CHAPTER 9:07

CRIMINAL PROCEDURE AND EVIDENCE ACT

Order-in-Council, 1898 (ss. 55 and 56); Ords. 4/1899, 10/1908, 13/1912; Acts 8/1924, 19/1926, 4/1927, 18/1927, 5/1932, 7/1933, 1/1934, 19/1936 (ss. 3, 4, 5 and 6), 37/1938 (ss. 24 and 25), 19/1942 (ss. 3 and 4), 22/1942 (s. 12), 25/1948 (s. 24), 52/1949, 27/1950, 14/1952, 56/1953 (s. 4), 6/1955, 9/1955 (Federal s. 126), 17/1957 (Federal s. 25), 4/1958 (s. 10), 24/1958, 72/1959, 10/1960, 53/1960 (ss. 55, 56 and 57), 24/1962 (s. 2), 32/1962, 43/1962 (s. 2), 18/1963 (s. 24), 21/1963, 12/1964 (ss. 14, 15 and 16), 22/1964 (s. 54), 69/1964, 18/1965, 44/1966 (s. 20), 58/1966, 11/1968 (s. 17), 12/1969, 22/1972 (s. 91), 24/1972 (ss. 3, 4 and 5), 11/1973 (s. 14), 32/1973, 42/1973 (s. 13), 61/1973 (s. 2), 37/1975, 48/1976 (s. 82), 50/1976, 38/1977 (s. 7), 31/1978, 41/1978 (s. 5), 17/1979 (s. 8), 15/1981 (s. 66), 29/1981 (s. 59), 15/1982 (s. 3), 3/1983, 31/1983 (s. 7), 15/1985. (s. 13), 25/1985 (s. 13), 32/1985, 17/1986, 24/1989, 4/1990, 27/1990, 1/1992, 2/1992, 22/1992 (s. 3), 15/1994, 20/1994, 8/1997, 9/1997 (s. 10), 8/1998, 25/1998 (s. 52), 9/1999 (s. 82), 14/1999 (s. 29), 6/2000 (s. 151), 8/2001 (s. 26), 22/2001 (s. 4), 23/2001 (s. 49), 1/2002 (s. 44), 14/2002 (s. 14), 14/2004, 23/2004 (s. 282); 6/2005 (s. 7), 9/2006, 3/2009, 1/2011 (s. 2), 5/2011 (s. 4,), 5/2014 (s. 33), 2/2016.

R.G.N.s 153/1963, 801/1963, 91/1964, 214/1964, 295/1964, 386/1964, 217/1970 as read with Act 29/1970 (s. 16), 313/1970, 1092/1970, 1116/1970, 416/1972, 327/1977 (s. 3); S.I.s 589/1979 (s. 3).

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AN ACT to consolidate and amend the law relating to procedure and evidence in criminal cases, and to make provision for other matters incidental to such procedure and evidence.

[Date of commencement: 1st June, 1927.]

PART I

PRELIMINARY

1 Short title

This Act may be cited as the Criminal Procedure and Evidence Act [*Chapter 9:07*].

2 Interpretation

In this Act—

"accused" or "accused person" means a person who has been arrested for or charged with an offence;

[Definition inserted by section 2 of Act 2 of 2016]

"authorised person", for the purposes of taking an intimate sample or buccal sample pursuant to section 41(3) or 41B, means a health practitioner, medical officer or other person who has successfully undergone the relevant training to enable him or her to take a bodily sample;

[Definition inserted by section 2 of Act 2 of 2016]

"bodily sample" means an intimate or buccal sample taken from a person;

[Definition inserted by section 2 of Act 2 of 2016]

"buccal sample" means a sample of cellular material taken from the inside of a person's mouth for the purposes of conducting a forensic DNA analysis of that sample;

[Definition inserted by section 2 of Act 2 of 2016]

"company" means a company incorporated or registered under any enactment generally governing companies or under any special enactment or under letters patent or Royal Charter;

"compelling reasons", for the purposes of—

(a) sections 39B(2)(*b*), 258A(2)(*b*) and 385A(3), means any reason related to—

(i) safeguarding the enjoyment of rights and not prejudicing the rights and freedoms of other persons that might be put in immediate jeopardy; or

(ii) safeguarding the interests of defence, public safety, public order, public health, regional or town planning or the general public interest, that might be put in immediate jeopardy;

(b) Part IX ("Bail"), shall be construed in accordance with section 115C;

Definition inserted by section 2 of Act 2 of 2016]

"court" or "the court", in relation to any matter dealt with under a particular provision of this Act, means the judicial authority which under this Act or any other enactment has jurisdiction in respect of that matter;

"day" or "day-time", when used in contra-distinction to "night" or "night-time", means the space of time between sunrise and sunset;

"DNA" means deoxyribonucleic acid;

[Definition inserted by section 2 of Act 2 of 2016]

"forensic DNA analysis", in relation to an intimate or buccal sample, means the identification in that sample of genetic sequences commonly called "markers" that are highly variable and particular to each person;

[Definition inserted by section 2 of Act 2 of 2016]

"health practitioner" means any person in respect of whose profession or calling a register is kept in terms of the Health Professions Act [*Chapter 27:19*];

[Definition inserted by section 2 of Act 2 of 2016]

"judge" means a judge of the High Court;

"justice" means a justice of the peace appointed or exercising functions as such under any enactment;

"legal representative" means—

(a) in relation to a person who is represented by a legal practitioner, that legal practitioner;

(b) in relation to an accused person under the age of sixteen who is assisted by his natural or legal guardian, that guardian;

(c) in relation to an accused person whom a court has in terms of section *one hundred and ninetyone* permitted to be assisted by another person, that other person;

"medical officer" means a—

(a) medical practitioner; or

(b) State Registered Nurse;

employed wholly or mainly or on a part-time basis by the Police Service, the Prisons and Correctional Service or other organ of State, or a local authority;

[Definition inserted by section 2 of Act 2 of 2016]

"Minister" means the Minister of Justice, Legal and Parliamentary Affairs or any other Minister to whom the President may, from time to time, assign the administration of this Act;

"money" includes all coined money, whether current in Zimbabwe or not, and all bank-notes, bank-drafts, cheques, orders or warrants or any other authorities whatever for the payment of money;

"National Director of Public Prosecutions" means the National Director of Public Prosecutions appointed in terms of section 8 of the National Prosecuting Authority Act [*Chapter 7:20*];

[Definition inserted by section 2 of Act 2 of 2016]

"night" or "night-time", when used in contra-distinction to "day" or "day-time", means the space of time between sunset and sunrise;

"offence" means an act or omission punishable by law;

"peace officer" includes—

(a) any magistrate or justice;
(b) the Sheriff or any deputy sheriff;
(c) any police officer;
(d) any prison officer;
(e) any immigration officer;
(f) any inspector of mines;
(g) any—
  (i) chief, within his area; and
  (ii) headman, within his chief's area; and
  (iii) village head, within the area of his village; and
  (iv) chief's messenger or headman's messenger, within the chief's area; as defined in the Traditional Leaders Act [*Chapter 29:17*];

[Paragraph amended by section 52 of Act 25 of 1998.]

(h) any other person designated by the Minister by a statutory instrument;

"person" and "owner" and other like terms, when used with reference to property or acts, include corporations of all kinds, and any other association of persons capable of owning or holding property or doing acts and they also, when relating to property, include any department of the State;

"premises" includes, in addition to any land, building or structure, any vehicle, conveyance, ship or boat;

"property" includes everything animate or inanimate, corporeal or incorporeal, capable of being the subject of ownership;

"public prosecutor" " means the Prosecutor-General or a person who has the Prosecutor-General's authority to institute and conduct criminal proceedings on behalf of the State;

[Definition substituted by section 2 of Act 2 of 2016]

"sexual offence" means—

(a) for the purpose of section 278, any of the following offences or an attempt to commit any of the following offences—
  (i) rape;
  (ii) aggravated indecent assault;
  (iii) sexual intercourse or performing an indecent act with a young person;
  (iv) sodomy;
  (v) sexual intercourse within a prohibited degree of relationship;
  (vi) deliberate infection of another with a sexually transmitted disease;
  (vii) deliberate transmission of HIV;
  (viii) coercing or inducing a person for the purpose of engaging in sexual conduct;
(b) for the purpose of section 302A, any of the following offences or an attempt to commit any of the following offences—
  (i) rape;
  (ii) aggravated indecent assault;

(iii) sexual intercourse or performing an indecent act with a young person, involving any penetration of any part of his or her or another person's body that involves a risk of transmission of HIV;

(iv) deliberate transmission of HIV;

[Definition inserted by section 2 of Act 9 of 2006.]

"statutory capital offence" ....

[Definition repealed by section 2 of Act 2 of 2016]

"suitably qualified nurse" means a State certified nurse, paediatric nurse, State certified traumatology nurse or general registered nurse registered as such in terms of the Health Professions Act [*Chapter 27:19*] (No. 6 of 2000);

[Definition inserted by section 2 of Act 9 of 2006.]

"valuable security" includes any document which is the property of any person and which is the evidence of the ownership of any property or of the right to recover or receive any property.

3 Proceedings to which Act applies

This Act shall apply to all criminal proceedings in the High Court and the Supreme Court and in magistrates courts in respect of any offence.

4 Neither acquittal nor conviction a bar to civil action for damages

Neither a conviction nor an acquittal following on any prosecution shall be a bar to a civil action for damages at the instance of any person who may have suffered any injury from the commission of any alleged offence.

PART II

PROSECUTION ON BEHALF OF STATE

[Part II (sections 5 – 11A) substituted by section 3 of Act 32 of 2016]

5 Delegation of functions by Prosecutor-General

(1) Subject to the general or specific instructions of the Prosecutor- General, the public prosecutor to whom responsibility for public prosecutions is assigned under the National Prosecuting Authority Act [*Chapter 7:20*] (No. 5 of 2014), shall exercise all the rights and powers and perform all of the functions conferred upon the Prosecutor-General by section 259 of the Constitution, this Act or any other enactment, insofar as they relate to criminal proceedings.

(2) The Prosecutor-General may, when he or she deems it expedient, appoint any legal practitioner entitled to practise in Zimbabwe to exercise (subject to the general or specific instructions of the Prosecutor-General) all or any of the rights and powers or perform all or any of the functions conferred upon the Prosecutor-General by section 259 of the Constitution, this Act or any other enactment, whether or not they relate to criminal proceedings.

(3) The officer referred to in subsection (1) or a legal practitioner appointed in terms of subsection (2) may, subject to any conditions which the Prosecutor-General may impose—

(a) sign any certificate, authority or other document required or authorised by an enactment referred to in those subsections; and

(b) appoint a member of the National Prosecuting Authority constituted in terms of the National Prosecuting Authority Act [*Chapter 7:20*] (No. 5 of 2014), or a legal practitioner entitled to practise in Zimbabwe, as the case may be, to exercise the rights and powers or perform the functions delegated to him or her in terms of subsection (1) or (2), and the provisions of this subsection shall apply, with such changes as may be necessary, in respect of that appointment.

6 National Director of Public Prosecutions

There shall be a National Director of Public Prosecutions appointed in terms of section 8 of the National Prosecuting Authority Act [*Chapter 7:20*] (No. 5 of 2014).

7 Change of prosecutor

Criminal proceedings instituted on behalf of the State by one public prosecutor may be continued by any other public prosecutor.

8 Power to stop public prosecutions

The Prosecutor-General, or any person conducting criminal proceedings on behalf of the State may—

(a) before an accused pleads to a charge, withdraw that charge, in which event the accused shall not be entitled to a verdict of acquittal in respect of that charge;

(b) at any time after an accused has pleaded to a charge, but before conviction, stop the prosecution in respect of that charge, in which event the court trying the accused shall acquit the accused in respect of that charge.

9 Prosecutions for contempt of court proceedings

(1) A court or tribunal may, on its own motion, institute proceedings for contempt of court against any person who is alleged to have impaired its dignity, reputation or authority in the presence of the court or tribunal.

(2) No court, tribunal or person, other than the Prosecutor-General or someone acting on the express authority of the Prosecutor-General, shall institute or continue any proceedings for contempt of court against anyone who is alleged to have impaired the dignity, reputation or authority of a court or tribunal in circumstances other than those referred to in subsection (1).

(3) Nothing in this section shall affect the institution of proceedings for contempt of court against any person for the purpose of enforcing any order of a court or tribunal.

10 Power of ordering liberation of persons committed for further examination, sentence or trial

(1) The Prosecutor-General may order the liberation of any person committed to prison for further examination or trial, and for that liberation a document setting forth that the Prosecutor-General sees no grounds for prosecuting such person and signed by him or her shall be a sufficient warrant.

(2) If, in the opinion of the Prosecutor-General, the accused person has been wrongly convicted by the court, the Prosecutor-General may, at any stage after conviction, make representations to the court that—

(a) there is compelling evidence that exonerates the convicted person of the offence; or

(b) compelling evidence incriminating a person other than the convicted person has been brought to the Prosecutor- General's knowledge; or

(c) new evidence obtained links the convicted person to a lesser offence and not to the offence for which he or she was convicted;

and that the evidence referred to in paragraph (*a*), (*b*) or (*c*) was not within the Prosecutor-General's knowledge at the time of trial.

(3) Upon hearing the representations of the Prosecutor-General, the court may—

(a) uphold the conviction; or

(b) set aside the conviction and liberate the convicted person; or (*c*) make such order or give such directions as it deems fit.

(4) If the Prosecutor-General is dissatisfied with the court's decision in terms of subsection (3), the Prosecutor-General may appeal against such decision to a superior court.

(5) On an appeal by the Prosecutor-General in terms of subsection (4), the superior court may— (*a*) confirm the decision made in terms of subsection (3); or

(*b*) remit the case to the convicting court for sentencing; or (*c*) make such order or give such directions as it deems fit.

11 Functions of local public prosecutor

(1) All public prosecutors attached to a magistrates court are, as representatives of the Prosecutor-General and subject to his or her instructions, charged with the duty of prosecuting in that magistrates court, in the name and on behalf of Zimbabwe, all offences which, under any enactment governing magistrates courts or any other enactment, that magistrates court has jurisdiction to try.

(2) Criminal proceedings instituted in a magistrates court by any local public prosecutor may be continued by any other public prosecutor.

(3) When there is lodged with or made before a local public prosecutor a sworn declaration in writing by any person disclosing that any other person has committed an offence chargeable in the magistrates court to which such public prosecutor is attached, he or she shall determine whether there are good grounds for prosecution or not:

Provided that—

(i) he or she may refer to the Prosecutor-General the question whether he or she shall prosecute or not;

(ii) any other person may be specially authorised by the Prosecutor-General to prosecute in the matter.

11A Publication of principles on which decisions to prosecute are based

(1) The Prosecutor-General shall, at intervals of not more than two years, review the statement which he or she is required by section 260(2) of the Constitution to formulate, and which sets out the principles by which he or she decides whether and how to institute and conduct criminal proceedings.

(2) When formulating or reviewing the principles by which he or she decides whether and how to institute and conduct criminal proceedings in terms of section 260(2) of the Constitution, the Prosecutor-General shall consult—

(a) the Judicial Service Commission; and

(b) the Law Society of Zimbabwe; and

(c) such other persons and bodies as he or she thinks appropriate; and while he or she shall not be bound to adopt any recommendation made by those persons and bodies, he or she shall pay due regard to them.

(3) The Prosecutor-General shall ensure that the statement of principles referred to in subsection (1) is published as widely as practicable, and in particular shall ensure that copies of the statement, as amended from time to time, are kept at all offices of the National Prosecuting Authority and are available for inspection there by members of the public at all reasonable times during office hours.

[Part II (sections 5 – 11A) substituted by section 3 of Act 32 of 2016]

PART III

PRIVATE PROSECUTIONS

12 Interpretation in Part III

In this Part—

"private party" means a person authorized by section *thirteen* or *fourteen* to prosecute any offence.

13 Private prosecution on refusal of Prosecutor-General to prosecute

In all cases where the Prosecutor-General declines to prosecute for an alleged offence, any private party, who can show some substantial and peculiar interest in the issue of the trial arising out of some injury which he individually has suffered by the commission of the offence, may prosecute, in any court competent to try the offence, the person alleged to have committed it.

14 What other persons entitled to prosecute

The following shall possess the right of prosecution—

(a) a spouse of the person against whom the offence was committed;

(b) the legal guardians or curators of minors or mentally disordered or defective persons, in respect of offences committed against their wards;

(c) the surviving spouse or children or, where there is no surviving spouse or child, any of the next-of-kin of any deceased person, in respect of any offence by which the death of such person is alleged to have been caused;

(d) public bodies and persons on whom the right is specially conferred by statute, in respect of particular offences.

[Section amended by section 4 of Act 2 of 2016]

15 Private prosecutor may apply to court for warrant

Where, by virtue of the right of prosecution given to private parties by section *thirteen* or *fourteen*, any private party desires to prosecute for any offence any person for whose liberation from prison any warrant has been issued by the Prosecutor-General, such private party may apply to the High Court or, in case such court is not then sitting, to any judge, for a warrant for the further detention or, if he is on bail, for the detention of such person, and such court or judge shall make such order as to it or him seems right under the circumstances.

16 Certificate of Prosecutor-General that he or she declines to prosecute

(1) Except as is provided by subsection (4), it shall not be competent for any private party to obtain the process of any court for summoning any party to answer any charge, unless such private party produces to the officer authorised by law to issue such process a certificate signed by the Prosecutor-General that he or she has seen the statements or affidavits on which the charge is based and declines to prosecute at the public instance, and, subject to the conditions set forth in subsections (2) and (3), in every case in which the Prosecutor-General declines to prosecute he or she shall, at the request of the party intending to prosecute, grant the certificate required.

(2) The Prosecutor-General shall grant the certificate referred to in subsection (1) if—

(*a*) there is produced to him or her by the private party a written request in the form of a sworn statement from which it appears to the Prosecutor-General that the private party—

(i) is the victim of the alleged offence, or is otherwise an interested person by virtue of having personally suffered, as a direct consequence of the alleged offence, an invasion of a legal right beyond that suffered by the public generally; and

(ii) has the means to conduct the private prosecution promptly and timeously; and

(iii) will conduct the private prosecution as an individual (whether personally or through his or her legal practitioner), or as the representative of a class of individuals recognised as a class for the purposes of the Class Actions Act [*Chapter 8:17*] (No. 10 of 1999);

and

(*b*) no grounds exist in terms of subsection (3) for withholding the certificate.

(3) The Prosecutor-General may refuse to grant the certificate referred to in subsection (1) upon any one or more of the following grounds, namely—

(a) that the conduct complained of by the private party does not disclose a criminal offence; or

(b) that on the evidence available, there is no possibility (or only a remote possibility) of proving the charge against the accused beyond a reasonable: doubt; or

(c) whether the person to be prosecuted has adequate means to conduct a defence to the charge (in the case of any person who, but for the fact that the Prosecutor-General has declined to prosecute him or her, would have qualified for legal assistance at the expense of the State); or

(d) that it is not in the interests of national security or the public interest generally to grant the certificate to the private party.

(4) When the right of prosecution referred to in this Part is possessed under any statute by any public body or person in respect of particular offences, subsections (1), (2) and (3) shall not apply.

[Section substituted by section 5 of Act 2 of 2016]

17 Private prosecutor may be ordered to give security for costs

Where a private prosecution is being or has been instituted by a person other than a public body or person described in section 14(*d*), the court may order him or her to give such security as the court may direct for the payment of any costs incurred by the accused person in respect of his or her defence, and where the court has made such an order no further steps shall be taken in the prosecution until the security has been given.

[Section substituted by section 6 of Act 2 of 2016]

18 Failure of private prosecutor to appear on appointed day

(1) If the prosecutor, being a private party, does not appear on the day appointed for appearance, the charge orcomplaint shall be dismissed unless the court sees reason to believe that such party was prevented from being present by circumstances beyond his control, in which case it may adjourn the hearing of the case.

(2) In the case of any dismissal in terms of subsection (1), the accused shall not be again liable to prosecution on the same charge by any private party, but no such dismissal shall prevent the Prosecutor-General, or a public prosecutor on the instructions of the Prosecutor-General, from afterwards taking up the case.

19 Mode of conducting private prosecutions

A private prosecution shall, subject to this Act, be proceeded with in the same manner as if it were being conducted at the public instance, except that all costs and expenses of the prosecution shall be paid by the party prosecuting, subject to any order that the court may make when the prosecution is finally concluded.

20 Competency of Prosecutor-General to take up and conduct prosecution at public instance

[Heading substituted by Act 5 of 2014]

In the case of a prosecution at the instance of a private party, the Prosecutor-General or the local public prosecutor may apply by motion to any court before which the prosecution is pending to stop all further proceedings in the case, in order that prosecution for the offence may be instituted or continued at the public instance and such court shall, in every such case, make an order in terms of the motion.

21 Deposit of money by private prosecutor

In the case of a criminal prosecution at the instance of a private party, the registrar or clerk of the court shall, for the service of any criminal summons or subpoena or execution of any warrant of arrest or other criminal process, demand and receive the prescribed fee.

22 Costs of private prosecution

(1) Where a person prosecuted at the instance of a private party is acquitted, the court in which the prosecution was brought may order the party that instituted the prosecution to pay to the party prosecuted the whole or any part of the expenses, including the costs both before and after committal, which may have been occasioned to him by the prosecution.

(2) Where the court, upon hearing the charge or complaint on a private prosecution, pronounces the same unfounded and vexatious, it shall award to the accused on his request such costs as it may think fit.

(3) Where a person prosecuted at the instance of a private party is convicted, the court may order the convicted person to pay the costs and expenses of the private prosecution in addition to any sum awarded in terms of Part XIX:

Provided that if the private prosecution was instituted after a certificate by the Prosecutor-General that he declined to prosecute the court may order the costs to be paid by the State.

(4) Any costs awarded in terms of this section shall be taxed according to the scale applicable in civil cases in the court concerned unless a special scale of costs for private prosecutions has been prescribed in rules of court.

PART IV

PRESCRIPTION OF OFFENCES

23 Prescription of offences

(1) The right of prosecution for murder shall not be barred by any lapse of time.

(2) The right of prosecution for any offence other than murder, whether at the public instance or at the instance of a private party, shall, unless some other period is expressly provided by law, be barred by the lapse of twenty years from the time when the offence was committed.

PART V

ARRESTS

A. Without warrant

24 Arrest and verbal order to arrest

(1) It shall be lawful for any judge, magistrate or justice, who has knowledge of any offence by seeing it committed, himself to arrest the offender or by a verbal order to authorize others so to do.

(2) The persons authorized in terms of subsection (1) are empowered and required to follow the offender if he flees, and to execute the order on him out of the presence of the judge, magistrate or justice.

25 Arrest without warrant by peace officer or other officer

(1) Any peace officer and any other officer empowered by law to execute criminal warrants is hereby authorized, subject to the general or specific directions of a superior officer or person placed in authority over him, to arrest without warrant—

(a) any person who commits any offence in his presence;

(b) any person whom he or she has reasonable grounds to suspect of having committed any of the offences mentioned in the First Schedule or the Ninth Schedule:

Provided that if, in the case of an offence mentioned in the Ninth Schedule, the peace officer or other officer concerned has reason to believe that the offence is sufficiently serious to justify the issue by the Prosecutor-General of a certificate referred to in subsection (3b) of section *thirty-two*, the officer concerned shall not effect an arrest in terms of this paragraph—

(i) unless he or she is a police officer who is of or above the rank of assistant inspector, or is given leave by such an officer to effect the arrest; and

(ii) where the alleged offence is disclosed by an anonymous complainant, unless the officer concerned immediately (and in any case no later than the end of the day on which the complaint is received) records in writing the particulars, time and date of such complaint and the manner in which it was made;

[Paragraph (*b*) substituted by section 2 of Act 14 of 2004.]

(*c*) any person whom he finds attempting to commit an offence, or clearly manifesting an intention so to do.

(2) Any peace officer may, without any order or warrant, arrest—

(a) any person having in his possession any implement of housebreaking and not being able to account satisfactorily for such possession;

(b) any person in whose possession anything is found which it is reasonably suspected is stolen property or property dishonestly obtained, and who is reasonably suspected of having committed an offence with respect to such thing;

(c) any person who obstructs a police officer or other peace officer while in the execution of his duly or who has escaped or attempts to escape from lawful custody;

(d) any person reasonably suspected of being a deserter from the Defence Forces of Zimbabwe;

(e) any person 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 of his having been concerned in, any act committed at any place outside Zimbabwe, which if committed in Zimbabwe would have been punishable as an offence, and for which he is, in terms of any enactment relating to extradition or fugitive offenders or otherwise, liable to be arrested or detained in custody in Zimbabwe;

(f) any person being or loitering in any place under such circumstances as to afford reasonable grounds for believing that he has committed or is about to commit an offence;

(g) any person reasonably suspected of committing or of having committed an offence under any enactment governing the making, supply, use, possession or conveyance of intoxicating liquor, habit-forming drugs, traditional beer or harmful liquids or the possession or disposal of arms or ammunition;

(h) any person reasonably suspected of being a prohibited immigrant in Zimbabwe, for the purpose of any enactment regulating entry into or residence in Zimbabwe;

(i) any person found in any gambling-house or at any gambling-table, the keeping or visiting whereof is in contravention of any enactment for the prevention or suppression of gambling or games of chance;

(j) any person reasonably suspected of being or having been in unlawful possession of stock or produce, as defined in any enactment for preventing the theft of stock or produce.

(3) Whenever it is provided in any enactment that the arrest of any person may be made by a police officer or other official without warrant, subject to conditions or to the existence of circumstances in that enactment set out, an arrest by any peace officer, without warrant or order, may be made of such person, subject to those conditions or the existence of those circumstances.

26 Power of peace officer to call for name and address of certain persons

(1) A peace officer may call upon—

(a) any person whom he has power to arrest; and

(b) any person reasonably suspected of having committed any offence; and

(c) any person who may in his opinion 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. (2)

If a person on demand in terms of subsection (1)—

(a) fails to furnish his full name and address, the peace officer making the demand may forthwith arrest him; or

(b) furnishes to the peace officer a name or address which the peace officer, upon reasonable grounds, suspects to be false, such person may be arrested and detained for a period not exceeding twelve hours until the name and address so furnished have been verified.

(3) Any person who, when called upon under this section 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 to a fine not exceeding level four or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

[Subsection amended by section 4 of Act 22 of 2001.]

27 Arrest by private person for certain offences committed in his presence

(1) Any private person in whose presence anyone commits or attempts to commit an offence mentioned in theFirst Schedule, or who has knowledge that any such offence has been recently committed, is authorized to arrest without warrant or forthwith to pursue the offender, and any other private person to whom the purpose of the pursuit has been made known is authorized to join and assist therein.

(2) Any private person is authorized to arrest without warrant any other person whom he believes on reasonable grounds to have committed an offence and to be escaping from, and to be freshly pursued by, one whom such private person believes on reasonable grounds to have authority to arrest the escaping person for that offence.

(3) When it is provided by any enactment with respect to an offence that the offender may be arrested without warrant by any private person particularly specified, any such specified person may arrest the offender without warrant.

28 Arrest by private persons of persons fighting in public places

Any private person is authorised to arrest without warrant any person whom he or she sees engaged in fighting in a public place in order to prevent such person from continuing the fight, and to deliver him or her over to a police officer to be dealt with according to law.

[Section substituted by section 7 of Act 2 of 2016]

29 Owners of property may arrest in certain cases

The owner, lawful occupier or person in charge of any property on or in respect of which any person is found committing an offence, or any person authorized by such owner, lawful occupier or person in charge, may arrest without warrant the person so found.

30 Arrest by private person for certain offences on reasonable suspicion

Any private person may without warrant arrest any other person upon reasonable suspicion that such other person has committed any offence specified in the First Schedule.

31 Arrest of persons offering stolen property for sale

Where anyone may without warrant arrest another for committing an offence, he may also arrest without warrant any person who offers to sell, pawn or deliver to him any property which on reasonable grounds he believes to have been acquired by such person by means of any such offence.

31A Arrest by persons in charge of ship, boat or aircraft

(1) The commander or person in charge of any ship, boat or aircraft may without warrant arrest any person whom he knows or on reasonable grounds believes to have committed, to be committing or to be about to commit an offence aboard the ship, boat or aircraft.

(2) A commander or person in charge of any ship, boat or aircraft may authorise any member of the crew of the ship, boat or aircraft or any passenger aboard the ship, boat or aircraft to assist him in arresting any person in terms of subsection (1), and the member of the crew or the passenger so authorised shall have the same power to effect the arrest as the commander or person in charge of the ship, boat or aircraft.

[Section inserted by Act 23 of 2004]

32 Procedure after arrest without warrant

(1) For the purposes of this section—

"court day" means any day except a Sunday or a public holiday.

(2) Subject to subsections (3a), (3b) and (3c), a person arrested without warrant shall as soon as possible be brought to a police station or charge office and, if not released by reason that no charge is to be brought against him, may be detained for a period not exceeding forty-eight hours unless he is brought before a judge or magistrate upon a charge of any offence and his further detention is ordered by that judge or magistrate or a warrant for his further detention is obtained in terms of section *thirty-three.*

[Subsection substituted by section 44 of Act 1 of 2002 and amended by section 3 of Act 14 of 2004.]

(3) Any person who is arrested or detained—

(a) for the purpose of bringing him or her before a court; or

(b) for an alleged offence;

and who is not released must be brought before a court as soon as possible and in any event not later than fortyeight hours after the arrest took place or the detention began, as the case may be, whether or not the period ends on Sunday or a public holiday.

[Subsection substituted by section 8 of Act 2 of 2016]

(3a) Where the person arrested without warrant is charged with any offence referred to in paragraph 10 of the Third Schedule and the judge or magistrate before whom the person is brought in terms of this section is satisfied that there is a reasonable suspicion that the person committed the offence, the judge or magistrate shall order that person's further detention or issue a warrant for his or her further detention for a period of twenty-one days.

[Subsections (3a) to (3d) inserted by section 3 of Act 14 of 2004.]

(3b) Where the person arrested without warrant is charged with any offence referred to in the Ninth Schedule and there is produced to the judge or magistrate before whom the person is brought in terms of this section—

(a) a certificate issued by or on behalf of the Prosecutor-General stating that, in the Prosecutor-General's opinion

(i) the offence in question involves significant prejudice or significant potential prejudice to the economy or other national interest of Zimbabwe; and

(ii) the further detention of the person arrested for a period of up to twenty-one days is necessary for any one or more of the following reasons

A. the complexity of the case; or

B. the difficulty of obtaining evidence relating to the offence in question; or

C. the likelihood that the person arrested will conceal or destroy the evidence relating to the offence in question or interfere with the investigation of the offence or both;

and

(b) the following, where the arrest is made in the circumstances referred to in paragraph (*b*) of subsection (1) of section *twenty-five*—

(i) proof that the arresting officer was an officer of or above the rank of assistant inspector at the time of the arrest, or that the arresting officer made the arrest with the prior leave of such an officer; and

(ii) where the alleged offence was disclosed through an anonymous complaint, a copy of the complaint as recorded in accordance with subparagraph (ii) of the proviso to paragraph (*b*) of subsection (1) of section *twenty-five*;

the judge or the magistrate shall, if satisfied that there is a reasonable suspicion that the person committed the offence, order that person's detention or issue a warrant for his or her further detention for a period of twenty-one days or the lesser period specified in the certificate.

[Subsections (3a) to (3d) inserted by section 3 of Act 14 of 2004.]

(3c) A person referred to in subsection (3a) or (3b) shall, unless the charge or charges against him or her are earlier withdrawn, remain in detention for twenty-one days or the lesser period specified in a certificate mentioned in subsection (3b), as the case may be, from the date when an order or warrant for the person's further detention was issued in terms of the relevant subsection, and no court shall admit such person to bail during that period.

Provided that the arresting officer or other officer in authority over him or her shall, at intervals of not more than forty-eight hours beginning on the date when the order or warrant for the person's further detention is issued, make a report to the Prosecutor-General on the progress of the investigations into the charge or charges against the person in detention, and if the Prosecutor-General is satisfied on the basis of any such report that the person's detention is no longer justified, the Prosecutor-General may order the immediate and unconditional release of the detained person.

[Subsections (3a) to (3d) inserted by section 3 of Act 14 of 2004. Proviso inserted by Act 23 of 2004 and amended by section 28 of Act 9 of 2006.]

(3d) A person referred to in subsection (3a) or (3b) may continue to be detained after the expiry of the period referred to in subsection (3c) pending the outcome of investigations into the charge or charges against him or her if (without prejudice to the person's right to apply for bail) an order or warrant for that person's further detention is obtained from a judge or magistrate in terms of section *thirty-three* within forty-eight hours of the expiry of the period referred to in subsection (3c).

[Subsections (3a) to (3d) inserted by section 3 of Act 14 of 2004.]

(4) ….

[Subsection repealed by section 3 of Act 14 of 2004.]

(5) When an arrest is made without warrant, the person arrested shall be informed forthwith by the person arresting him of the cause of the arrest.

B. With warrant

33 Warrant of arrest by judge, magistrate or justice

(1) Any judge, magistrate or justice (other than a police officer) may issue a warrant for the arrest of any person or for the further detention of a person arrested without a warrant on written application subscribed by—

(a) the Prosecutor-General; or

(b) the local public prosecutor; or

(c) a police officer who is of or above the rank of inspector; or

(d) a police officer in charge of a police station who is of or above the rank of assistant inspector;

setting forth the offence alleged to have been committed, and that, from information available to him, he has reasonable grounds of suspicion against that person, or upon the information to the like effect of any person made on oath before the judge, magistrate or justice issuing the warrant:

Provided that it shall not be lawful for a magistrate or justice to issue any such warrant except when the offence charged has been committed within his area of jurisdiction or except when the person against whom the warrant is issued was, at the time when it was issued, known, or suspected on reasonable grounds, to be within the area of jurisdiction of the magistrate or justice.

[Subsection amended by section 9 of Act 2 of 2016]

(2) Any warrant referred to in subsection (1) may be issued on any day of the week, including Sunday.

(3) Subject to subsection (4), a warrant issued for the arrest of a person shall remain in force until it is cancelled by the person who issued it or until it is executed.

(4) Where a warrant is issued for the arrest of a person and such person is detained by virtue of an arrest without warrant, the warrant shall be deemed to have been cancelled and the provisions of this Act relating to the arrest of a person without warrant shall apply in respect of such person.

34 Execution of warrants

(1) Every peace officer is authorized and required to obey and execute any warrant issued in terms of section*thirty-three*.

(2) A peace officer or other person arresting any person by virtue of a warrant under this Act shall, upon demand of the person arrested, produce the warrant to him and notify him of the substance thereof.

(3) A person arrested by virtue of a warrant under this Act shall as soon as possible be brought to a police station or charge office, unless any other place is specially mentioned in the warrant as the place to which such person shall be brought, and he shall thereafter be brought as soon as possible before a judicial officer upon a charge of the offence mentioned in the warrant.

(4) If a person arrested by virtue of a warrant is charged with any offence referred to in

(a) paragraph 10 of the Third Schedule, and the judicial officer before whom the person is brought in terms of this section is satisfied that there is a reasonable suspicion that the person committed the offence, the judicial officer shall order that person's continued detention for a period of twenty-one days; or

(b) the Ninth Schedule and there is produced to the judicial officer before whom the person is brought in terms of this section a certificate issued by or on behalf of the Prosecutor-General in the same terms as those specified in subsection (3b) of section *thirty-two*, the judicial officer shall, if satisfied that there is a reasonable suspicion that the person committed the offence, order that person's continued detention for a period of twenty-one days or the lesser period specified in the Prosecutor-General's certificate.

[Subsections (4), (5) and (6) inserted by section 4 of Act 14 of 2004.]

(5) A person referred to in subsection (4) shall, unless the charge or charges against him or her are earlier withdrawn, remain in detention for twenty-one days or the lesser period specified in a certificate mentioned in paragraph (*b*) of subsection (4), as the case may be, from the date when an order for the person's further detention was issued in terms of that subsection, and no court shall admit such person to bail during that period.

Provided that the arresting officer or other officer in authority over him or her shall, at intervals of not more than forty-eight hours beginning on the date when the order for the person's further detention is issued, make a report to the Prosecutor-General on the progress of the investigations into the charge or charges against the person in detention, and if the Prosecutor-General is satisfied on the basis of any such report that the person's detention is no longer justified, the Prosecutor-General may order the immediate and unconditional release of the detained person.

[Subsections (4), (5) and (6) inserted by section 4 of Act 14 of 2004. Proviso inserted by Act 23 of 2004 and amended by section 28 of Act 9 of 2006.]

(6) A person referred to in subsection (4) may continue to be detained after the expiry of the period referred to in subsection (5) pending the outcome of investigations into the charge or charges against him or her if (without prejudice to the person's right to apply for bail) an order or warrant for that person's further detention is obtained from a judge or magistrate within forty-eight hours of the expiry of the period referred to in subsection (5).

[Subsections (4), (5) and (6) inserted by section 4 of Act 14 of 2004.]

35 Arrest on wireless or telegraphic transmission of warrant

A communication which—

(a) sets out or substantially outlines the terms of a warrant issued in terms of section 33; and

(b) is sent or communicated electronically or in an official publication; shall be sufficient authority for the arrest of the person named in the warrant as if it were the original warrant.

[Section substituted by section 10 of Act 2 of 2016]

36 Arresting wrong person

(1) Any person duly authorized to execute a warrant of arrest who thereupon arrests a person, believing ingood faith and on reasonable and probable grounds that he is the person named in the warrant, shall be protected from responsibility to the same extent and subject to the same provisions as if the person arrested had been the person named in the warrant.

(2) Any person called on to assist the person making such arrest and believing that the person in whose arrest he is called on to assist is the person for whose arrest the warrant was issued, and every officer in charge of a prison

who is required to receive and detain such person, shall be protected to the same extent and subject to the same provisions as if the arrested person had been the person named in the warrant.

37 Irregular warrant or process

Any person acting under a warrant or process which is bad in law, on account of a defect in substance or in form apparent on the face of it, shall, if he in good faith and without culpable ignorance and negligence believes that the warrant or process is good in law, be protected from responsibility to the same extent and subject to the same provisions as if the warrant or process were good in law, and ignorance of the law shall in such case be an excuse:

Provided that it shall be a question of law whether the facts of which there is evidence may or may not constitute culpable ignorance or negligence in his so believing the warrant or process to be good in law.

38 Tenor of warrant

Any warrant issued under this Act shall be to apprehend the person described therein and to bring him before a judicial officer as soon as possible upon a charge of an offence mentioned in the warrant.

C. General

39 Assistance by private persons called on by officers of the law

(1) Every male inhabitant of Zimbabwe between the ages of sixteen and sixty is, when called upon by any police officer, authorized and required to assist that police officer in making any arrest which by law that police officer is authorized to make of any person charged with or suspected of the commission of any offence, or to assist that police officer in retaining the custody of any person so arrested.

(2) Any inhabitant of Zimbabwe referred to in subsection (1) who, without sufficient excuse, refuses or fails to assist when called upon to do so shall be guilty of an offence and liable to a fine not exceeding level four or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

[Subsection amended by section 4 of Act 22 of 200 and by section 49 of Act 2 of 2016.]

39A Voluntary attendance at police station or charge office

Where for purposes of assisting the police with an investigation a person attends voluntarily at a police station or charge office or voluntarily accompanies a police officer to a police station or charge office without having been arrested—

(a) he or she shall be entitled to leave the police station or charge office at will unless he or she is placed under arrest; and

(b) he or she shall be informed promptly that he or she is under arrest if a decision is taken to arrest him or her on reasonable suspicion that he or she has committed an offence.

[Section inserted by section 11 of Act 2 of 2016]

39B Police officers may restrain, etc., persons in certain circumstances without intention to arrest

(1) In the exercise of a police officer's socially protective function, a police officer may—

(a) without intending to charge a person with an offence or without having formed the intention to charge a person with an offence; and

(b) by the of use such force as is reasonably justifiable and proportionate in the circumstances of the case (but never by the use of lethal force) to overcome any resistance on the part of the person concerned or to prevent the person concerned from escaping;

physically restrain a person and remove him or her to a police station or charge office, and there detain that person for a period of not more than twenty-four hours, in either of the circumstances specified in subsection (2).

(2) A police officer may exercise the powers referred to in subsection (1) in either of the following circumstances—

(*a*) where the person concerned is found not to be in his or her sound or sober senses (whether by reason of intoxication or a mental disorder or defect)—

(i) in a public place; or

(ii) in a private place or private residence where the owner or any lawful occupier thereof requests the intervention of a police officer;

or

(*b*) where there are compelling reasons (the proof whereof rests with the police officer concerned) for so restraining, removing and detaining the person concerned:

Provided that if a decision to charge a person so restrained, removed and detained with an offence is not made within twenty-four hours, the person must be released unconditionally no later than the expiry of that period.

(3) Whenever the police exercise their powers in terms of subsection (1), the police shall, as soon as possible, record in their occurrence book as defined in section 47, the particulars of the detained person and the reasons for such detention.

[Section inserted by section 11 of Act 2 of 2016]

40 Breaking open of doors after failure in obtaining admission for purpose of arrest or search

It shall be lawful for any peace officer or private person, who by law is authorized to arrest any person known or suspected to have committed any offence, to break open for that purpose the doors and windows of, and to enter and search, any premises in which the person whose arrest is required is known or suspected to be:

Provided that such officer or private person aforesaid shall not act under this section—

(a) if directions, whether general or specific, to the contrary have been given to him by a superior officer or other person placed in authority over him;

(b) unless he has previously failed to obtain admission after having audibly demanded admission and notified the purpose for which he seeks to enter such premises.

41 Arrest-how made, and search thereon of person arrested

(1) In making an arrest, the peace officer or other person authorized to arrest shall actually touch or confine the body of the person to be arrested, unless there is a submission to the custody by word or action.

(2) A peace officer or other person arresting any person under this Part may search that person, and shall place in safe custody all articles, other than necessary wearing apparel, found on him.

(3) Any peace officer may take or cause to be taken the finger-prints, palm-prints, footprints and photographs of any person arrested upon any charge, and may take or cause to be taken such steps as he or she may think necessary in order to ascertain whether or not the body of any such person bears any mark, characteristic or distinguishing feature, or shows any condition or appearance:

Provided that no intimate or buccal sample may be taken from the person who has been arrested except—

(a) in case of a buccal sample, by an authorised person at the request and in the presence of the peace officer; or

(b) in the case of an intimate sample—

(i) by a medical officer at the written request of a police officer of or above the rank of superintendent; or

(ii) by the medical officer of any prison at which the arrested person is detained; or

(iii) by an authorised person of the same sex as the person from whom the intimate sample is to be taken;

in order to ascertain some fact which is material to the investigation of the charge upon which such person has been arrested.

[Subsection substituted by section 12 of Act 2 of 2016]

(4) When it is desired to search or examine the body of a woman in terms of this section, such search or examination, unless made by a medical officer, shall be made only by a woman and shall be conducted with strict regard to decency and, if there is no woman available for such search or examination who is a police officer or a prison officer, the search or examination may be made by any woman specially named for the purpose by a peace officer.

(5) Any finger-prints, palm-prints, footprints or photographs and the records of any steps taken under this section shall be destroyed if the person concerned is found not guilty at his trial or his conviction is set aside by a superior court or the Prosecutor-General declines to prosecute him in terms of paragraph (*a*) of subsection (1) of section *one hundred and one* or the charge against him is withdrawn.

41A Arrested person to be informed of his or her rights

(1) Subject to this section, where a person has been arrested by a peace officer, whether with or without a warrant, the peace officer shall cause the person to be informed promptly, in a language he or she understands, of—

(a) the reason for the arrest; and

(b) his or her right to remain silent; and

(c) the consequences of remaining silent and of not remaining silent; and

(d) his or her right to contact, at the State's expense, any one of the following—

(i) a legal practitioner of his or her choice; or

(ii) a medical practitioner of his or her choice; or

(iii) his or her spouse or partner; or

(iv) his or her relative of choice; or

(v) anyone else of his or her choice; for the purpose of informing the person contacted about the arrest.

(2) Where a person has been informed of his or her rights referred to in subsection (1) in the English language, it shall be presumed, unless the contrary is proved, that he or she was informed of his or her rights in a language he or she understands.

(3) For the purposes of subsection (1)(*d*), if an arrested person does not succeed, without any fault on his or her part, in contacting a person of his or her first choice, the arrested person shall be allowed an opportunity to contact any other person until he or she succeeds in contacting him or her.

(4) The Tenth Schedule shall guide a peace officer as to the form of the words to be used for the purposes of subsection (1).

(5) Where a person has been arrested by a private person in terms of this Act or any other enactment, the private person must as soon as possible deliver the arrested person over to a police officer, who must then, as soon as he or she is satisfied that the arrest is justified, cause the arrested person to be informed of his or her rights in the manner provided in subsection (1).

(6) Every person concerned in the arrest of another person, under this Act or any other enactment and whether the arrest is with or without warrant, shall ensure that the arrested person is—

(a) treated humanely and with respect for his or her inherent dignity; and

(b) permitted to challenge the lawfulness of the arrest in person before a court; and (*c*) released promptly if the arrest is unlawful.

(7) A person who has been detained following an arrest, under this Act or any other enactment and whether with or without warrant, shall be accorded, by the person for the time being in charge of the place where he or she is being detained, the right to—

(a) be informed promptly of the reason for his or her detention; and

(b) consult in private with a registered legal practitioner of his or her choice, and to be informed of this right promptly; and

(c) communicate with, and be visited by—

(i) a spouse or partner; and

(ii) a relative; and

(iii) a religious counsellor of his or her choice; and

(iv) a registered legal practitioner of his or her choice; and

(v) a registered medical practitioner of his or her choice; and

(vi) subject to any reasonable restrictions imposed for the proper administration of the place of detention, any other person of his or her choice; and to be informed of this right promptly; and

(*d*) to remain silent and to be informed of this right, and of the consequences of exercising or not exercising this right, if there is reason to believe that he or she may not be aware of it.

(8) The person for the time being in charge of the place where a person is being detained following his or her arrest, under this Act or any other enactment and whether with or without warrant, shall ensure that the conditions of detention are consistent with human dignity, including—

(a) the affording of a reasonable opportunity for the detained person to engage in physical exercise; and

(b) the right of the detained person to wear clothing of his or her choice, unless—

(i) the exercise of the right is likely to prejudice his or her health or the reasonable requirements of discipline in the place where he or she is detained; or

(ii) the clothing is required for the purposes of any investigation or inquiry; whereupon, in either case, he or she must be provided with decent alternative clothing to wear; and (*c*) the provision, at State expense, of— (i) adequate accommodation; and

(ii) adequate ablution facilities and other facilities for maintaining personal hygiene; and

(iii) adequate nutrition; and

(iv) appropriate reading material; and

(v) adequate medical treatment; and

(vi) such other facilities as may be prescribed.

(9) A person who is being detained following his or her arrest, under this Act or any other enactment and whether with or without warrant, shall be entitled to challenge the lawfulness of the detention in person before a court, and the person for the time being in charge of the place where he or she is being detained shall cause him or her to be informed of this right promptly.

[Section inserted by section 13 of Act 2 of 2016]

41B Bodily samples for investigation purposes

(1) An authorised person may take a bodily sample of a person or group of persons, or supervise the taking of a bodily sample from any person or group of persons, if the person or persons concerned consent to such sample being taken at the verbal or written request of a peace officer who is satisfied that there are reasonable grounds—

(a) to suspect that the person, or any one or more persons in a group of persons, has committed an offence; or

(b) for believing that the bodily sample and the resulting forensic DNA analysis thereof will be of value in the investigation of an offence by excluding or including one or more persons as possible perpetrators of the offence.

(2) If a person does not consent to the taking of a bodily sample, a warrant may be issued by a judge or magistrate upon written request by a police officer who is of or above the rank of inspector, if it appears from written information given by the police officer under oath that there are reasonable grounds—

(a) to suspect that the person named in the information, or any one or more persons in a group of persons so named, has committed an offence; or

(b) for believing that the bodily sample and the resulting forensic DNA analysis thereof will be of value in the investigation of an offence by excluding or including one or more named persons as possible perpetrators of the offence.

(3) A bodily sample must be taken—

(a) by an authorised person or by a person under the supervision and in the presence of the authorised person; and

(b) with strict regard for decency and decorum:

Provided that no intimate or buccal sample may be taken from the person who has been arrested except—

(a) in case of a buccal sample, by an authorised person at the request and in the presence of the peace officer; or

(b) in the case of an intimate sample, in private by—

(i) a medical officer at the written request of a police officer of or above the rank of superintendent; or

(ii) the medical officer of any prison at which the arrested person is detained; or

(iii) by an authorised person of the same sex as the person from whom the intimate sample is to be taken;

in order to ascertain some fact which is material to the investigation of the charge upon which such person has been arrested.

(4) If in any criminal proceedings the results of a forensic DNA analysis of a bodily sample are embodied in an affidavit sworn to by an authorised person in which that person deposes to the following facts—

(a) that he or she is an authorised person who is qualified to undertake forensic DNA analysis of bodily samples; and

(b) that the bodily sample was obtained by that person or by another named authorised person under the supervision of the first named person under conditions which safeguard as much as is reasonably possible against the possibility of the contamination of that sample;

such affidavit shall, upon its mere production, be admissible as *prima facie* proof of the facts deposed therein.

(5) Any bodily sample taken from a person and the records of any steps taken under this section shall, in the case of—

(a) an accused person, be destroyed if he or she has been found not guilty at his or her trial, or his or her conviction is set aside by a superior court, or the charge against him or her is withdrawn, unless the person consents in writing to the preservation of the bodily sample;

(b) a person other than an accused person, be retained until the criminal proceedings to which they are relevant have been finally concluded, whereupon they shall be destroyed, unless the person consents in writing to the preservation of the bodily sample.

(6) A person referred to in subsection (5)(*a*) or (*b*) shall have the right to receive written notification from the custodian of his or her bodily sample of the destruction thereof in accordance with that subsection.

[Section inserted by section 13 of Act 2 of 2016]

41C Records to be kept of arrested and detained persons

(1) The officer in charge of every police station or charge office where persons are brought following their arrest, or where they are detained, shall ensure that a record is kept showing, in respect of every such person—

(a) the person's name and other identity particulars; and
(b) the date and time on which the person was brought to the police station or charge office or was first detained there, as the case may be; and
(c) the offence for which the person was arrested or detained; and

(d) where the person has been released, the date and time of the release and the reasons for it; and
(e) where the person has been transferred elsewhere— (i) the place to which he or she was transferred; and
(ii) the date and time of the transfer; and (iii) the reasons for the transfer.

(2) Every police officer at a police station or charge office where records are required to be kept in terms of subsection (1) shall permit any interested person, including a legal practitioner representing a person who is believed to have been arrested or detained, to inspect the records at all reasonable times.

(3) The officer in charge of a police station or charge office where records are required to be kept in terms of subsection (1) shall ensure that the records are kept there for at least three years.

[Section inserted by section 13 of Act 2 of 2016]

41D Search and examination of arrested person

(1) A person who arrests another person, under this Act or any other enactment and whether with or without warrant, may search that person, and shall place in safe custody all articles, other than necessary wearing apparel, found on him or her.

(2) A peace officer may take or cause to be taken the finger-prints, palm-prints, footprints and photographs of any person arrested upon any charge, under this Act or any other enactment and whether with or without warrant, and the medical officer of any prison or any medical officer of the Ministry responsible for health or any peace officer may take a sample of the arrested person's blood, saliva or tissue or cause to be taken such other steps as he or she may think necessary in order to ascertain whether or not the body of the arrested person has any mark, characteristic or distinguishing feature or shows any condition or appearance:

Provided that a bodily, saliva or tissue sample shall only be taken by a medical officer at the request in writing of a police officer of or above the rank of superintendent, in order to ascertain some fact which is material to the investigation of the charge upon which the person has been arrested.

(3) Any search of the body of an arrested person in terms of this section shall be made—
(a) by a medical officer; or
(b) where it is not made by a medical officer, by any person who is of the same sex as the arrested person; and shall be conducted with strict regard to decency and decorum.

(4) Any finger-prints, palm-prints, footprints, photographs or samples taken under this section, and the records of any steps taken under this section, shall be destroyed if the person concerned is found not guilty at his or her trial or if his or her conviction is set aside by a superior court or if it is decided not to prosecute him or her or if the charge against him or her is withdrawn.

(5) Section 41B(6) applies, with such changes as may be necessary, to a person referred to in subsection (4).

[Section inserted by section 13 of Act 2 of 2016]

42 Resisting arrest

(1) If any person who is authorised or required under this Act or any other enactment to arrest or assist in arresting another person, attempts to make the arrest and the person whose arrest is attempted resists the attempt, or flees, or resists the attempt and flees, when it is clear that an attempt to arrest him or her is being made, and the person concerned cannot be arrested without the use of force, the person attempting the arrest may, in order to effect the arrest, use such force as may be reasonably justifiable and proportionate in the circumstances to overcome the resistance or prevent the person concerned from fleeing:

Provided that the person attempting the arrest is justified in terms of this section in using force against the person concerned only if the person sought to be arrested was committing or had committed, or was suspected of having committed an offence referred to in the First Schedule, and the person attempting the arrest believes on reasonable grounds that—

(a) the force is immediately necessary for the purposes of protecting the person attempting the arrest, any person lawfully assisting the person attempting the arrest or any other person from imminent or future death or grievous bodily harm; or

(b) there is a substantial risk that the suspect will cause imminent or future death or grievous bodily harm if the arrest is delayed; or

(c) the offence for which the arrest is sought is in progress and is of a forcible and serious nature and involves the use of life-threatening violence or a strong likelihood that it will cause grievous bodily harm.

(2) For the avoidance of doubt it is declared that no use of lethal force for the purposes of subsection (1) shall be lawful unless there is strict compliance with the conditions specified therein.

[Section substituted by section 14 of Act 2 of 2016]

43 Power to retake on escape

If a person in lawful custody escapes or is rescued, the person from whose custody he escaped or was rescued may immediately pursue and arrest him or cause him to be pursued and arrested in any place in Zimbabwe.

44 …..

[Section repealed by Act 23 of 2004.]

45 Saving of other powers of arrest

Nothing in this Part shall be construed as taking away or diminishing any authority specially conferred by any other enactment to arrest, detain or put any restraint on any person.

46 Saving of civil rights

Nothing in this Part shall be construed as taking away or diminishing any civil right or liability of any person in respect of a wrongful or malicious arrest.

PART VI

SEARCH WARRANTS, SEIZURE, DETENTION AND DISPOSAL OF PROPERTY CONNECTED WITH OFFENCES AND CUSTODY OF WOMEN UNLAWFULLY DETAINED FOR IMMORAL PURPOSES

47 Interpretation in Part VI

In this Part—

"article" includes any document or substance.

"articles whose possession is intrinsically unlawful" means harmful liquids, dangerous drugs, child pornography as defined in the Trafficking in Persons Act [*Chapter 9:25*], adult pornography whose possession is prohibited under the Censorship and Entertainments Control Act [*Chapter 10:04*], unlicensed firearms and ammunition, arms or weapons of war, explosives whose use or possession is not authorised under the Explosives Act [*Chapter 10:08*], forged or counterfeit currency or forged or counterfeit travel or identity documents, any plate or dye used for forging currency or documents and any other article specified by the Minister in regulations made under section 389;

"full receipt", in relation to an article seized in terms of this Part, means a receipt specifying the nature of the article, the name and address of the person from whom it was seized and (if some other person is known to be the owner thereof) the name and address of the owner thereof, the date of seizure and the place of custody, and the name and signature of the seizing officer:

Provided that if three or more such articles are seized from the same person at the same time, the receipt may refer to a description of the articles in a list attached thereto that is signed by the seizing officer and retained by the person from whom it was seized;

"occurrence book" means the journal kept at a police station of events required to be recorded therein on a daily basis;

"premises" or "land" includes any container, vehicle, vessel or aircraft present within or upon such premises or land.

[Section substituted by section 15 of Act 2 of 2016]

48 Savings as to certain powers conferred by other enactments

This Part shall not derogate from any power conferred by any other enactment to enter any premises, to search any person, container or premises, to seize any article, to declare any article forfeited or to dispose of any article.

49 State may seize certain articles

(1) The State may, in accordance this Part, seize any 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 Zimbabwe or elsewhere; or

(b) which it is on reasonable grounds believed may afford evidence of the commission or suspected commission of an offence, whether within Zimbabwe 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.

(2) A police officer who seizes and removes any article in accordance with this Part, whether under or without a warrant, must make a full receipt in duplicate for the article so seized and removed, and—

(a) give a copy of it to the owner or possessor thereof (unless the owner or possessor of the article is arrested in connection with an offence involving the article, in which case paragraphs (*b*), (*c*) and (*d*) following apply); or

(b) in the absence of the owner or possessor, or if the owner or possessor of the article is arrested in connection with an offence involving the article, or if the owner or possessor is unknown or cannot be ascertained by the police officer after due inquiry, give a copy of it to (as the case may be)—

(i) the person apparently in charge or control of or in lawful occupation of the land, premises upon or in which the article is seized: or

(ii) the person apparently in charge or control of the vehicle, vessel or aircraft from which the article is seized;

or

(*c*) in the absence of the persons referred to in paragraph (*b*), give a copy of it to (as the case may be)—

(i) an apparently responsible person present upon or in the land or premises from which the article is seized: or

(ii) an apparently responsible person present as a passenger within the vehicle, vessel or aircraft from which the article is seized and removed; or

(*d*) in the absence of all of the persons referred to in paragraph (*a*), (*b*) and (*c*), attach or leave a copy of the receipt in any part of the premises, land, vehicle, vessel or aircraft from which the article to which the receipt relates was seized and removed.

[Subsection inserted by section 16 of Act 2 of 2016]

(3) If an owner or possessor from whom any article is seized in accordance with this Part did not receive a full receipt therefor by reason having been arrested in connection with an offence involving the article, he or she shall have the right to demand and receive such a receipt immediately upon being released on bail or upon being conditionally released, and thereupon he or she becomes entitled to all the rights provided under this Part to holders of such receipts.

[Subsection inserted by section 16 of Act 2 of 2016]

(4) Any police officer responsible for the seizure of an article under this Part who—

(a) fails to comply with subsection (2);

(b) fails, upon a demand being made by an owner or possessor of the article pursuant to subsection (3), to furnish a full receipt in respect of that article;

shall, unless the article or articles in question are articles whose possession is intrinsically unlawful, be guilty of an offence and liable to a fine not exceeding level four or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

[Subsection inserted by section 16 of Act 2 of 2016]

50 Article to be seized under warrant

(1) Subject to sections *fifty-one*, *fifty-two* and *fifty-three*, an article referred to in section *forty-nine* shall be seized only by virtue of a warrant issued—

(a) by a magistrate or justice (other than a police officer), if it appears to the magistrate or justice from information on oath that there are reasonable grounds for believing that any such article is in the possession or under the control of any person, or upon or in any premises or area, within his area of jurisdiction; or

[Paragraph amended by section 44 of Act 1 of 2002 and by section 17 of Act 2 of 2016.]

(b) by a judge or magistrate presiding at criminal proceedings, if it appears to the judge or magistrate that any such article in the possession or under the control of any person or upon or in any premises is required in evidence in the proceedings.

(2) A warrant issued in terms of subsection (1) shall require a police officer to seize the article in question and shall to that end authorize such police officer, where necessary—

(a) to search any person identified in the warrant or any premises within an area identified in the warrant; or

[Paragraph amended by section 44 of Act 1 of 2002.]

(b) to enter and search any premises identified in the warrant, and to search any person found upon or in those premises.

(3) A warrant—

(a) may be issued on any day and shall be of force until it is executed or it is cancelled by the person who issued it or, if that person is not available, by a person with like authority; and

(b) shall be executed by day, unless the person issuing the warrant in writing authorizes the execution thereof by night.

(4) A police officer executing a warrant in terms of this section shall, before or after such execution, upon demand of any person whose rights in respect of any search or article seized under the warrant have been affected, hand to him a copy of the warrant.

[Subsection amended by section 17 of Act 2 of 2016]

51 Search and seizure without warrant

(1) A police officer may, without warrant, search any person or container or premises for the purposes of seizing any article referred to in section *forty-nine* and additionally, or alternatively, seize any such article—

(a) if the person concerned consents to the search for and additionally, or alternatively, the seizure of the article in question or if a person who may consent to the search of the container or premises consents to such search and additionally, or alternatively, the seizure of the article in question; or

(b) if he on reasonable grounds believes that—

(i) a warrant would be issued to him in terms of paragraph (*a*) of subsection (1) of section *fifty* if he applied for one; and

(ii) the delay in obtaining a warrant would prevent the seizure or defeat the object of the search, as the case may be.

(2) Where a police officer has reason to suspect that an offence has been committed by any person on board a boat on inland waters, it shall be lawful for him to stop, go on board and search such boat without warrant and to seize any thing which he has reasonable grounds for believing will afford evidence as to the commission of an offence under any law.

(3) Any person who, when called upon in terms of subsection (2) to stop a boat under his control, fails to comply immediately with such request shall be guilty of an offence and liable to a fine not exceeding level four or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

[Subsection amended by section 4 of Act 22 of 2001.]

(4) A police officer executing a search without a warrant in the circumstances specified in subsection (1)(*b*) shall, upon demand of any person whose rights in respect of any search or article seized under the warrant have been affected, furnish that person with the particulars of his or her name, rank and number, and the reasons for carrying out the search and seizure without warrant.

[Subsection inserted by section 18 of Act 2 of 2016]

(5) Any police officer who contravenes subsection (4), shall be guilty of an offence and liable to a fine not exceeding level four or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment, unless the affected person is lawfully charged with and arrested for an offence in connection with such search and seizure.

[Subsection inserted by section 18 of Act 2 of 2016]

52 Seizure of article on arrest or detention of person carrying same

(1) On the arrest and search of any person, the person making the arrest may—

(a) if he is a peace officer, seize any article referred to in section *forty-nine* which is in the possession or under the control of the person arrested and, where such peace officer is not a police officer, shall forthwith deliver any such article to a police officer; or

(b) if he is not a peace officer, seize any article referred to in section *forty-nine* which is in the possession or under the control of the person arrested and shall forthwith deliver any such article to a police officer.

(2) A police officer to whom an article is delivered under subsection (1)(*a*) or (*b*) shall forthwith, and in any event not later than forty-eight hours after such delivery, make and deliver the full receipt referred to in section 49(2), and any failure to do so entitles the owner or possessor thereof to demand the return of the seized article upon expiry of that period, unless the article or articles in question are of a kind whose possession is intrinsically unlawful.

[Subsection substituted by section 19 of Act 2 of 2016]

(3) Any police officer may stop and interrogate any person who is found at any time between sunset and sunrise carrying or transporting any goods or articles of any description and if—

(a) such person does not account satisfactorily for the possession of the goods or articles so being carried or transported; and

(b) there are reasonable grounds for suspecting that such goods or articles—

(i) have been criminally procured; or

(ii) are of a kind whose possession is intrinsically unlawful;

such officer may convey such goods or articles and the person so carrying or transporting the same to any prison or police station, and detain such person in custody:

Provided that section 32(3) and the other provisions of this Act relating to the rights of arrested persons shall apply in relation to the person so detained and, if he or she is released from custody, the goods and articles that he or she was carrying or transporting shall be returned to him or her, unless they are seized and a full receipt therefor is given to him or her in accordance with section 49.

[Subsection inserted by section 19 of Act 2 of 2016]

53 Search by occupier of land

Any person who is lawfully in charge or occupation of any land and who reasonably suspects that—

(a) stolen stock or produce, as defined in any law relating to the theft of stock or produce, is upon or in any premises on that land; or

(b) any article has been placed upon or in any premises on that land or is in the possession or under the control of any person upon such premises in contravention of any law relating to harmful liquids, dependence-producing drugs, arms and ammunition or explosives;

may at any time, if a police officer is not readily available, enter the premises for the purpose of searching the premises and any person thereupon or therein and, if any such stock, produce or article is found, he shall take possession thereof and forthwith deliver it to a police officer.

54 Entering of premises for purposes of obtaining evidence

(1) Where a police officer in the investigation of an offence or alleged offence reasonably suspects that a person who may furnish information with reference to any such offence is upon or in any premises, he may, without warrant, enter the premises for the purpose of interrogating such person and obtaining a statement from him:

Provided that a police officer shall not enter any dwelling in terms of this section without the consent of the occupier thereof.

(2) Where a police officer of such class as the Minister may designate considers on reasonable grounds that it is necessary for the purpose of investigating or detecting an offence to examine any books, documents or other records, he may, without warrant—

(a) enter any premises for the purpose of examining such books, documents or other records; and

(b) require from any person thereupon or therein the production then and there of such books, documents or other records which are or have been upon or in the premises or in the custody or under the control of any person by whom the premises are occupied or used;

and may examine and make extracts from and copies of all such books, documents and other records:

Provided that a police officer shall not enter any dwelling in terms of this subsection without the consent of the occupier thereof.

(3) A police officer executing powers under subsection (1) or (2) shall, upon demand of any person whose rights are affected by the exercise of such powers, furnish that person with the particulars of his or her name, rank and number, and the reasons for exercising those powers.

[Subsection inserted by section 20 of Act 2 of 2016]

(4) Any police officer who— (*a*) contravenes subsection (3); or

(*b*) enters a dwelling without the consent of the occupier thereof in the purported exercise of powers under subsection (1) or (2);

shall be guilty of an offence and liable to a fine not exceeding level four or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment, unless, in the case of a contravention of subsection (3), the affected person is lawfully charged with and arrested for an offence in connection with the exercise of powers under subsection (1) or (2).

[Subsection inserted by section 20 of Act 2 of 2016]

55 Resistance against entry or search

(1) A police officer who may lawfully search any person or premises or who may enter any premises in terms of section *fifty-four* may use such force as may reasonably be necessary to overcome any resistance against such search or entry, including the breaking of any door or window of the premises:

Provided that the police officer shall first audibly demand admission to the premises and notify the purpose for which he seeks to enter the premises.

(2) The proviso to subsection (1) shall not apply where the police officer concerned is on reasonable grounds of the opinion that any article which is the subject of the search may be destroyed or disposed of if the provisions of that proviso are first complied with.

56 Award of damages for false information on oath

Where any person falsely gives information on oath for the purposes of subsection (1) of section *fifty* and a warrant is issued and executed on such information, and such person is in consequence of such false information convicted of perjury or any statutory offence involving the making of a false statement on oath, the court convicting such person may, upon the application of any person who has suffered any damage in consequence of the unlawful entry, search or seizure, as the case may be, or upon the application of the prosecutor acting on the instructions of that person, award compensation in respect of such damage and the provisions of section *three hundred and sixty-two* shall apply, *mutatis mutandis*, to the award.

57 Search to be conducted in decent and orderly manner

A search of any person or premises in terms of this Part shall be conducted with strict regard to decency and order, and section 41B(3) shall apply to the search of any person.

[Section amended by section 49 of Act 2 of 2016]

58 Custody and disposal of seized articles

(1) Subject to subsection (2), a police officer who seizes any article referred to in section 49 or to whom any such article is delivered in terms of this Part or to whom an article seized in terms of any other enactment is delivered to be dealt with in terms of this Part, shall—

(a) take it or cause it to be taken forthwith and delivered to a place of security under the control of a police officer; and

(b) have all relevant particulars in relation to it and its seizure entered in an inventory (which may be an electronic inventory, provided that a manual or material back-up of the inventory is maintained simultaneously) kept at the place of custody, namely a sufficient description of the article, details of the date

and particulars of the full receipt (if any) issued in relation thereto, and the identification number and mark assigned to it; and

(c) endeavour to ensure that the article, if vulnerable to damage or contamination from moisture or dust, is kept free from contamination by moisture and dust, and that the place of security where it is lodged is protected from access by unauthorised persons; and

(d) be held, subject to section 59, until the criminal proceedings which are instituted in relation to that article—

(i) have been abandoned or discontinued or are concluded otherwise than with the conviction of the accused, in which event the custodian police officer shall forthwith restore any such article the accused or the owner thereof, as may be appropriate, unless the article is one whose possession is intrinsically unlawful; or

(ii) have resulted in the conviction of the accused, in which event the convicting court shall—

A. order any such thing to be restored to the accused or the owner thereof, as may be appropriate; or

B. order any such article to be forfeited to the State or destroyed.

(2) A police officer may, if the article is stolen property or property suspected to be stolen, with the consent of the person from whom it was seized, deliver the article to the person from whom, in the opinion of such police officer, such article was stolen, and shall warn such person to hold such article available for production at any resultant criminal proceedings, if required to do so.

(3) If the seized article needs to be destroyed or disposed of because it is perishable or has become a hazard to human health or safety, and there is any valid reason for not returning the article in question to the owner or possessor thereof or other person to whom a full receipt was given in respect of its seizure, then the police officer shall—

(a) issue to the owner or possessor thereof or other holder of the full receipt a notice of destruction or disposal of a seized article substantially in the form set out in the Eleventh Schedule, in which the owner, possessor or holder is also notified of his or her right to object to the proposed destruction or disposal within fourteen days of the date of issuance of the notice; and

(b) not earlier than fourteen days thereafter destroy the article or have it destroyed, or dispose of the article in such manner as the circumstances may require; and

(c) at least twenty-four hours before the day on which the article is to be destroyed or disposed of, notify in writing the person to whom the notice of destruction or disposal of the seized article was issued, and afford the notified person or his or her authorised representative an opportunity to witness the destruction or disposal.

(4) Immediately upon receiving any objection to a notice of destruction or disposal of a seized article, a police officer shall apply for a warrant of destruction or disposal of a seized article in terms of subsection (5), upon not less than seven days' written notice to the owner or possessor thereof, or, if his or her whereabouts or identity cannot be ascertained after due inquiry, upon delivery of the notice to the same person or in the same manner and at the same place as the receipt referred to in section 49(2) was delivered.

(5) An application for a warrant of destruction or disposal of a seized article shall be made by a police officer to a magistrate or justice (other than a police officer) having jurisdiction over the area where the article was seized, for which purpose the police officer shall swear by affidavit that—

(a) the seized article (of a description and having the identification number specified in the affidavit) needs to be destroyed or disposed of because it is perishable or has become a hazard to human health or safety; and

(b) there is a valid reason (specified in the affidavit) for not returning the article in question to the owner or possessor thereof or other person to whom a full receipt was given in respect of its seizure; and

(c) a full receipt in respect of the article was issued on a specified date; and

(d) written notice of the time and place of the application for the warrant was timeously given to the owner or possessor thereof or other person mentioned in paragraph (*b*).

(6) In an application for a warrant of destruction or disposal of a seized article the magistrate or justice shall, if the owner or possessor thereof, or other person mentioned in subsection (5)(*b*), is present, allow—

(a) him or her to make representations in person, in writing or through a legal practitioner, in opposition to the application; and

(b) the applicant police officer to respond to any submissions made under paragraph (*a*); but no postponement of the application shall be entertained, and no submissions shall be made by either party except those concerning—

(c) the truth or otherwise of any statement referred to in subsection (5)(*a*), (*b*), (*c*) or (*d*); and

(d) any allegation by the applicant police officer that the notified party or the party who is opposing the application is not entitled to the possession or ownership of the seized article by reason of not having a full receipt in relation thereto or for some other lawful reason;

and the application must be determined on the same day on which it was made, whether the notified person is present or not.

[Section substituted by section 21 of Act 2 of 2016]

58A Continued retention of seized articles if institution of criminal proceedings is delayed

(1) If within twenty-one working days from the date—

(a) when an article was seized and receipt therefor was given (provided that the date shown on the receipt shall be determinative if it is dated later than the day of seizure); or

(b) when a person referred to in section 49(3) receives a receipt for any article previously seized from him or her;

no prosecution of an offence in respect of which the seized article is required as an exhibit is initiated, that is to say—

(c) no summons is issued to the accused person for the prosecution of the offence; or

(d) no statement of the charge is lodged with the clerk of the magistrates court before which the accused is to be tried, where the offence is to be tried summarily; or

(e) no indictment has been served upon the accused person, where the person is to be tried before the High

Court;

then the seized article shall (unless the article in question is one whose possession is intrinsically unlawful) be returned as soon as possible by the police officer who detained it, or by any other person acting in his or her stead, to the premises, place, vehicle, vessel or aircraft from which it was removed or, where that is impracticable, be availed for collection at such place as the police officer shall direct the owner or possessor thereof to go, unless the police officer earlier, upon at least seventy-two hours' notice to the owner or possessor thereof, serves upon him or her a written notice of continued retention of the seized article, in which the police officer shall—

(f) affirm that investigations relating to the offence in respect of which the seized article is required as an exhibit are ongoing and are being actively pursued without undue delay; and

(g) afford the owner or possessor thereof an opportunity to lodge at a specified police station a written objection to the retention of the article within forty-eight hours of the date of issuance of the notice of continued retention;

and if no such objection is lodged, the seized article may be retained in custody by the police until the pertinent criminal proceedings have been concluded, abandoned or discontinued and the seized article dealt with in accordance with this Part.

(2) If the owner or possessor of a seized article is not served with a notice of continued retention after the expiry of the period specified in subsection (1) and no prosecution in respect of the seized article is initiated within that time, then the owner or possessor has the right to recover the article (unless it is one whose possession is intrinsically unlawful) from the police upon mere production of the receipt issued to him or her by a police officer in relation thereto, unless a police officer forthwith delivers to the owner or possessor the notice of continued retention, and subsection (1) shall thereupon apply in relation to such notice.

(3) Immediately upon receiving any objection to a notice of continued retention of a seized article, a police officer shall apply for a warrant of further retention of the seized article in terms of subsection (4), upon not less than seven days' written notice to the owner or possessor thereof, or, if his or her whereabouts or identity cannot be ascertained after due inquiry, upon delivery of the notice to the same person or in the same manner and at the same place as the receipt referred to in section 49(2) was delivered.

(4) An application for a warrant of further retention of a seized article shall be made by a police officer to a magistrate or justice (other than a police officer) having jurisdiction over the area where the article was seized, for which purpose the police officer shall swear by affidavit that the seized article (of a description and having the identification number specified in the affidavit) is required in evidence in criminal proceedings and that— (*a*) investigations in respect thereof are ongoing and are being actively pursued without undue delay; and

(b) a full receipt in respect of the article was issued on a specified date; and

(c) written notice of the time and place of the application for the warrant of further retention of the seized article was timeously given to the owner or possessor thereof or other person mentioned in subsection (3).

(5) In an application for a warrant of further retention of a seized article the magistrate or justice shall, if the owner or possessor thereof, or other person mentioned in subsection (3), is present, allow—

(a) him or her to make representations in person, in writing or through a legal practitioner, in opposition to the application; and

(b) the applicant police officer to respond to any submissions made under paragraph (*a*);

but no postponement of the application shall be entertained, and no submissions shall be made by either party except those concerning—

(c) the truth or otherwise of any statement referred to in subsection (4) (*a*), (*b*) or (*c*); and

(d) any allegation by the applicant police officer that the notified party or the party who is opposing the application is not entitled to the possession or ownership of the seized article by reason of not having a full receipt in relation thereto or for some other lawful reason;

and the application must be determined on the same day on which it was made, whether the notified person is present or not.

(6) The effect of—

(a) the issuance of a warrant of further retention of a seized article is that the article may be retained in custody by the police until the pertinent criminal proceedings have been concluded, abandoned or discontinued and the seized article dealt with in accordance with this Part; or

(b) the refusal to issue a warrant of further retention of the seized article is that it must be returned without delay to the holder of the receipt issued in respect thereof, subject to any directions the magistrate or

justice may give for the preservation or safe custody of the same until the expiry of a specified period or on the initiation of a prosecution in connection therewith, whichever event happens earlier.

(7) Any holder of the receipt referred to in subsection (6)(*b*) who fails to comply with any directions given to him or her for the preservation or safe custody of the article returned to him or her until the expiry of a specified period or on the initiation of a prosecution in connection therewith, whichever event happens earlier, shall be guilty of the crime of defeating or obstructing the course of justice contrary to section 184 of the Criminal Law Code and liable to the penalties therefor.

[Section inserted by section 21 of Act 2 of 2016]

58B Manner of service of notices for purposes of sections 58 and 58A

References to a police officer—

(a) issuing a notice of destruction or disposal of a seized article to the owner or possessor thereof or other person to whom a full receipt was given in respect of its seizure for the purpose of section 58(3)(*a*);

(b) notifying such owner, possessor or person for the purpose of section 58(3)(*c*);

(c) notifying such owner, possessor or person for the purpose of section 58(4);

(d) issuing a notice of further retention of a seized article to the owner or possessor thereof or other person to whom a full receipt was given in respect of its seizure for the purpose of section 58A(1);

(e) notifying such owner, possessor or person for the purpose of section 58A(3); are to be interpreted as requiring the police officer to deliver such notice to the owner, possessor or person concerned or his or her authorised representative in any of the following ways—

(f) by hand delivery to the owner, possessor, person representative concerned in person, or to a responsible individual at the place of business or residential address of the owner, possessor, person representative; or

(g) by registered post addressed to the place of business or residential address of the owner, possessor, person representative; or

(h) by delivery to the place of business or residential address of the owner, possessor, person representative through a commercial courier service; or

(i) by electronic mail or telefacsimile at the electronic mail or telefacsimile address furnished by the owner, possessor, person representative to the police officer.

[Section inserted by section 21 of Act 2 of 2016]

59 Disposal of article where no criminal proceedings are instituted, where it is not required for criminal proceedings or where accused admits his guilt

(1) Subject to subsection (2), if in connection with any article referred to in section 58(1), and regardless of whether a notice of further retention of the seized article or warrant of further retention of the seized article has been issued in relation to the article—

(a) no criminal proceedings are instituted; or

(b) it appears that such article is not required at the trial for purposes of evidence or for purposes of an order of court; or

(c) criminal proceedings are instituted and the accused admits his guilt in accordance with section *three hundred and fifty-six*;

the article shall—

(i) if the person from whom it was seized may lawfully possess the article, be returned to that person; or

(ii) if the person from whom it was seized may not lawfully possess the article, be delivered to the person who may lawfully possess it; or

(iii) if no person may lawfully possess the article (whether by reason of its being an article whose possession is intrinsically unlawful, or otherwise)or if the police officer concerned does not know of any person who may lawfully possess the article, be forfeited to the State.

[Subsection amended by section 22 of Act 2 of 2016]

(2) If the person who may lawfully possess the article in question is known and has not applied for the return or delivery of the article, notice shall be sent by registered post to his last known address that he may take possession of the article, and if such person fails to take possession of the article within three months from the date of such notice being sent, the article shall be forfeited to the State.

(3) Where an article has been forfeited to the State in terms of paragraph (iii) of subsection (1) or subsection (2), a magistrate within whose area of jurisdiction the article was, in terms of paragraph (*c*) of section *fifty-eight*, retained in police custody may at any time within a period of three years from the date of the original seizure by a police officer or delivery to a police officer, as the case may be, of the article, upon the application of any person who claims that any right referred to in paragraph (*a*) or (*b*) is vested in him, inquire into and determine such right and, if the magistrate finds that the article—

(*a*) is the property of the applicant, he shall—

(i) set aside the forfeiture and direct that the article be returned to such person; or

(ii) if the State has disposed of the article, direct that the applicant be paid adequate compensation by the State;

(*b*) was sold to the accused in pursuance of a contract under which he becomes the owner of the article upon payment of a stipulated price, whether by instalments or otherwise, and under which the seller becomes entitled to the return of the article upon default of payment of the stipulated price or any part thereof, he shall—

(i) direct that the article be sold by public auction and that the said seller be paid out of the proceeds of the sale an amount equal to the value of his rights under the contract to the article, but not exceeding the proceeds of the sale; or

(ii) if the State has disposed of the article, direct that the said seller be paid adequate compensation by the State.

(4) If a determination by a magistrate of an application in terms of subsection (3) is adverse to the applicant, he may appeal therefrom as if it were a conviction by the court making the determination.

(5) When determining any rights in terms of subsection (3), the magistrate may hear such evidence, whether by affidavit or orally, as he may think fit.

(6) If, in making an order under subsection (3)(*a*) or (*b*) in favour of an applicant, it appears to the magistrate, from the evidence presented before him or her in the course of hearing the application, that—

(a) the amount, if any, realised by the State when disposing of the article in question was inadequate to cover any costs reasonably incurred in securing the safe custody of the article; and

(b) the applicant was negligent or unduly dilatory in pursuing his or her claim to the article in question; the magistrate shall afford the State an opportunity to submit a claim for the recovery of any costs reasonably incurred in securing the safe custody of the article, and, if such submission is made—

(c) may grant the whole or any part of such costs as to the magistrate appears reasonable:

Provided that such costs must not exceed the reasonably estimated value of the article to be returned, or the value of the compensation awarded or sale price realised under this section, as the case may be; and

(d) shall direct the amount of the costs awarded under paragraph (*c*) to be deducted from any compensation payable or sale price realised under this section.

[Subsection inserted by section 22 of Act 2 of 2016]

60 Article to be transferred to court for purposes of trial

(1) If criminal proceedings are instituted in connection with any article referred to in section 58(1) and the article is required at a trial for the purposes of evidence or of any order of court, the police officer concerned shall, subject to subsection (2), deliver the article to the registrar or clerk of the court where such criminal proceedings are instituted.

[Subsection amended by section 28 of Act 9 of 2006 and section 49 of Act 2 of 2016.]

(2) If it is, by reason of the nature, bulk or value of the article in question, impracticable or undesirable that the article be delivered to the registrar or clerk of the court in terms of subsection (1), the registrar or clerk, as the case may be, may require the police officer concerned to retain the article in police custody or in such other custody as may be determined in terms of section 58(1).

[Subsection amended by section 49 of Act 2 of 2016]

(3) The registrar or clerk, as the case may be, of the court shall place any article received in terms of subsection (1) in safe custody, which may include the deposit of money in an official banking account if such money is not required at the trial for the purposes of evidence.

[Subsection amended by section 28 of Act 9 of 2006.]

(4) Where the trial in question is to be conducted in a court other than the court to which the article was delivered in terms of subsection (1), the registrar or clerk, as the case may be, of the court shall—

(a) transfer any article received in terms of that subsection, other than money deposited in a banking account in terms of subsection (3), to the registrar or clerk, as the case may be, of the court in which the trial is to be conducted, and that registrar or clerk shall place such article in safe custody; or

(b) in the case of any article retained in police custody or in some other custody in terms of subsection (2) or any money deposited in a banking account in terms of subsection (3), advise the registrar or clerk of the court in which the trial is to be conducted accordingly.

61 Disposal of article after commencement of criminal proceedings

(1) Subject to this Act and except as otherwise provided in any other enactment under which any matter shall or may be forfeited, the judge or magistrate presiding at criminal proceedings may, at the conclusion of the proceedings, unless the article is further required as an exhibit at a trial, make an order that any article referred to in section *sixty* or produced in evidence—

(a) if the person from whose possession it was obtained may lawfully possess such article, be returned to that person; or

(b) if the person from whose possession it was obtained is not entitled to the article or may not lawfully possess the article, be returned to any other person entitled thereto, if such person may lawfully possess the article; or

(c) if no person is entitled to the article (whether by reason of its being an article whose possession is intrinsically unlawful, or otherwise) or if the person who is entitled thereto cannot be traced or is unknown, be forfeited to the State.

[Subsection amended by section 23 of Act 2 of 2016]

(2) The court may, for the purpose of making any order in terms of subsection (1), hear such additional evidence, whether by affidavit or orally, as it may think fit.

(3) If the judge or magistrate concerned does not, at the conclusion of the relevant proceedings, make an order in terms of subsection (1), the registrar or clerk of the court may hand the article to the person who, in terms of paragraph (*a*) or (*b*) of subsection (1), is entitled to the article and, if he is in any doubt as to who is entitled to the article, shall refer the matter to a judge or magistrate, as the case may be, who may make any order referred to in subsection (1) and for that purpose may hear such additional evidence, whether by affidavit or orally, as he may think fit:

Provided that, if within a period of three months after the conclusion of the trial the article has not been handed to any person and no order has been made in respect thereof or is pending in respect thereof, the article shall be forfeited to the State.

(4) Any order made in terms of subsection (1) or (3) may be suspended pending any appeal or review.

(5) Where the court makes an order in terms of paragraph (*a*) or (*b*) of subsection (1) or subsection (3), the provisions of subsection (2) of section *fifty-nine* shall apply, *mutatis mutandis*, in respect of the person in whose favour the order is made.

(6) If circumstances so require or if the criminal proceedings in question cannot for any reason be disposed of, the judge or magistrate concerned may make any order referred to in paragraph (*a*) or (*b*) of subsection (1) at any stage of the proceedings.

62 Forfeiture of article to State

(1) A court convicting any person of any offence may, without notice to any other person, declare forfeited to the State—

(a) any weapon, instrument or other article by means whereof the offence in question was committed or which was used in the commission of such offence; or

(b) if the conviction is in respect of an offence specified in the Second Schedule, any vehicle, container or other article which was used for the purpose of or in connection with the commission of the offence in question or, in the case of a conviction relating to the theft of any goods, for the conveyance or removal of the stolen property;

and which was seized in terms of this Part:

Provided that such forfeiture shall not affect any right referred to in paragraph (*a*) or (*b*) of subsection (4) if it is proved that the person who claims such right did not know that the weapon, instrument, vehicle, container or other article was being used or would be used for the purpose of or in connection with the commission of the offence in question or, as the case may be, for the conveyance or removal of the stolen property in question, or that he could not prevent such use, and that he may lawfully possess such weapon, instrument, vehicle, container or other article, as the case may be.

(2) A court convicting any person or which finds an accused not guilty of any offence shall declare forfeited to the State any article seized under this Part whose possession is intrinsically unlawful.

[Subsection amended by section 24 of Act 2 of 2016]

(3) Any article declared forfeited in terms of subsection (1) shall be kept for a period of three months with effect from the date of declaration of forfeiture or, if an application is within that period received from any person for the determination of any right referred to in paragraph (*a*) or (*b*) of subsection (4), until a final decision in respect of any such application has been given.

(4) Any judge or magistrate of the court in question may at any time within a period of three years from the date of declaration of forfeiture of an article in terms of subsection (1), upon the application of any person, other than the accused, who claims that any right referred to in paragraph (*a*) or (*b*) is vested in him, inquire into and determine any such right and, if the court finds that facts referred to in the proviso to subsection (1) are proved and that the article—

(*a*) is the property of the applicant, the court shall—

(i) set aside the declaration of forfeiture and direct that the article be returned to such person; or

(ii) if the State has disposed of the article, direct that the applicant be compensated by the State to the extent to which the State has been enriched by such disposal;

(*b*) was sold to the accused in pursuance of a contract under which he becomes the owner of the article upon the payment of a stipulated price, whether by instalments or otherwise, and under which the seller becomes entitled to the return of the article upon default of payment of the stipulated price or any part thereof, the court shall—

(i) direct that the article be sold by public auction and that the said seller be paid out of the proceeds of the sale an amount equal to the value of his right under the contract of the article, but not exceeding the proceeds of the sale; or

(ii) if the State has disposed of the article in question, direct that the said seller be compensated by the State by an amount equal to the value of his rights under the contract to the article, but not exceeding the extent to which the State has been enriched by such disposal.

(5) If a determination by the court of an application in terms of subsection (4) is adverse to the applicant, he may appeal therefrom as if it were a conviction by the court making the determination, and such appeal may be heard either separately or jointly with an appeal against the conviction as a result whereof the declaration of forfeiture was made or against a sentence imposed as a result of such conviction.

(6) When determining any rights in terms of subsection (4), the record of the criminal proceedings in which the declaration of forfeiture was made shall form part of the relevant proceedings, and the court making the determination may hear additional evidence, whether by affidavit or orally, as it may think fit.

(7) If, in making an order under subsection (4)(*a*) or (*b*) in favour of an applicant, it appears to the judge or magistrate, from the evidence presented before him or her in the course of hearing the application, that—

(a) the amount, if any, realised by the State when disposing of the article in question was inadequate to cover any costs reasonably incurred in securing the safe custody of the article; and

(b) the applicant was negligent or unduly dilatory in pursuing his or her claim to the article in question; the judge or magistrate shall afford the State an opportunity to submit a claim for the recovery of any costs reasonably incurred in securing the safe custody of the article, and, if such submission is made—

(c) may grant the whole or any part of such costs as to the judge or magistrate appears reasonable:

Provided that such costs must not exceed the reasonably estimated value of the article to be returned, or the value of the compensation awarded or sale price realised under this section, as the case may be; and

(d) shall direct the amount of the costs awarded under paragraph (*c*) to be deducted from any compensation payable or sale price realised under this section.

[Subsection inserted by section 24 of Act 2 of 2016]

62A Forfeiture of unlawful consideration in cases of bribery

(1) In this section, "agent" and "principal" shall have the meaning given to those terms by section 169 of the Criminal Law Code.

(2) Where a court has convicted a person of bribery and does not exercise its powers in terms of section 62 to declare any consideration unlawfully obtained by the convicted person to be forfeited to the State, the court may, in addition to passing sentence give summary judgment in favour of

(a) the convicted person's principal, where the convicted person was an agent when the crime was committed; or

(b) in any other case, the State; for an amount equal to the value of the consideration unlawfully received by the convicted person, together with interest, calculated from the date on which the convicted person received the consideration, at the highest rate permissible in terms of the Moneylending and Rates of Interest Act [*Chapter 14:14*].

(3) A judgment given by a court in terms of subsection (1) shall have the same effect and may be executed in the same manner as if the judgment had been given in a civil action instituted in the court.

[Proviso repealed by section 25 of Act 2 of 2016]

[Section inserted by section 282 of Act 23 of 2004]

63 Disposal of article concerned in offence committed outside Zimbabwe

(1) Where an article in connection with which—

(a) an offence was committed or is on reasonable grounds suspected to have been committed in a country or territory outside Zimbabwe; or

(b) there are reasonable grounds for believing that it will afford evidence as to the commission in a country or territory outside Zimbabwe of any offence or that it was used for the purpose of or in connection with the commission of any such offence;

has been seized, the magistrate within whose area of jurisdiction the article was seized may, on application and if satisfied that such offence is punishable in that country or territory by death or by imprisonment for a period of twelve months or more or by a fine of level six or more, order such article to be delivered to a member of a police force established in such country or territory who may thereupon remove it from Zimbabwe.

[Subsection amended by section 4 of Act 22 of 2001.]

(2) When the article so removed from Zimbabwe is returned to the magistrate or the magistrate refuses to order that the article be delivered as aforesaid, the article shall be returned to the person from whose possession it was taken, unless the magistrate is authorized or required by law to dispose of it otherwise.

63A Forfeiture and disposal of seized articles whose possession is intrinsically unlawful

(1) If any article whose possession is intrinsically unlawful is seized by a police officer, such police officer or his or her superior shall as soon as possible communicate to the police officer in command of the police district within which the seized article is to be held in custody the fact of such seizure, together with all relevant particulars concerning the article.

(2) Subject to subsection (3), the seized article whose possession is intrinsically unlawful shall be held in custody in accordance with this section until—

(*a*) it is forfeited to the State by virtue of this paragraph—

(i) three months from the date when it was so seized, if no criminal proceedings are instituted in connection therewith within that period; or

(ii) on the date that criminal proceedings, having been instituted in connection therewith, are abandoned, withdrawn or concluded otherwise than by the conviction of the accused; or

(*b*) the article is declared forfeited to the State in terms of section 62(2); whereupon

it shall be destroyed or disposed of in accordance with this section.

(3) If the seized article whose possession is intrinsically unlawful is, in the opinion of police officer seizing it, too hazardous or dangerous to be removed or kept in custody in the manner prescribed by this section, and accordingly needs to be destroyed on the spot or dealt with or kept in custody in some other manner or place than that prescribed (whether before or after it is forfeited to the State), the police officer shall forthwith communicate his or her apprehensions to the police officer in command of the police district within which the article is seized, and shall comply with any directions as to the removal, custody, destruction or disposal of the article as the police officer so in command may give him or her, and shall record or cause to be recorded the following in the occurrence book on the day of their occurrence or no later than twenty-four hours thereafter— (*a*) the date of seizure of the article and a sufficient description of it; and

(b) the date of the communication of the seizing police officer's apprehensions to the police officer in command of the police district within which the article is seized, and any directions received from the latter in relation thereto; and

(c) the date and manner of the removal, custody, destruction or disposal of the article.

(4) Section 58(1)(*a*), (*b*) and (*c*) applies to the custody of an article whose possession is intrinsically unlawful except that—

(a) if possible, it shall be kept in a place of security that is exclusively reserved for the custody of seized articles whose possession is intrinsically unlawful; and

(b) a separate inventory from that mentioned in section 58(1)(*b*) shall be kept in relation to such articles; and

(c) the police officer in control of the seized article shall be subject to any directions concerning the custody of the article issued by the Environmental Management Authority or other agency of the State having any statutory responsibility in respect of the seized article.

(5) Within seven days of the date of forfeiture in terms of subsection (1), the police officer in command of the police district within which the seized article is held in custody (hereafter in this section called "the responsible police officer") shall communicate in writing to the Commissioner-General of Police, or any Assistant Commissioner appointed by the Commissioner-General generally or specifically for that purpose, and to the Prosecutor-General, and to any agency of the State having any statutory responsibility in respect of the seized article—

(a) the full particulars of such article, including a sufficient description of it and the dates of its seizure and forfeiture to the State; and

(b) the date, time and place for the destruction of the article, or, if the article is to be disposed of in any other manner, the manner of its disposal and the date, time and place of the disposal.

(6) The responsible police officer shall be in charge of the destruction or disposal of the seized article at the date, time and place referred to in subsection (5)(*b*):

Provided that whenever the responsible police officer is prevented by illness or other reasonable cause from discharging his or her function under this subsection, such function shall be discharged by any police officer of or above the rank of sergeant designated by the responsible police officer for that purpose.

(7) The Prosecutor-General or any public prosecutor appointed by the Prosecutor-General generally or specifically for that purpose, and any other person on behalf of an agency that received a communication referred to in subsection (5), shall be entitled to be present at the destruction of the seized article or to witness its disposal, as the case may be.

(8) On the date and time appointed by the responsible police officer under subsection(5), the police officer in charge of the destruction or disposal of the seized article shall, immediately upon such destruction or disposal, sign a declaration attesting to the destruction or disposal of the seized article, to which any witnesses authorised by subsection (7) to be present thereat shall also subscribe their names and signatures.

[Section inserted by section 26 of Act 2 of 2016]

63B Admissibility in evidence of certain notices and entries made under this Part

(1) Any original or authenticated copy of—

(a) a full receipt issued in relation to an article seized in terms of this Part;

(b) an entry in an inventory referred to in section 58(1)(*b*);

(c) a notice of destruction or disposal of a seized article or a notice to be present at the destruction or disposal thereof issued to any person for the purposes of section 58(3)(*a*) or (*c*);

(d) a notice of further retention of the seized article served in terms of section 58A(1);

(e) an entry in an occurrence book made for the purposes of section 63A(3); shall, upon its mere production by any person, be *prima facie* proof of the facts stated therein.

[Section inserted by section 26 of Act 2 of 2016]

64 Women detained for immoral purposes

(1) If it appears to a magistrate on complaint made on oath by a parent, husband, relative or guardian of a woman or girl, or any other person who, in the opinion of the magistrate, is acting in good faith in the interests of a woman or girl, that there are reasonable grounds for suspecting that such woman or girl is unlawfully detained for immoral purposes by any person in any place within the magistrate's jurisdiction, he may issue a warrant directed to a peace officer and authorizing him to search for such woman or girl, and when found to take her to and detain her in a place of safety until she can be brought before a magistrate, and the magistrate before whom she is brought may cause her to be delivered up to her parents, husband, relatives or guardians, or otherwise deal with her as the circumstances may permit and require.

(2) The magistrate issuing the warrant may by warrant direct any person accused of so unlawfully detaining the woman or girl to be arrested and brought before him or some other magistrate having jurisdiction.

(3) A woman or girl shall be deemed to be unlawfully detained for immoral purposes if she—

(a) being under the age of sixteen years, is detained for those purposes, whether against her will or not; or

(b) being of or over the age of sixteen years and under the age of eighteen years, is for those purposes detained against her will or against the will of her father or mother or any other person who has the lawful care or charge of her; or

(c) being of or above the age of eighteen years, is for those purposes detained against her will; and a woman or girl shall be deemed to be detained for immoral purposes if she is detained by any person in order that she may be unlawfully carnally known by any man, whether a particular man or not.

(4) A peace officer authorized by warrant under this section to search for a woman or girl may enter, if need be, by force any house or other place specified in the warrant, and may remove the woman or girl therefrom.

(5) A warrant under this section shall be executed by the police officer mentioned in it, who shall, unless the magistrate otherwise directs, be accompanied by the parent, husband, relative, guardian or other person by whom the complaint is made, if such person so desires.

PART VII

COMMITTAL FOR TRIAL IN THE HIGH COURT OF ACCUSED PERSONS

[Part VII substituted by section 3 of Act 9 of 2006.]

65 Accused to be committed for trial by magistrate before High Court

No person shall be tried in the High Court for any offence unless he or she has been previously committed for trial by a magistrate for or in respect of the offence charged in the indictment:

Provided that—

(i) in any case in which the Prosecutor-General has declined to prosecute, the High Court or any judge thereof may, upon the application of any such private party as is described in sections 13 and 14, order any person to be committed for trial;

(ii) an accused person, other than an accused person committed for trial under section 66, shall be deemed to have been committed for trial for or in respect of the offence charged in the indictment if the evidence taken before the committing magistrate contains an allegation of any fact or facts upon which the accused might have been committed upon the charge named in the indictment, although the committing magistrate may, when committing the accused upon such evidence, have committed him or her for some offence other than that charged in the indictment or for some other offence not known to the law;

(iii) an accused person who is in actual custody when brought to trial, or who appears to take his or her trial in pursuance of any recognizance entered into before any magistrate, shall be deemed to have been duly committed for trial upon the charge stated in the indictment unless he or she proves the contrary;

(iv) nothing in this section shall be construed as affecting the power of a judge to sentence a person whose case has been transferred to that court on the direction of the Prosecutor-General in terms of section 225;

(v) no irregularity or defect in—

(a) any proceedings referred to in section 66; or

(b) any other matter relating to the bringing of an accused person before the High Court; shall affect the validity of the trial, but the court may, on the application of the prosecutor or the accused, adjourn the trial to some future day.

[Section substituted by section 3 of Act 9 of 2006.]

66 Summary committal for trial of accused person

(1) If the Prosecutor-General is of the opinion that any person is under reasonable suspicion of having committed an offence for which the person may be tried in the High Court, the Prosecutor-General shall cause written notice to be served on—

(a) a magistrate for the province within which the person concerned resides or for the time being is present; or

(b) any magistrate before whom the trial of the offence could be held in respect of the offence concerned; informing the magistrate of his or her decision to indict the person concerned for trial before the High Court and of the offence for which the person is to be tried.

(2) On receipt of a notice in terms of subsection (1), the magistrate shall cause the person to be brought before him or her and shall forthwith commit the person for trial before the High Court and, if the person is in custody, shall issue a warrant for the further detention of the person in prison pending his or her trial before the High Court for the offence for which he or she has been committed.

[Subsection substituted by section 27 of Act 2 of 2016]

(2a) If a person who is committed for trial in terms of subsection (2) has earlier been granted bail on the charge for which he or she is committed, the grant shall stand but a judge of the High Court may, in terms of Part IX, alter the conditions of the recognizance or revoke the bail and commit the person to prison.

[Subsection inserted by section 27 of Act 2 of 2016]

(3) For the purpose of bringing a person before a magistrate to be committed for trial in terms of subsection (2)—

(*a*) the clerk of the magistrates court concerned shall issue a summons at the request of a public prosecutor requiring the person to appear before the magistrate at a specified date, time and place and stating the

nature of the offence in respect of which he or she is to be indicted for trial; or (*b*)

the magistrate may issue a warrant for the person's arrest.

(4) Section 140 shall apply, with any changes that may be necessary, to a summons issued in terms of subsection (3)(*a*) as if it had been issued in terms of that section.

(5) Part V shall apply, with any changes that may be necessary, to a warrant issued in terms of subsection (3)(*b*) as if it had been issued in terms of section 33(1).

(6) Where an accused has been committed for trial in terms of subsection (2) there shall be served upon him or her in addition to the indictment and notice of trial—

(a) a document containing a list of witnesses it is proposed to call at the trial and a summary of the evidence which each witness will give, sufficient to inform the accused of all the material facts upon which the State relies; and

(b) a notice requesting the accused—

(i) to give an outline of his or her defence, if any, to the charge; and

(ii) to supply the names of any witnesses he or she proposes to call in his or her defence together with a summary of the evidence which each witness will give, sufficient to inform the Prosecutor-General of all the material facts on which he or she relies in his or her defence;

and informing the accused of the provisions of section 67(2) in the event that the accused declines to give the information referred to in paragraph (*b*), whether on the grounds that he or she wishes to exercise his or her right to silence or otherwise.

[Subsection substituted by section 27 of Act 2 of 2016]

(7) The Prosecutor-General shall lodge with the registrar of the High Court a copy of the document and notice referred to in subsection (6).

(8) Where the accused is to be represented at his or her trial by a legal practitioner, the legal practitioner shall, at least three days, Saturdays, Sundays and public holidays excluded, before the date for trial determined by the Prosecutor-General in terms of section 160(1)— (*a*) send to the Prosecutor-General; and

(*b*) lodge with the registrar of the High Court; a document containing the information referred to subsection (6)(*b*).

(9) Where the accused is not to be represented at his or her trial by a legal practitioner, the ProsecutorGeneral may—

(a) serve on the accused a notice directing him or her to appear before a specified magistrate to provide the information referred to in subsection (6)(*b*), and

(b) send to the magistrate specified in terms of paragraph (*a*) a copy of—

(i) the document and notice referred to in subsection (6); and (ii) the notice served in terms of paragraph (*a*).

(10) The magistrate shall cause an accused on whom a. notice in terms of subsection (9) is served to appear before him or her and—

(a) ask the accused if he or she understands the facts set out in the document referred to in subsection (6)(*a*) and, if necessary, explain those facts, and

(b) inform him or her of—

(i) his or her right to remain silent by declining to do either or both of the following— A. to give an outline of his or her defence, if any, to the charge; and

B. to supply the names of any witnesses he or she proposes to call in his or her defence together with a summary of the evidence which each witness will give, sufficient to inform the Prosecutor-General of all the material facts on which he or she relies in his or her defence; and

(ii) the consequences of remaining silent, that is to say, informing the accused of the provisions of section 67(2).

[Paragraph substituted by section 27 of Act 2 of 2016]

(*c*) request the accused to supply the information referred to in subsection (6)(*b*); and the proceedings shall be recorded.

(11) The magistrate shall transmit a certified copy of the record made in terms of subsection (10) to the registrar of the High Court.

(12) The registrar shall transmit—

(a) the document and notice lodged with him or her in terms of subsection (7); and

(b) the document lodged with him or her in terms of subsection (8)(*b*) or a certified copy of the record transmitted in terms of subsection (11), as the case may be;

to the judge who is to preside at the trial.

[Section substituted by section 3 of Act 9 of 2006.]

67 Information provided by accused or failure of accused to mention fact relevant to his or her defence may be used as evidence against accused

(1) A document purporting to be a copy of a document referred to in section 66(8) or a certified copy of a record made in terms of subsection (10) of that section shall be received in evidence before the court upon its mere production by the prosecutor without further proof, unless it is shown that the information given by the accused was not in fact duly given:

Provided that, except in so far as it amounts to an admission of any allegation made by the State, any information provided by the accused shall not be taken into account for the purpose of deciding whether the accused should be found not guilty in terms of section 198(3).

(2) If an accused has failed to mention any fact relevant to his or her defence as requested in the notice in terms of section 66(6)(*b*), being a fact which, in the circumstances existing at the time, he or she could reasonably have been expected to have mentioned, the court, in determining whether there is any evidence that the accused committed or whether the accused is guilty of the offence charged or any other offence of which he or she may be convicted on that charge, may draw such inferences from the failure as appear proper and the failure may, on the basis of such inferences, be treated as evidence corroborating any other evidence given against the accused.

(3) In deciding, in terms of subsection (2), whether in the circumstances existing at the time the accused could reasonably have been expected to mention any fact, the court may have regard to the document referred to in section 66(6)(*a*).

[Section substituted by section 3 of Act 9 of 2006.]

68 – 111 ….

[Sections 68 – 11 repealed by section 3 of Act 9 of 2006 which repealed and substituted Part VII.]

PART VIII

CONFIRMATION OF EXTRA-CURIAL STATEMENTS

112 Interpretation in Part VIII

In this Part—

"confirmation proceedings" means confirmation proceedings in terms of section 113;

"expert witness" means any person whose professional, scientific or technical training gives authority to evidence given in his or her professional, scientific or technical capacity;

"statement" means any statement, including a confession, that is written or made orally and subsequently reduced to writing;

"verification proceedings" means verification proceedings in terms of section 115A.

[Section substituted by section 4 of Act 9 of 2006.]

113 Confirmation or investigation of statement

(1) Where an accused has been brought before a magistrate, the prosecutor may apply to the magistrate for the confirmation of any statement alleged to have been made by the accused, whether in writing or orally, and reduced to writing.

(2) In an application in terms of subsection (1)—

(a) the prosecutor shall produce the statement referred to in subsection (1) by handing it to the magistrate and shall inform the magistrate of the details of when, where and to whom it was made; and

(b) the statement produced in terms of paragraph (*a*) shall be read over to the accused and the accused shall be informed of the details provided in accordance with that paragraph; and

(c) the magistrate shall ask the accused whether—

(i) he made the statement; and

(ii) he did so freely and voluntarily without his having been unduly influenced thereto; and shall explain to him the provisions of subsection (3).

[Paragraph amended by section 49 of Act 2 of 2016]

(3) If the accused—

(*a*) refuses to answer any question put in terms of subsection (2); or (*b*)

admits that—

(i) he made the statement; and

(ii) the statement was made freely and voluntarily without his having been unduly influenced thereto; the magistrate shall confirm the statement by endorsing upon it the word "confirmed" and his signature and the place and date of confirmation.

(4) If the accused alleges that— (*a*) he did not make the statement; or

(*b*) the statement was not made freely and voluntarily without his having been unduly influenced thereto; the magistrate shall request him to give particulars sufficient to inform the State of the facts upon which he relies for his allegation and, as far as is reasonably possible, to identify those involved in the allegation and shall inform him of the provisions of section *one hundred and fifteen*.

(5) The magistrate may require a person who makes an allegation referred to in subsection (4) to be medically examined and may make such other investigation as he considers necessary or desirable in the circumstances.

(6) ….

(7) …

[Subsections 6 and 7 repealed by section 5 of Act 9 of 2006.]

113A Parents or guardian of juvenile may be summoned to confirmation proceedings

(1) If confirmation proceedings are held in respect of a person under the age of eighteen years, the magistrate conducting the proceedings may, at any time during those proceedings, direct any persons to warn the parent or guardian of the person orally to attend the proceedings and to remain in attendance at them, or to serve a warning in writing upon the parent or guardian:

Provided that no magistrate shall give a direction in terms of this subsection in respect of the parent or guardian of a person who is married or, in the opinion of the magistrate, is tacitly emancipated.

(2) If a parent or guardian who has been warned under subsection (1) fails to attend on the date and at the time appointed, or to remain in attendance during the confirmation proceedings on that day and on any day to which the proceedings may be adjourned, the magistrate presiding at the proceedings may issue a warrant for the apprehension of that parent or guardian and may also order him or her to pay a fine not exceeding level three or, in default of payment, to be imprisoned for a period not exceeding one month.

(3) The magistrate may, on cause shown, remit any penalty imposed under subsection (2).

[Section inserted by section 6 of Act 9 of 2006.]

113B Accused must be in his or her sound and sober senses

(1) Before commencing confirmation proceedings and at all times during the course thereof, the magistrate shall satisfy himself or herself that the accused is in his or her sound and sober senses, and if the magistrate is, before commencing or at any time during the course of the proceedings, satisfied that the accused is not in his or her sound and sober senses, the magistrate shall record that fact and order the accused to be kept in custody in such place for such period and under such conditions as to observation as the magistrate may think fit.

(2) An order in terms of subsection (1) shall expire at the termination of fourteen days from the date of its issue, but may, from time to time, be renewed by the magistrate for a period not exceeding fourteen days.

(3) If at the expiry of the period of the order or of any renewal thereof or before such expiry the accused is found to be in his or her sound and sober senses, the accused shall again be brought before the magistrate who shall commence or, as the case may be, continue the confirmation proceedings.

[Section inserted by section 6 of Act 9 of 2006.]

113C Subpoenaing of witnesses

(1) A public prosecutor who has initiated confirmation proceedings, or an accused in respect of whom those proceedings are being or are to be held, or the latter's legal representative, may compel the attendance of any person at those proceedings to give evidence or to produce any book or document, by means of a subpoena, issued in the manner prescribed by the rules of court, at the instance of the public prosecutor or accused, as the case may be, by the clerk of the magistrate in which the proceedings are being or are to be held.

(2) If a magistrate conducting confirmation proceedings believes that any person may be able to give evidence or to produce any book or document which is relevant to the subject of the examination, he or she may direct the clerk of the magistrate court to issue, in the manner mentioned in subsection (1), a subpoena requiring such person to appear before him or her at a time mentioned therein, to give evidence or to produce any book or document.

(3) Any such subpoena shall be served in the manner prescribed by the rules of court, upon the person to whom it is addressed.

(4) A magistrate conducting confirmation proceedings may call as a witness any person in attendance, although not subpoenaed as a witness, or may recall and re-examine any person already examined as a witness.

(5) Every person subpoenaed to attend confirmation proceedings shall obey the subpoena and remain in attendance throughout the proceedings, unless excused by the magistrate conducting the proceedings.

[Section inserted by section 6 of Act 9 of 2006.]

113D Arrest and punishment for failure to obey subpoena or to remain in attendance

(1) If any person subpoenaed to attend confirmation proceedings without reasonable cause fails to obey the subpoena, and it appears from the return or from evidence given under oath that the subpoena was served upon the person to whom it is directed, or if any person who has attended it in obedience to a subpoena fails to remain in attendance, the magistrate conducting the proceedings may issue a warrant directing that such person be arrested and brought at a time and place stated in the warrant, or as soon thereafter as possible, before him or her or any other magistrate.

(2) When the person in question has been arrested under the said warrant, he or she may be detained thereunder before the magistrate who issued it or in any prison or lock-up or other place of detention or in the custody of the person who is in charge of him or her, with a view to securing the person's presence as a witness at the confirmation proceedings, or such magistrate may release him or her on a recognizance, with or without sureties, for his or her appearance to give evidence as required and for his or her appearance at the inquiry mentioned in subsection (3).

(3) The magistrate may in a summary manner inquire into the said person's failure to obey the subpoena or to remain in attendance, and unless it is proved that the said person had a reasonable excuse for such failure, the magistrate may sentence him or her to a fine not exceeding level three or to imprisonment for a period not exceeding one month or to both such fine and such imprisonment.

(4) Any person sentenced by a magistrate to a fine or imprisonment in terms of subsection (3) shall have the same right of appeal as if he or she had been convicted and sentenced by a magistrates court in a criminal trial.

(5) If a person who has entered into a recognizance for his or her appearance to give evidence at confirmation proceedings or for his or her appearance at an inquiry referred to in subsection (3) fails so to appear, he or she may, apart from the estreatment of his or her recognizance, be dealt with as if he or she had failed to obey a subpoena to attend confirmation proceedings.

[Section inserted by section 6 of Act 9 of 2006.]

113E When tender of witness' expenses not necessary

No prepayment or tender of expenses shall be necessary in the case of a person who is required to give evidence at confirmation proceedings and who is also within five kilometres of the premises in which such proceedings are being held.

[Section inserted by section 6 of Act 9 of 2006.]

113F Witness refusing to be examined or to produce evidence may be committed

(1) Whenever any person appearing, either in obedience to a subpoena or by virtue of a warrant, or being present and being verbally required by the magistrate to give evidence at confirmation proceedings, refuses to be sworn or, having been sworn, refuses to answer such questions as are put to him or her, or refuses or fails to produce any document or thing which he or she is required to produce, without in any such case offering any just excuse for such refusal or failure, the magistrate may adjourn the proceedings for any period not exceeding eight clear days, and may in the meantime by warrant commit the person so refusing to prison unless he or she sooner consents to do what is required of him or her.

(2) If a person referred to in subsection (1), upon being brought up upon the adjourned hearing, again refuses to, do what is so required of him or her, the magistrate may, if he or she sees fit, again adjourn the proceedings, and by order commit him or her for a like period and so again from time to time until such person consents to do what is required of him or her.

(3) An appeal shall lie from any order of committal in terms of subsection (1) or (2) to the Supreme Court, which may make such order on the appeal as to it seems just.

(4) Nothing in this section shall prevent the magistrate from confirming the accused's statement in the meantime according to any other sufficient evidence taken by him or her.

(5) No person shall be bound to produce at confirmation proceedings any document or thing not specified or otherwise sufficiently described in the subpoena unless he or she actually has it with him or her.

[Section inserted by section 6 of Act 9 of 2006.]

114 ….

[Section repealed by section 7 of Act 9 of 2006.]

115 Failure to mention fact relevant to allegation may be used as evidence

If an accused alleges during the course of any criminal proceedings that a statement allegedly made by him which is tendered by the State in evidence was not made by him or was not made freely and voluntarily without his having been unduly influenced thereto and it is proved by the State that—

(a) the same statement was produced in terms of subsection (2) of section *one hundred and thirteen*; and

(b) the accused, when requested to do so in terms of subsection (4) of that section, failed to mention any fact, being a fact which, in the circumstances existing at the time, he could reasonably have been expected to have mentioned;

the magistrate or the court, as the case may be, in determining whether the statement was made by the accused or is admissible, may draw such inferences from the failure as appear proper and the failure may, on the basis of such inferences, be treated as evidence corroborating any other evidence given against the accused.

115A Verification of witnesses' depositions in certain circumstances

(1) Where, at any time before an accused is brought to trial for an offence, a witness has made a deposition giving material information relating to the offence, and it appears to the prosecutor that—

(a) the witness is dangerously ill; or

(b) the evidence of the witness is given in his or her capacity as an expert witness, and that the nature of the witness's professional commitments is such as to render it difficult to secure his or her attendance at the trial on any given day, or

(c) for any other reason it may not be possible to secure the attendance of such witness at the trial; the prosecutor may, if so authorised by the Prosecutor-General, make an urgent *ex parte* application to a magistrate in chambers for an order to verify the deposition in terms of this section.

(2) An application in terms of subsection (1) shall be accompanied by— (*a*) the deposition referred to in subsection (1); and

(*b*) a statement of the reasons why it appears to the prosecutor that it is necessary for the deposition to be verified in terms of this section.

(3) If the magistrate grants leave in terms of subsection (1), the magistrate shall, by written order delivered by hand to the accused or his or her legal representative, if any—

(*a*) summon the accused and his or her legal representative, if any, to attend a conference to be held in private at the time and place (being a magistrates court or any other place selected by the magistrate for the purpose) specified in the order for the purpose of verifying the witness's deposition in the presence of the magistrate, the prosecutor, the witness and any police officer concerned with the investigation of the alleged offence:

Provided that—

(i) the accused or his or her legal representative, if any, shall have not less than three days' notice (including Saturdays, Sundays and public holidays) of the time and place of the conference, and

(ii) the magistrate may, upon the written request of the accused or his or her legal representative, and after consultation with the prosecutor, postpone or bring forward the date of the conference,

and

(*b*) inform the accused that, in the event of failure by him or her to comply with the order, the provisions of section 255 may apply to his or her case.

(4) At a conference convened in terms of this section—

(a) the prosecutor shall cause the deposition of the witness to be read over or made available to the accused, and thereupon the accused shall be entitled, personally or by his or her legal representative, if any, to cross-examine the witness, and in such case the prosecutor may re-examine the witness; and

(b) the magistrate may put any question he or she sees fit to the prosecutor, the accused or his or her legal representative, or the witness.

(5) During a conference convened in terms of this section the magistrate shall make or cause to be made a re-

cord of—

(a) the time and place of the conference, the names of all those who attended at the conference and the capacities in which they so attended; and

(b) the examination or re-examination of the witness, if any.

(6) At the conclusion of a conference convened in terms of this section— (*a*) the magistrate, if he or she is satisfied that the deposition which is the subject of the verification pro-

ceedings—

(i) was made by a witness referred to in subsection (1)(*a*), (*b*) or (*c*) and

(ii) may properly be admitted in criminal proceedings for the prosecution of the offence to which it relates as *prima facie* proof of the evidence deposed to in therein;

shall verify the deposition by endorsing upon it the word "verified" and his or her signature and the place and date of verification; and

(*b*) the magistrate and the prosecutor shall sign the record referred to in subsection (5) and, if the accused and his or her legal representative, if any, attended at the conference, the magistrate shall invite the accused or the legal representative to sign it:

Provided that if the accused or his or her legal representative refuses to sign the record, the magistrate shall note that fact in the record, and the reasons for the refusal, if any are given.

(7) If the accused or his or her legal representative fails to attend a conference convened in terms of this section after having been given an opportunity to do so under subsection (3), then subsection (4)(*b*) and subsections (5) and (6) shall apply, with any changes that may be necessary, as if the accused or his or her legal representative were in attendance.

[Section inserted by section 8 of Act 9 of 2006.]

115B Proof of evidence and statements given or made at confirmation or verification proceedings and furnishing of copies thereof to accused

(1) Subject to subsection (2), in any proceedings in any court—

(a) a document, purporting to be the longhand record of the evidence given by a witness or of a statement or evidence made or given by the accused at confirmation or verification proceedings and purporting to have been taken down by the magistrate holding such proceedings; or

(b) a document which—

(i) purports to be a transcription of the original record of the evidence given by a witness or of a statement or evidence made or given by the accused at confirmation or verification proceedings and taken down in shorthand writing or by mechanical means; and

(ii) purports to have been certified as correct under the hand of the person who transcribes such record;

shall, upon its mere production by any person, be *prima facie* evidence of such statement or evidence, as the case may be, and, if the same was made or given as aforesaid through an interpreter or interpreters, of the correctness of the interpretation.

(2) Notwithstanding subsection (1), the terms of—

(a) any statement produced in confirmation proceedings shall not be proved except by the production of the statement as confirmed by the magistrate in terms of section 113(3) or, where the statement is not so confirmed, by calling as a witness the person to whom the statement was made;

(b) any deposition which was the subject of verification proceedings shall not be proved except by the production of the deposition as verified by the magistrate in terms of section 115A(6)(*a*) or, where the deposition is not so verified, by calling as a witness the person who made the deposition, unless the court, in its discretion (where the witness cannot be found after diligent search, or cannot be compelled to attend the court), allows the deposition to be read as evidence at the trial, subject to the conditions mentioned in section 255.

(3) If the accused is indicted for trial before the High Court, a copy of any of the following documents as may relate to his or her case shall be served upon the accused together with the other documents served upon him or her in terms of section 66—

(*a*) a statement confirmed in terms of section 113(3); and (*b*) a deposition verified in terms of section 115A(6)(*a*) and (*c*) a record referred to in subsection (1).

[Section inserted by section 8 of Act 9 of 2006]

PART IX

BAIL

115C Compelling reasons for denying bail and burden of proof in bail proceedings

(1) In any application, petition, motion, appeal, review or other proceeding before a court in which the grant or denial of bail or the legality of the grant or denial of bail is in issue, the grounds specified in section 117(2), being grounds upon which a court may find that it is in the interests of justice that an accused should be detained in custody until he or she is dealt with in accordance with the law, are to be considered as compelling reasons for the denial of bail by a court.

(2) Where an accused person who is in custody in respect of an offence applies to be admitted to bail—

(a) before a court has convicted him or her of the offence—

(i) the prosecution shall bear the burden of showing, on a balance of probabilities, that there are compelling reasons justifying his or her continued detention, unless the offence in question is one specified in the Third Schedule;

(ii) the accused person shall, if the offence in question is one specified in—

A. Part I of the Third Schedule, bear the burden of showing, on a balance of probabilities, that it is in the interests of justice for him or her to be released on bail, unless the court determines that, in relation to any specific allegation made by the prosecution, the prosecution shall bear that burden;

B. Part II of the Third Schedule, bear the burden of showing, on a balance of probabilities, that exceptional circumstances exist which in the interests of justice permit his or her release on bail;

(b) after he or she has been convicted of the offence, he or she shall bear the burden of showing, on a balance of probabilities, that it is in the interests of justice for him or her to be released on bail.

[Section inserted by section 28 of Act 2 of 2016]

116 Power to admit to bail

Subject to this section and sections 32 and 34, a person may, upon an application made in terms of section 117A, be admitted to bail or have his or her conditions of bail altered—

(a) in respect of any offence, by a judge at any time after he or she has appeared in court on a charge and before sentence is imposed;

(b) in respect of any offence, except an offence specified in the Third Schedule, by a magistrate within whose area of jurisdiction the accused is in custody at any time after he or she has appeared in court on a charge and before sentence is imposed:

Provided that, with the personal consent of the Prosecutor-General, a magistrate may admit a person to bail or alter a person's conditions of bail in respect of any offence;

(c) if he or she is a person whose case is adjourned in terms of section 55(1) of the Magistrates Court Act [*Chapter 7:10*] or in respect of whom an order has been made in terms of section 351(4), by a judge or by any magistrate within whose area of jurisdiction he or she is in custody: Provided that—

(i) the Prosecutor-General, in the case of any application to a judge, in terms of section 117A, or the local public prosecutor, in the case of any application to a magistrate in terms of section 117A, shall be given reasonable notice of any such application;

(ii) where an application in terms of section 117A is determined by a judge or magistrate, a further application in terms of section 117A may only be made, whether to the judge or magistrate who has determined the previous application or to any other judge or magistrate, if such application is based on facts which were not placed before the judge or magistrate who determined the previous application and which have arisen or been discovered after that determination;

(iii) a magistrate shall not, without the personal consent of the Prosecutor-General, admit a person to bail or alter a person's conditions of bail in respect of an offence specified in the Third Schedule.

[Section substituted by section 9 of Act 9 of 2006.]

117 Entitlement to bail

(1) Subject to this section and section 32, a person who is in custody in respect of an offence shall be entitled to be released on bail at any time after he or she has appeared in court on a charge and before sentence is imposed, unless the court finds that it is in the interests of justice that he or she should be detained in custody.

(2) The refusal to grant bail and the detention of an accused in custody shall be in the interests of justice where one or more of the following grounds are established—

(*a*) where there is a likelihood that the accused, if he or she were released on bail, will—

(i) endanger the safety of the public or any particular person or will commit an offence referred to in the First Schedule; or

(ii) not stand his or her trial or appear to receive sentence; or

(iii) attempt to influence or intimidate witnesses or to conceal or destroy evidence; or

(iv) undermine or jeopardise the objectives or proper functioning of the criminal justice system, including the bail system; or

(*b*) where in exceptional circumstances there is the likelihood that the release of the accused will disturb the public order or undermine public peace or security.

(3) In considering whether the ground referred to in— (*a*) subsection (2)(*a*)(i) has been established, the court shall, where applicable, take into account the following factors, namely—

(i) the degree of violence towards others implicit in the charge against the accused;

(ii) any threat of violence which the accused may have made to any person;

(iii) the resentment the accused is alleged to harbour against any person;

(iv) any disposition of the accused to commit offences referred to in the First Schedule, as evident from his or her past conduct;

(v) any evidence that the accused previously committed an offence referred to in the First Schedule while released on bail;

(vi) any other factor which in the opinion of the court should be taken into account;

(*b*) subsection (2)(*a*)(ii) has been established, the court shall take into account—

(i) the ties of the accused to the place of trial;

(ii) the existence and location of assets held by the accused;

(iii) the accused's means of travel and his or her possession of or access to travel documents;

(iv) the nature and gravity of the offence or the nature and gravity of the likely penalty therefor;

(v) the strength of the case for the prosecution and the corresponding incentive of the accused to flee;

(vi) the efficacy of the amount or nature of the bail and enforceability of any bail conditions;

(vii) any other factor which in the opinion of the court should be taken into account;

(*c*) subsection (2)(*a*)(iii) has been established, the court shall take into account—

(i) whether the accused is familiar with any witness or the evidence;

(ii) whether any witness has made a statement;

(iii) whether the investigation is completed;

(iv) the accused's relationship with any witness and the extent to which the witness may be influenced by the accused;

(v) the efficacy of the amount or nature of the bail and enforceability of any bail conditions;

(vi) the ease with which any evidence can be concealed or destroyed;

(vii) any other factor which in the opinion of the court should be taken into account;

(*d*) subsection (2)(*a*)(iv) has been established, the court shall take into account—

(i) whether the accused supplied false information at arrest or during bail proceedings;

(ii) whether the accused is in custody on another charge or is released on licence in terms of the Prisons Act [*Chapter 7:11*];

(iii) any previous failure by the accused to comply with bail conditions;

(iv) any other factor which in the opinion of the court should be taken into account;

(*e*) subsection (2)(*b*) has been established, the court shall, where applicable, take into account the following factors, namely—

(i) whether the nature of the offence and the circumstances under which the offence was committed is likely to induce a sense of shock or outrage in the community where the offence was committed;

(ii) whether the shock or outrage of the community where the offence was committed might lead to public disorder if the accused is released;

(iii) whether the safety of the accused might be jeopardised by his or her release;

(iv) whether the sense of peace and security among members of the public will be undermined or jeopardised by the release of the accused;

(v) whether the release of the accused will undermine or jeopardise the public confidence in the criminal justice system;

(vi) any other factor which in the opinion of the court should be taken into account.

(4) In considering any question in subsection (2) the court shall decide the matter by weighing the interests of justice against the right of the accused to his or her personal freedom and in particular the prejudice he or she is likely to suffer if he or she were to be detained in custody, taking into account, where applicable, the following factors, namely—

(a) the period for which the accused has already been in custody since his or her arrest;

(b) the probable period of detention until the disposal or conclusion of the trial if the accused is not released on bail;

(c) the reason for any delay in the disposal or conclusion of the trial and any fault on the part of the accused with regard to such delay;

(d) any impediment in the preparation of the accused's defence or any delay in obtaining legal representation which may be brought about by the detention of the accused;

(e) the state of health of the accused;

(f) any other factor which in the opinion of the court should be taken into account.

(5) Notwithstanding the fact that the prosecution does not oppose the granting of bail, the court has the duty to weigh up the personal interests of the accused against the interests of justice as contemplated in subsection (4).

(6) Notwithstanding any provision of this Act, where an accused is charged with an offence referred to in—

(a) Part I of the Third Schedule, the judge or (subject to proviso (iii) to section 116) the magistrate hearing the matter shall order that the accused be detained in custody until he or she is dealt with in accordance with the law, unless the accused, having been given a reasonable opportunity to do so, adduces evidence which satisfies the judge or magistrate that exceptional circumstances exist which in the interests of justice permit his or her release;

(b) Part II of the Third Schedule, the judge or (subject to proviso (iii) to section 116) the magistrate hearing the matter shall order that the accused be detained in custody until he or she is dealt with in accordance with the law, unless the accused, having been given a reasonable opportunity to do so, adduces evidence which satisfies the judge or magistrate that the interests of justice permit his or her release.

(7) Where a person has applied for bail in respect of an offence referred to in the Third Schedule— (*a*) the Prosecutor-General; or

(*b*) the Minister responsible for the administration of the Public Order and Security Act [*Chapter 11:17*], in respect of offence referred to in paragraph 6 of Part I of the Third Schedule;

may issue a certificate stating that it is intended to charge the person with the offence.

(8) If the Minister responsible for the administration of the Extradition Act [*Chapter 9:08*], certifies in writing that a person who has applied for bail has been extradited to Zimbabwe from a foreign country and that the Minister has given an undertaking to the government or other responsible authority of that country—

(a) that the accused person will not be admitted to bail while he or she is in Zimbabwe, the judge or magistrate hearing the matter shall not admit the accused person to bail;

(b) that the accused person will not be admitted to bail while he or she is in Zimbabwe except on certain conditions which the Minister shall specify in his or her certificate, the judge or magistrate hearing the matter shall not admit the accused person to bail except on those conditions:

Provided that the judge or magistrate may fix further conditions, not inconsistent with the conditions specified by the Minister on the grant of bail to the accused person.

(9) A document purporting to be a certificate issued by a Minister or the Prosecutor-General in terms of subsection (7) or (8) shall be admissible in any proceedings on its production by any person as *prima facie* evidence of its contents.

[Section substituted by section 9 of Act 9 of 2006.]

117A Application for bail, bail proceedings and record thereof

(1) Subject to the proviso to section 116, an accused person may at any time apply verbally or in writing to the judge or magistrate before whom he or she is appearing to be admitted to bail immediately or may make such application in writing to a judge or magistrate.

(2) Every written application for bail shall be made in such form as may be prescribed in rules of court.

(3) Every application in terms of subsection (2) shall be disposed of without undue delay.

(4) In bail proceedings the court may—

(a) postpone such proceedings;

(b) subject to subsection (5), receive—

(i) evidence on oath, including hearsay evidence;

(ii) affidavits and written reports which may be tendered by the prosecutor, the accused or his or her legal representative;

(iii) written statements made by the prosecutor, the accused or his or her legal representative; (iv) statements not on oath made by the accused;

(c) require the prosecutor or the accused to adduce evidence;

(d) require the prosecutor to place on record the reasons for not opposing bail.

(5) In bail proceedings the accused is compelled to inform the court whether—

(a) the accused has previously been convicted of any offence; and

(b) there are any charges pending against him or her and whether he or she has been released on bail in respect of those charges.

(6) Where the legal representative of an accused submits the information referred to in subsection (5) the accused shall be required by the court to declare whether he or she confirms such information.

(7) The record of the bail proceedings excluding the information referred to in subsection (5), shall form part of the record of the trial of the accused following upon such bail proceedings:

Provided that if the accused elects to testify during the course of the bail proceedings the court must inform him or her that anything he or she says may be used against him or her at his or her trial and such evidence becomes admissible in any subsequent proceedings.

(8) Any accused who wilfully—

(a) fails or refuses to comply with subsection (5); or

(b) furnishes the court with false information required in terms of subsection (5); shall be guilty of an offence and liable to fine not exceeding level seven or to imprisonment for a period not exceeding two years or both.

(9) The court may make the release of an accused subject to conditions which, in the court's opinion, are in the interests of justice.

(10) Notwithstanding anything to the contrary contained in any law, no accused shall, for the purposes of bail proceedings, have access to any information, record or document relating to the offence in question, which is contained in, or forms part of, a police docket, including any information, record or document which is held by any police officer charged with the investigation in question, unless the Prosecutor-General otherwise directs:

Provided that this subsection shall not be construed as denying an accused access to any information, record or document to which he or she may be entitled for the purposes of his or her trial.

[Section inserted by section 9 of Act 9 of 2006.]

118 Conditions of recognizance

(1) Where a judge or magistrate has granted an application for bail, a recognizance shall, before the accused is admitted to bail, be taken from him or from him and one or more sureties according to the conditions fixed by the judge or magistrate, as the case may be.

[Section amended by section 10 of Act 9 of 2006 and by section 49 of Act 2 of 2016.]

(2) The conditions of the recognizance shall be that the prisoner—

(a) …

[Paragraph repealed by section 10 of Act 9 of 2006.]

(b) in the case of a prisoner who has been committed for trial or sentence, shall—

(i) appear and undergo any further examination which the magistrate or the Prosecutor-General may consider desirable; and

[Subparagraph amended by section 49 of |Act 2 of 2016]

(ii) answer to any indictment that may be presented or charge that may be made against him in any competent court for the offence with which he is charged at any time; and

(iii) attend during the hearing of the case and to receive sentence; and

(iv) accept service of any summons to undergo further examination and of any such indictment or charge, notice of trial and summons thereon and any other notice under this Act at some certain and convenient place within Zimbabwe chosen by him and stated therein;

(c) in the case of a prisoner whose case has been adjourned in terms of subsection (2) of section 54 of the Magistrates Court Act [*Chapter 7:10*], shall appear in any competent court at any time to receive sentence in that case and that he will accept service of any notice in respect thereof at some certain and convenient place within Zimbabwe chosen by him and stated therein;

(d) in the case of a prisoner whose case has been adjourned in terms of subsection (1) of section 55 of the Magistrates Court Act [*Chapter 7:10*] or in respect of whom an order has been made in terms of subsection (5) of section *three hundred and fifty-eight*, shall appear in the High Court or a magistrates court, as the case may be, on the date and at the place to be notified to him by the registrar of the High Court or the clerk of the magistrates court, as the case may be, to show cause why the sentence postponed or suspended should not be imposed or brought into operation and that he will accept service of any notice in respect thereof at some certain and convenient place within Zimbabwe chosen by him and stated therein;

(e) in the case of a prisoner, other than a prisoner mentioned in paragraph (*c*), admitted to bail when a criminal case before a magistrate is adjourned or postponed and the prisoner is remanded, shall appear at a time and place to be specified in writing and as often as may be necessary thereafter until final judgment in his case has been given to answer the charge of the offence alleged against him or the charge of any other offence which may appear to the Prosecutor-General or the local public prosecutor to have been committed by the accused.

(3) The judge or magistrate referred to in subsection (1) may require to be added to the recognizance any condition which he may think necessary or advisable in the interests of justice as to—

(a) the surrender by the accused of his passport; or

(b) the times and place at which, and the persons to whom, the accused shall personally present himself; or (*c*) the places where the accused is forbidden to go; or

(*d*) the prohibition against communication by the accused with witnesses for the prosecution; or (*e*) any other matter relating to the accused's conduct.

(4) The recognizance taken in respect of a prisoner mentioned in paragraph (*b*) of subsection (2) shall continue in force notwithstanding that for any reason, when the trial takes place, no verdict is then given, unless the indictment or charge is withdrawn.

119 Recognizance to be forfeited on failure of accused to appear at trial

(1) If upon the day appointed for the hearing of a case it appears by the return of the proper officer or by other sufficient proof that a copy of the indictment and notice of trial or, in case of a remittal to a magistrates court, the summons or charge or, where the case has been adjourned in terms of subsection (2) of section 54 or subsection (1) of section 55 of the Magistrates Court Act [*Chapter 7:10*] or an order has been made in terms of subsection (5) of section *three hundred and fifty-eight*, the notice prescribed in the rules of court has been duly served and the accused does not appear after he has been called by name three times in or near the court premises, the prosecutor may apply to the court for a warrant for the arrest of the accused and may also move the court that the accused and his sureties, if any, be called upon their recognizance and, in default of his appearance, that the same may be then and there declared forfeited.

(2) Any declaration of forfeiture in terms of subsection (1) shall have the effect of a judgment on the recognizance for the amounts therein named against the accused and his sureties respectively.

120 Excessive bail not to be required

(1) The amount of bail to be taken in any case shall be in the discretion of the judge or magistrate to whom the application to be admitted to bail is made:

Provided that no person shall be required to give excessive bail.

(2) Notwithstanding the proviso to subsection (1), if it is established that there is a possibility that the accused, if released on bail, will not stand his or her trial or appear to receive sentence, and that possibility, though short of a likelihood, is not too remote, a court shall not release the accused on bail unless it satisfies itself that the amount or the terms of the bail or both are reasonably sufficient to deter the accused from fleeing, given the factors referred to in section 117(3)(*b*).

[Subsection inserted by section 11 of Act 9 of 2006.]

121 Appeals against decisions regarding bail

(1) Subject to this section, where a judge or magistrate has admitted or refused to admit a person to bail—

(a) the Prosecutor-General or the public prosecutor, within forty-eight hours of the decision; or

(b) the person concerned, at any time; may appeal against the admission to or refusal to bail or the amount fixed as bail or any conditions imposed in connection with bail.

[Subsection substituted by section 29 of Act 2 of 2016]

(2) An appeal in terms of subsection (1) against a decision of—

(*a*) a judge of the High Court, shall be made to a judge of the Supreme Court; (*b*) a magistrate, shall be made to a judge of the High Court.

(3) Where a judge or magistrate has admitted a person to bail, and an appeal is noted by the ProsecutorGeneral or public prosecutor under subsection (1), the decision to admit to bail remains in force unless, on the application of the Prosecutor-General or public prosecutor, the judge or magistrate is satisfied that there is a reasonable possibility that the interests of justice may be defeated by the release of the accused on bail before the

decision on appeal, in which event the judge or magistrate may suspend his or her decision to admit the person to bail and order the continued detention of the person for a specified period or until the appeal is determined, whichever is the shorter period.

[Subsection substituted by section 29 of Act 2 of 2016]

(4) An appeal in terms of subsection (1) by the person admitted to bail or refused admission to bail shall not suspend the decision appealed against.

(5) A judge who hears an appeal in terms of this section may make such order relating to bail or any condition in connection therewith as he considers should have been made by the judge or magistrate whose decision is the subject of the appeal.

(6) Subsections 117(2) to (6) shall apply, *mutatis mutandis*, in relation to any appeal in terms of this section.

(7) Any order made by a judge in terms of subsection (5) shall be deemed to be the order made in terms of the appropriate section of this Part by the judge or magistrate whose decision was the subject of the appeal.

(8) There shall be no appeal to a judge of the Supreme Court from a decision or order of a judge of the High Court in terms of paragraph (*b*) of subsection (2), unless the decision or order relates to the admission or refusal of admission to bail of a person charged with any offence referred to in

(a) paragraph 10 of the Third Schedule; or

(b) the Ninth Schedule in respect of which the Prosecutor-General has issued a certificate referred to in subsection (3b) of section *thirty-two*;

in which event subsections (3) to (7) shall apply to such appeal.

[Subsection substituted by section 6 of Act 14 of 2004.]

(9) This section shall apply in regard to a private prosecution as if references to the Prosecutor-General were references to the private party instituting the prosecution.

[Section as substituted by section 2 of Act 8 of 1997.]

122 …..

[Section repealed by section 2 of Act 8 of 1997]

123 Power to admit to bail pending appeal or review

(1) Subject to this section, a person may be admitted to bail or have his conditions of bail altered— (*a*) in the case of a person who has been convicted and sentenced or sentenced by the High Court and who applies for bail—

(i) pending the determination by the Supreme Court of his appeal; or

(ii) pending the determination of an application for leave to appeal or for an extension of time within which to apply for such leave;

by a judge of the Supreme Court or the High Court;

(*b*) in the case of a person who has been convicted and sentenced by a magistrates court and who applies for bail—

(i) where the record of a case is required or permitted, in terms of section 57 or 58 of the Magistrates Court Act [*Chapter 7:10*], to be transmitted for review, pending the determination of the review; or

(ii) pending the determination by the High Court of his appeal; or

(iii) pending the determination of an application for leave to appeal or for an extension of time within which to apply for such leave; by a judge of the High Court or by any magistrate within whose area of jurisdiction he is in custody:

[Paragraph amended by section 10 of Act 9 of 1997.]

Provided that—

(i) the Prosecutor-General, in the case of any application to a judge in terms of this subsection, or the local public prosecutor, in the case of any application to a magistrate in terms of this subsection, shall be given reasonable notice of any such application;

(ii) where an application in terms of this subsection is determined by a judge or magistrate, a further application in terms of this subsection may only be made, whether to the judge or magistrate who has determined the previous application or any other judge or magistrate, if such application is based on facts which were not placed before the judge or magistrate who determined the previous application and which have arisen or been discovered after that determination.

(iii) a magistrate shall not, without the consent of the Prosecutor-General, admit a person to bail or alter a person's conditions of bail in respect of an offence specified in the Third Schedule.

(2) Sections 117 and 117A shall, with any changes that may be necessary, apply to this section.

[Subsection amended by section 12 of Act 9 of 2006.]

(3) ….

(4) ….

(5) ….

(6) ….

[Subsections 3 - 6 repealed by section 12 of Act 9 of 2006.]

(7) If a judge or magistrate refuses an application for bail referred to in subsection (1), he may—

(*a*) direct that the person be treated as an unconvicted prisoner pending the determination of his appeal, application or review, as the case may be; or (*b*) postpone the payment of any fine.

(8) The time during which a person, pending the determination of an appeal, application or review, is—

(a) admitted to bail; or

(b) subject to any direction which the Supreme Court or High Court may give to the contrary on any appeal or review, treated as an unconvicted prisoner in terms of this section;

shall not count as part of any term of imprisonment under his sentence.

(9) The term of imprisonment of a person shall be resumed or begin to run, as the case requires—

(a) if such person is treated as an unconvicted prisoner in terms of this section, subject to any directions which the Supreme Court or the High Court may give to the contrary, as from the day on which the appeal, application or review is determined; or

(b) if such person is admitted to bail in terms of this section, as from the day on which he is received into prison under his sentence.

(10) A recognizance shall be taken on the admission of a person to bail either from that person alone or from him and one or more sureties, in the discretion of the judge or magistrate according to the nature and circumstances of the case, and it shall be a condition of such recognizance that the person shall, upon service on or for him at some place to be mentioned in the recognizance of a notice signed by the registrar of the High Court or, where the conviction or sentence appealed against took place in a magistrates court, by the clerk of that court informing that person of the decision of the High Court or the Supreme Court, as the case may be—

(a) pay the fine, if any, due by him within such time and to such person as shall be specified in the notice; or

(b) surrender himself within such time and to such person as shall be specified in the notice in order to undergo any other punishment which he is liable to undergo, and the judge or magistrate may add any or all of the conditions mentioned in subsection (3) of section *one hundred and eighteen* which he may think necessary or advisable to impose.

(11) The provisions of section *three hundred and eighty-two* shall apply, *mutatis mutandis*, to the service of a notice referred to in subsection (10).

(12) In granting bail in terms of subsection (1) the judge or magistrate may take bail also for the cost and charge of serving the notice referred to in subsection (10), which cost and charge shall be the same as that of serving a summons in a civil case in a magistrates court against the same person at the same place.

(13) When a person has been admitted to bail in terms of subsection (1), a judge, in the case where the conviction or sentence took place in the High Court, or a magistrate in any other case, may, upon the application of the Prosecutor-General or local public prosecutor, as the case may be, and upon information being made in writing and upon oath that default has been made in any condition of the recognizance taken from such person— (*a*) issue a warrant for the arrest of such person; and

(b) issue an order calling upon him and his sureties, if any, to appear on a day and at a place specified in the order to show cause why the recognizance should not be declared forfeited; and

(c) if cause to the satisfaction of the judge or magistrate, as the case may be, is not shown against any such declaration, declare the recognizance to be forfeited, and such declaration of forfeiture shall have the effect of a judgment on the recognizance for the amounts therein named against such person and his sureties, respectively.

124 …..

[Section repealed by section 3 of Act 8 of 1997.]

125 Insufficiency of sureties

If, through mistake, fraud or otherwise, insufficient sureties have been accepted or if they afterwards become insufficient, the judge or magistrate granting the bail may issue a warrant of arrest directing that the accused be brought before him, and may order him to find sufficient sureties, and on his failing so to do may commit him to prison.

126 Alteration of recognizances or committal of person on bail to prison

(1) Any judge or magistrate who has granted bail to a person in terms of this Part may, if he is of the opinion that it is necessary or advisable in the interests of justice that the conditions of a recognizance entered into by that person should be altered or added to or that that person should be committed to prison, order that the said conditions be altered or added to or commit the person to prison, as the case may be:

Provided that—

(i) if the judge or magistrate who granted bail is not available, any other judge or magistrate, as the case may be, may act in terms of this subsection;

(ii) a judge or magistrate shall not act in terms of this subsection unless facts which were not before the judge or magistrate who granted bail are brought to his attention.

(2) In order to secure the presence before him of a person for the purpose of acting in terms of subsection (1), a judge or magistrate may issue a warrant for the arrest of the person and thereafter subsection (1) shall apply.

(3) The provisions of section *thirty-five* shall apply, *mutatis mutandis*, in respect of a warrant issued in terms of subsection (2).

127 Person on bail may be arrested without warrant if about to abscond or interfere with witness

(1) If a peace officer believes on reasonable grounds that a person to whom bail has been granted in terms of this Part is about to abscond for the purpose of evading justice or to interfere with the evidence against him, he may arrest the person without warrant and shall as soon as possible and in any event within forty-eight hours of the arrest, take him before a magistrate who may, upon being satisfied that the ends of justice would otherwise be defeated, commit the person to prison.

(2) A person arrested in terms of subsection (1) shall be informed at the time of the arrest by the person arresting him of the cause of the arrest.

[Section amended by section 30 of Act 2 of 2016]

128 Release of sureties and death of surety

(1) All or any sureties for the attendance and appearance of an accused person released on bail may at any time apply to the judge or magistrate before whom the recognizance was entered into to discharge the recognizance, either wholly or so far as relates to the applicants.

(2) On an application in terms of subsection (1), the judge or magistrate shall issue a warrant of arrest directing that the accused be brought before him.

(3) On the appearance of the accused pursuant to the warrant or on his voluntary surrender, the judge or magistrate shall direct the recognizances to be discharged, either wholly or so far as relates to the applicants, and shall call upon the accused to find other sufficient sureties, and if he fails to do so may commit him to prison.

(4) When a surety to a recognizance dies before any forfeiture has been incurred, his estate shall be discharged from all liability in respect of the recognizance, but the accused may be required to find a new surety.

129 Rendering in court

The sureties may bring the accused into the court at which he is bound to appear during any sitting thereof, and then, by leave of the court, render him in discharge of such recognizance at any time before sentence, and the accused shall be committed to a prison there to remain until discharged by due course of law but such court may admit the accused person to bail for his appearance at any time it thinks fit.

130 Sureties not discharged until sentence or discharge of accused

The pleading or conviction of any accused person released on bail in terms of this Part shall not discharge the recognizance, but the same shall be effectual for his appearance during the trial and until sentence is passed or he is discharged:

Provided that the court may commit the accused to a prison upon his trial or may require new or additional sureties for his appearance for trial or sentence, as the case may be, notwithstanding such recognizance, and such commitment shall be a discharge of the sureties.

131 Deposit instead of recognizance

(1) When any person is required by any judge or magistrate to enter into recognizances, with or without sureties, under this Act, such judge or magistrate may, except in the case of a bond for good behaviour, instead of causing such recognizances to be entered into, permit him or some person on his behalf to deposit a sum of money or Government securities or other property of any description whatsoever acceptable to the Prosecutor-General to such amount as the judge or magistrate may fix.

(2) Conditions in writing shall be made in respect of any deposit in terms of subsection (1) of money, securities or property of the same nature as the conditions prescribed by this Part in respect of recognizances, and all the provisions of this Part prescribing the circumstances in which recognizances taken from the accused or an appellant, as the case may be, alone shall be forfeited, his arrest if about to abscond and remission of forfeited bail shall apply, *mutatis mutandis*, in respect of any such deposit of money, securities or property.

132 Admission to bail by police

(1) Except where the charge against an accused person is one of the offences specified in the Fifth Schedule, any police officer of or above the rank of assistant inspector, or a police officer of whatever rank in charge of a police station, may, at a police station and at such times as no judicial officer is available, admit to bail an accused person who makes or on whose behalf is made a deposit of such sum of money as such police officer may in the particular circumstances fix.

(2) The provisions of section *one hundred and thirty-one* as to conditions, forfeiture and remission of forfeited bail shall apply, *mutatis mutandis*, in respect of any deposit of money made under subsection (1).

133 Provision in case of default in conditions of recognizance

If it appears to the judge or magistrate who admitted the accused to bail that default has been made in any condition of the recognizance or if it appears to a judge or magistrate of the court before which an accused person has to appear in terms of any recognizance that default has been made in any condition of such recognizance, such judge or magistrate may—

(a) issue an order declaring the recognizance forfeited and such order shall have the effect of a judgment on the recognizance for the amounts therein named against the person admitted to bail and his sureties respectively;

(b) issue a warrant for the arrest of the person admitted to bail and afterwards, upon being satisfied that the ends of justice would otherwise be defeated, commit him when so arrested to prison until his trial.

134 Remission of bail

The Prosecutor-General may, in his discretion, remit the whole or any portion of any amount forfeited under section *ninety-seven* or this Part and may, where a portion of such amount has been remitted, enforce payment in part only.

135 Release of juvenile offenders without bail

(1) When a person under the age of eighteen years is accused of any offence other than treason, murder or rape, any judge, magistrate or police officer who has power under this Part to admit the said person to bail may, instead of admitting him to bail or instead of detaining him—

(a) release him without bail and warn him to appear before a court or magistrate at a time and on a date then fixed by the judge, magistrate or police officer; or

(b) release him without bail to the care of the person in whose custody he is and warn that person to bring him or cause him to be brought before a court or magistrate at a time and on a date then fixed as aforesaid; or

(c) place him in a place of safety as defined in section 2 of the Children's Act [*Chapter 5:06*] pending his appearance before a court or magistrate or until he is otherwise dealt with according to law.

[Paragraph amended by section 49 of Act 2 of 2016]

(2) Any person who, having been warned in terms of paragraph (*b*) of subsection (1), fails without reasonable excuse, the burden of proof of which shall rest upon him, to act in accordance with that warning, shall be guilty of an offence and liable to a fine not exceeding level three or, in default of payment, to imprisonment for a period not exceeding one month.

[Subsection amended by section 28 of Act 9 of 2006.]

PART X

INDICTMENTS, SUMMONSES AND CHARGES

A. Indictments in High Court

136 Charge in High Court to be laid in indictment

(1) When a person charged with an offence has been committed for trial or sentence and it is intended to prosecute him before the High Court, the charge shall be in writing in a document called an indictment.

(2) Where the prosecution is at the public instance, the indictment shall be in the name of the ProsecutorGeneral and shall be signed by the Prosecutor-General or by a member of the National Prosecuting Authority authorised by him or her.

[Subsection substituted by section 31 of Act 2 of 2016]

(3) When the prosecution is a private one, the indictment shall be in the name of the party at whose instance it is preferred (who must be described therein with certainty and precision) and must be signed by such private party or by his legal representative.

(4) It shall not be competent for two or more persons to prosecute in the same indictment, except in a case where two or more persons have been injured by the same offence.

(5) The service upon an accused person of any indictment, together with any notice of trial thereof, shall be made by the person and in the manner provided by rules of court.

(6) When a person under the age of eighteen years is served with an indictment and notice of trial as aforesaid, the provisions of section 113A shall apply, *mutatis mutandis*:

Provided that where any reference is made to a direction by a magistrate, that shall be read as a reference to a direction by a judge.

[Subsection amended by section 49 of Act 2 of 2016]

137 When case is pending

As soon as the indictment in any criminal case brought in the High Court has been duly lodged with the registrar of that court, such case shall be deemed to be pending in that court.

138 High Court may try case wherever offence committed

Any person charged with committing an offence at any place may be tried by the High Court, wherever sitting.

B. Summonses and charges in magistrates courts

139 Lodging of charges in magistrates court

Where a public prosecutor has, by virtue of his office, determined to prosecute any person in a magistrates court for any offence within the jurisdiction of that court, he shall forthwith lodge with the clerk of the court a statement in writing of the charge against that person, describing him by his forename, surname, place of abode and occupation and setting forth shortly and distinctly the nature of the offence and the time and place at which it was committed.

140 Summons in magistrates court

(1) The clerk of the magistrates court shall, upon or after the lodging of any charge, at the request of the prosecutor, issue and deliver to the messenger of the court a summons to the person charged to appear to answer the charge, together with so many copies of the said summons as there are persons to be summoned.

(2) Except where otherwise specially provided by any enactment, the service upon an accused person of any summons or other process in a criminal case in a magistrates court shall be made by the prescribed officer, either by delivering it to the accused personally or, if he cannot conveniently be found, by leaving it for him at his place of business or most usual or last known place of abode with some inmate thereof.

(3) The service of a summons may be proved by the testimony on oath of the person effecting the service or by his affidavit or by due return of service under his hand.

(4) If, upon the day appointed for the appearance of any person to answer any charge, he fails to appear and the court is satisfied upon the return of the person required to serve the summons that he was duly summoned, the

court may, on the request of the prosecutor, issue a warrant for the apprehension of the said person, and may also impose on him for his default a fine not exceeding level three or to imprisonment for a period not exceeding one month or to both such fine and such imprisonment.

[Subsection amended by section 4 of Act 8 of 1997 and section 4 of Act 22 of 2001.]

(5) The court may, upon cause shown, remit any fine or imprisonment imposed under subsection (4).

(6) When a person under the age of eighteen years is summoned as aforesaid, the provisions of section 113A shall apply, *mutatis mutandis*.

[Subsection amended by section 49 of Act 2 of 2016]

141 Written notice to secure attendance of accused in magistrates court

(1) If a person is alleged to have committed an offence and a peace officer, on reasonable grounds, believes that a magistrates court, on convicting such accused of that offence, will impose a fine not exceeding level three, the peace officer may, whether or not the accused is in custody, hand to the accused a written notice in the form prescribed which shall—

(a) give such particulars as are necessary for giving reasonable information of the allegation:

Provided that it shall not be necessary to cite the provision of the enactment under which he is charged; and

(b) specify the full name and address of the accused; and

(c) 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; and

(d) contain an endorsement to the effect that the accused may, in terms of section *three hundred and fiftysix*, on or before such date as may be specified, admit his guilt in respect of the offence in question and pay a fine fixed in respect thereof without appearing in court; and

(e) 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.

[Subsection amended by section 4 of Act 22 of 2001.]

(2) If the accused is in custody, the effect of a written notice handed to him in terms of subsection (1) shall be that he be released forthwith from custody.

(3) A peace officer who hands a person a written notice in terms of subsection (1) shall forthwith forward a duplicate original of the written notice to the clerk of the court at which the accused is, in terms of the notice, called upon to appear.

(4) The provisions of subsections (4) and (5) of section *one hundred and forty* shall apply, *mutatis mutandis*, in regard to a written notice handed in terms of subsection (1) to an accused who has not, on or before the date specified in paragraph (*d*) of subsection (1), admitted his guilt in respect of the offence in question and paid the fine fixed in respect thereof in terms of section *three hundred and fifty-six* as if the written notice were a summons duly served on the person concerned.

(5) The production to the court by the prosecutor of the duplicate original referred to in subsection (3) shall be *prima facie* proof—

(a) that the original thereof was handed to the accused; and

(b) that the accused has not, on or before the date specified in paragraph (*d*) of subsection (1), admitted his guilt in respect of the offence in question and paid the fine fixed in respect thereof in terms of section *three hundred and fifty-six*.

142 Warning to appear in magistrates court

(1) Notwithstanding anything in section *one hundred and forty*, it shall be competent for a magistrates court to obtain the presence of any person to be charged with any offence by means of a warning to such person.

(2) In all summary trials in a magistrates court without summons, the charge shall be entered upon a form called the "Charge Sheet", containing the name of every accused person, with the name of the offence with which he is charged and the necessary particulars thereof concisely stated.

(3) At the trial the charge drawn in terms of subsection (2) shall be read out to the person charged, who shall be called upon to plead thereto, and his plea shall be recorded thereon.

(4) The accused or his legal representative shall be entitled at all reasonable times to inspect the charge as stated on the charge sheet.

(5) When a person under the age of eighteen years has been arrested by a peace officer for the purpose of being brought before a court or has been warned to appear before a court on a charge of having committed an offence, the officer who arrested or warned the said person shall, unless otherwise directed by a magistrate, warn the parent or

guardian of such person, or cause him to be warned, if he can be found within the area of jurisdiction of the court, to attend the court on the day on which and at the time at which such person is to be brought or was warned to appear before such court and to remain in attendance during the proceedings against such person in that court, and thereupon section 113A shall apply, *mutatis mutandis*:

Provided that this subsection shall not apply in respect of a person under the age of eighteen years who is married or who appears to the officer who arrests or warns that person to be tacitly emancipated.

[Subsection amended by section 49 of Act 2 of 2016]

143 Charges in remitted cases

(1) When any case has been remitted by the Prosecutor-General to be dealt with by a magistrates court, the court shall, with all convenient dispatch, cause the accused to be brought before it.

(2) If the accused has been released on bail, the court shall cause a notice to be served on him stating that the case has been remitted to it to be dealt with and requiring him to appear on the day appointed for the trial.

(3) A notice in terms of subsection (2) shall be served in the same manner as a criminal summons and, if the accused does not appear as required in the notice, his bail may be estreated and he may be arrested and brought before the court as in the case of a person who has not appeared upon a criminal summons.

C. General for all courts

144 Joinder of counts

(1) Any number of counts, for any offences whatever, may be joined in the same indictment, summons or charge and where separate indictments, summonses or charges have been presented against an accused person, the court may, with the consent of the prosecutor and the accused, treat the separate indictments, summonses or charges as being a number of counts joined in the same indictment, summons or charge.

[Subsection amended, by repeal of proviso, by section 5 of Act 8 of 1997.]

(2) When there are more counts than one in an indictment, summons or charge, they shall be numbered consecutively, and each count may be treated as a separate indictment, summons or charge.

(3) If the court thinks it conducive to the ends of justice to do so, it may direct that the accused shall be tried upon any one or more of such counts separately and such direction may be made either before or in the course of the trial.

(4) The counts in the indictment which are not then tried shall be proceeded upon in all respects as if they had been contained in a separate indictment.

(5) If it is alleged that on several different occasions on any one day or during any period any person has committed—

(a) an offence against or in respect of any one person; or

(b) an offence which is not an offence against or in respect of any person; the indictment, summons or charge may charge in one count that the accused committed the offence on several different occasions on that day or during that period.

145 Where doubtful what offence has been committed

If, by reason of the nature of an act or series of acts, or of any uncertainty as to the facts which can be proved, or if for any other reason whatever it is doubtful which of several offences is constituted by the facts which can be proved, the accused may be charged with having committed all or any of those offences, and any number of such charges may be tried at one time, or the accused may be charged in the alternative with having committed some or one of those offences.

146 Essentials of indictment, summons or charge

(1) Subject to this Act and except as otherwise provided in any other enactment, each count of the indictment, summons or charge shall set forth the offence with which the accused is charged in such manner, and with such particulars as to the alleged time and place of committing the offence and the person, if any, against whom and the property, if any, in respect of which the offence is alleged to have been committed, as may be reasonably sufficient to inform the accused of the nature of the charge.

(2) Subject to this Act and except as otherwise provided in any other enactment, the following provisions shall apply to criminal proceedings in any court, that is to say—

(a) the description of any offence in the words of any enactment creating the offence, or in similar words, shall be sufficient; and

(b) any exception, exemption, proviso, excuse or qualification, whether it does or does not accompany in the same section the description of the offence in the enactment creating the offence, may be proved by the

accused, but need not be specified or negatived in the indictment, summons or charge, and, if so specified or negatived, no proof in relation to the matter so specified or negatived shall be required on the part of the prosecution.

(3) Where any of the particulars referred to in this section are unknown to the prosecutor, it shall be sufficient to state that fact in the indictment, summons or charge.

(4) Where a person is charged with a crime listed in the first column of the Second Schedule to the Criminal Law Code, it shall be sufficient to charge him or her with that crime by its name only.

[Subsection inserted by section 282 of Act 23 of 2004]

(5) No indictment, summons or charge alleging the commission of a crime mentioned in subsection (4) shall be held to be defective on account of a failure to mention the section of the Criminal Law Code under which the crime is set forth.

[Subsection inserted by section 282 of Act 23 of 2004]

147 Sufficient to allege dates between which thefts took place

It shall be lawful in any indictment, summons or charge in respect of theft to allege that the property stated to have been stolen was taken at several different times between any two certain days named in the indictment, summons or charge, and upon such an indictment, summons or charge, proof may be given of the theft of such property upon any day or days between the two certain days aforesaid.

148 Indictment may charge general deficiency

In an indictment, summons or charge in respect of the theft of money, or in respect of the theft of any property by a person entrusted with the custody or care of such property, the accused may be charged and proceeded against for the amount of a general deficiency, notwithstanding that such general deficiency is made up of any number of specific sums of money or of any number of specific articles or of a sum of money representing the value of specific articles, the taking of which extended over any space of time.

149 Not necessary to specify particular coin or bank-note stolen

In any indictment, summons or charge in which it is necessary to make averment as to any money or any bank-note, it shall be sufficient to describe such money or bank-note simply as money, without specifying any particular coin or bank-note, and such averment, so far as regards the description of the property, shall be sustained by proof of any amount of coin or of any bank-note, although the particular species of coin of which such amount was composed or the particular nature of the bank-note is not proved, and in cases of money or bank-notes obtained by false pretences or by any other unlawful act, by proof that the offender obtained any coin or any banknote or any portion of the value thereof, although such coin or bank-note may have been delivered to him in order that some part of the value thereof should be returned to the party delivering the same or to any other person, and such part has been returned accordingly.

150 Indictments for giving false evidence; and making of conflicting statements on oath in judicial proceedings

(1) In an indictment, summons or charge in respect of an offence which relates to taking or administering an oath or affirmation, or to giving false testimony, or to making a false statement on solemn declaration or otherwise, or to procuring the giving of false testimony or the making of a false statement, it shall not be necessary to set forth the words of the oath or affirmation or testimony or statement, but it shall be sufficient to set forth the purport thereof or so much of the purport thereof as is material, nor shall it be necessary to allege in any such indictment, summons or charge or to prove at the trial that the false testimony or statement was material to any issue to be tried in the proceedings in connection wherewith it was given or made, or that it was to the prejudice of any person:

Provided that it shall be a sufficient defence on such trial to prove that the false testimony or statement was not material to any such issue and was not to the prejudice of any person.

(2) In an indictment, summons or charge which relates to giving false testimony or procuring or attempting to procure the giving of false testimony, it shall not be necessary to allege the jurisdiction or state the nature of the authority of the court or tribunal before which or the officer before whom the false testimony was given or intended or proposed to be given.

(3) Any person who has made any statement on oath, whether orally or in writing, and thereafter on the same or another oath makes another statement, whether orally or in writing, which is in substantial conflict with any such first-mentioned statement shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

[Subsection amended by section 4 of Act 22 of 2001.]

(4) It shall not be necessary to allege in any indictment, summons or charge in respect of an offence in terms of subsection (3) or to establish at the trial which of the conflicting statements was false or that either statement was

material to any issue to be tried in the proceedings in connection wherewith it was made, but it shall be a sufficient defence on any such trial to prove—

(a) that the accused when he made each statement believed it to be true; or

(b) that neither statement was material to any such issue as aforesaid; or

(c) that one statement was true and that the other statement, though false, was not material to any such issue as aforesaid.

(5) Subsections (1) and (2) shall apply to any indictment, summons or charge in respect of an offence in terms of subsection (3).

151 Rules applicable to particular indictments

(1) In an indictment, summons or charge in respect of an offence relating to a testamentary instrument, it shall not be necessary to allege that the instrument is the property of any person.

(2) In an indictment, summons or charge in respect of an offence relating to anything fixed in a square, street or open place, or in a place dedicated to public use or ornament or to any thing in or taken from a public place or office, it shall not be necessary to allege that the thing in respect of which the offence was committed is the property of any person.

(3) In an indictment, summons or charge in respect of an offence relating to a document which is evidence of title to land or an interest in land, the document may be described as being evidence of the title of the person or some one of the persons having an interest in the land to which the document relates, the land or some part thereof being described in some manner sufficient to identify it.

(4) In an indictment, summons or charge in respect of the theft of anything whatsoever let to hire to the offender, the thing may be described as the property of the person who actually let it to hire.

(5) In an indictment, summons or charge against a person employed by the State regarding an offence committed in respect of anything which came into his possession by virtue of his employment, the thing in question may be described as the property of the State.

[Subsection amended by Act 5 of 2014 and by section 49 of Act 2 of 2016]

(6) In an indictment, summons or charge regarding an offence committed in respect of anything in the occupation or under the management of any public officer, the thing may be described as belonging to such officer without naming him.

(7) In an indictment, summons or charge regarding an offence committed in respect of any property, movable or immovable, whereof any body corporate has by law the management, control or custody, the property may be described as belonging to such body corporate.

(8) In an indictment, summons or charge regarding an offence in respect of any property, if it is uncertain to which of two or more persons the property belonged at the time when the offence was committed, the property may be described as being the property of one or other of those persons, naming each of them, but without specifying which of them, and the indictment, summons or charge shall be sustained, so far as regards the allegation of ownership, upon proof that at the time when the offence was committed the property belonged to one or other of those persons without ascertaining which of them.

(9) In an indictment, summons or charge in respect of the theft of any property, if the property was not in the physical possession of the owner thereof at the time when the theft was committed, but was in the physical possession of another person who had the custody thereof on behalf of the owner, it shall be sufficient to allege that the property was in the lawful custody or under the lawful control of that other person.

(10) In an indictment, summons or charge in which any trade mark or forged trade mark is intended to be mentioned, it shall be sufficient, without further description and without any copy or facsimile, to state that such trade mark or forged trade mark is a trade mark or forged trade mark.

(11) In an indictment, summons or charge for housebreaking or for entering any house or premises with intent to commit an offence, whether the charge is made under the Criminal Law Code or under any other enactment, the indictment, summons or charge may either state the offence which it is alleged the accused intended to commit or may aver an intent to commit an offence to the prosecutor unknown.

[Subsection amended by section 28 of Act 9 of 2006.]

(12) In an indictment, summons or charge for robbing or theft from any grave, whether in a cemetery or burial place or not, it shall not be necessary to allege that any dead body or portion thereof or anything whatever in the grave is the property of any person.

152 Companies, firms and partnerships may be named in indictments by name, style or title

(1) In every case in which it is necessary in an indictment, summons or charge to name any company, firm or partnership, it shall be sufficient to state the name of the company or the style or title of the firm or partnership, without naming any of the officers or shareholders of the company or any of the partners in the firm or partnership and an individual trading under the style or title of a firm may be described by such style or title.

(2) It shall be sufficient where two or more persons not partners are joint owners of property to name one of such persons, adding the words "and another" or "and others", as the case may be, and to state that the property belonged to the person so named and another or others, as the case may be.

153 Means or instrument by which act is done need not be stated

It shall not in any indictment, summons or charge be necessary to set forth the manner in which or the means or instrument by which any act is done, unless the manner, means or instrument is an essential element of the offence.

154 .....

[Section repealed by section 32 of Act 2 of 2016]

155 In indictment for forgery and other cases copy of instrument not necessary

(1) In an indictment, summons or charge in respect of forging, uttering, stealing, destroying, concealing or otherwise unlawfully dealing with any instrument, it shall be sufficient to describe such instrument by any name or designation by which it is usually known or by the purport thereof, without setting out any copy or facsimile thereof or otherwise describing it or stating its value.

(2) In all other cases where it is necessary to make any averment in any indictment, summons or charge as to any instrument, whether the same consists wholly or in part of writing, print or figures, it shall be sufficient to describe such instrument by any name or designation by which it is usually known or by the purport thereof, without setting out any copy or facsimile of the whole or any part thereof, unless the wording of the instrument is an element of the offence.

156 Certain particulars not required in case of offence relating to insolvency

In an indictment, summons or charge in respect of an offence relating to an insolvent, it shall not be necessary to set forth any debt, act of insolvency, adjudication or other proceeding in any court, or any order, warrant or document made or issued out of or by the authority of any court.

157 Allegation of intent to defraud sufficient without alleging whom it is intended to defraud

(1) It shall be sufficient in any indictment, summons or charge in respect of—

(*a*) forgery or fraud; or (*b*)

.....

(c) obtaining anything by means of a fraudulent trick or device or any other fraudulent means; or

(d) inducing, by means of any such trick or device or fraudulent means, the payment or delivery of any money or thing; or

(e) attempting to commit or to procure the commission of any such offence; to allege that the accused did the act with intent to defraud, without alleging the intent of the accused to be to defraud any particular person.

[Subsection amended by section 33 of Act 2 of 2016]

(2) In the case of any offence referred to in subsection (1), it shall not be necessary to mention the owner of the property in question or to set forth the details of the trick or device.

158 Persons implicated in same offence may be charged together

(1) Any number of persons charged with committing or with procuring the commission of the same offence, although at different times, or with having, after the commission of the offence, harboured or assisted the offender, and any number of persons charged with receiving, although at different times, any property which has been obtained by means of an offence, or any part of any property so obtained, may be charged with substantive offences in the same indictment, summons or charge, and may be tried together, notwithstanding that the principal offender or the person who so obtained the property is not included in the same indictment, summons or charge or is not amenable to justice.

(2) A person who counsels or procures another to commit an offence, or who aids another person in committing an offence, or who after the commission of an offence harbours or assists the offender, may be charged in the same indictment, summons or charge with the principal offender, and may be tried with him or separately or may be indicted and tried separately, whether the principal offender has or has not been convicted or is or is not amenable to justice.

159 Joint trial of persons charged with different offences

When it is alleged in an indictment, summons or charge that two or more persons have committed separate offences at the same time and place or at the same place and about the same time and the prosecutor informs the court that any evidence which is, in his opinion, admissible at the trial of those persons is, in his opinion, also admissible at the trial of the other person or persons, such persons may be tried jointly for those offences on that indictment, summons or charge.

PART XI

PROCEDURE BEFORE COMMENCEMENT OF TRIAL

A. In High Court

160 Bringing of accused persons to trial before High Court

(1) Except as is otherwise expressly provided in this Act as to the postponement or adjournment of a trial, every person committed for trial or sentence whom the Prosecutor-General has decided to prosecute before the High Court shall be brought to trial on such date as may be determined by the Prosecutor-General:

Provided that the High Court may, on application by the accused and on good cause shown by him, order that the trial shall take place on an earlier date than that determined by the Prosecutor-General.

(2) If a person referred to in subsection (1) is not brought to trial after the expiry of six months from the date of his committal for trial, his case shall be dismissed:

Provided that any period during which such person is, through circumstances beyond the control of the Prosecutor-General, not available to stand trial shall not be included as part of the period of six months referred to in this subsection.

(3) ….

[Subsection repealed by section 13 of Act 9 of 2006.]

161 Change of place of trial

(1) When an indictment has been presented against an accused person in the High Court, any judge may, upon application by or on behalf of the Prosecutor-General or by or on behalf of the accused, order that the trial shall be held at some place other than that specified in the notice of trial and at a time to be named in the order.

(2) When any order is made under subsection (1), the consequences shall be the same in all respects and with regard to all persons as if the Prosecutor-General had decided to prosecute the accused at the place named in the order and at the time specified therein, and if he has been admitted to bail—

(a) the recognizances of the bail shall be deemed to extend to that time and place accordingly; and

(b) the recognizances of any persons who are bound to attend as witnesses shall be deemed to extend to the same time and place.

(3) Notice of the time and place named and specified in an order in terms of subsection (1) shall be given to the persons bound by the recognizances, otherwise their recognizances shall not be forfeited.

162 When removed prisoner to be tried

Where a case has, in terms of section *one hundred and sixty-one*, been removed for trial elsewhere and the accused is in custody, the judge granting the order of removal shall issue a warrant directing his transmission forthwith to the prison of the area to which the case has been removed and the accused shall be tried as soon as reasonably possible on a date to be determined by the Prosecutor-General:

Provided that the accused shall not be tried less than ten days after his arrival at the prison except with his consent.

B. In magistrates court

163 Accused in magistrates court to be brought for trial at once

Any person to be prosecuted on a criminal charge in a magistrates court shall be brought for trial at the next possible court day.

163A Accused in magistrates court to be informed of section 191 rights

(1) At the commencement of any trial in a magistrates court, before the accused is called upon to plead to the summons or charge, the accused shall be informed by the magistrate of his or her right in terms of section 191 to legal or other representation in terms of that section.

(2) The magistrate shall record the fact that the accused has been given the information referred to in subsection (1), and the accused's response to it.

[Section inserted by section 34 of Act 2 of 2016]

164 Persons brought before wrong court

(1) If on the trial of a person charged with any offence before any magistrates court it appears that he is not properly triable before the court, he is not by reason thereof entitled to be acquitted, but the court may at the request of the accused direct that he be tried before some proper court, and may remand him for trial accordingly.

(2) If he does not make a request in terms of subsection (1), the trial shall proceed and the verdict and judgment shall have the same effect in all respects as if the court had originally had jurisdiction to try the accused.

(3) This section shall not affect the right of the accused to plead to the jurisdiction of a court. *C. General for all courts*

165 Trial of pending case may be postponed

Subject to subsection (2) of section *one hundred and sixty*, any court before which a criminal trial is pending may, if it is necessary or expedient, postpone the trial until such time and to such place and upon such terms as to such court may seem proper, and further postponements may, if necessary or expedient, be made from time to time:

Provided that where a trial is pending before a magistrates court such trial shall not, unless the accused consents thereto, be postponed for a period exceeding fourteen days at any one time.

166 Adjournment of trial

(1) A trial may, if it is necessary or expedient, be adjourned at any period of the trial, whether evidence has or has not been given.

(2) A trial before a magistrates court shall not, unless the accused consents thereto, be adjourned for a period exceeding fourteen days but such adjournment may, if necessary, take place more than once upon sufficient cause appearing to the magistrate.

167 Accused may be admitted to bail on postponement or adjournment of trial

(1) When a trial is postponed or adjourned in terms of section *one hundred and sixty-five* or *one hundred and sixty-six*, the court may direct that the accused be detained until liberated in accordance with law or release him on bail or extend his bail if he has already been released on bail, and may extend the recognizances of the witnesses.

(2) When a trial is postponed or adjourned in terms of section *one hundred and sixty-five* or *one hundred and sixty-six* and the accused is not in custody and has not been admitted to bail, he shall be deemed to have been served with a summons to appear at the time and place to which the trial was postponed or adjourned.

167A Unreasonable delay in bringing accused to trial

(1) A court before which criminal proceedings are pending shall investigate any delay in the completion of the proceedings which appears to the court to be unreasonable and which could cause substantial prejudice to the prosecution, to the accused or his or her legal representative, to a witness or other person concerned in the proceedings, or to the public interest.

(2) In considering whether any delay is unreasonable for the purposes of subsection (1), the court shall consider all the circumstances of the case and in particular the following—

(a) the extent of the delay;
(b) the reasons advanced for the delay;
(c) whether any person can be blamed for the delay;
(d) whether the accused has raised such objections to the delay as he or she might reasonably have been expected to have raised;
(e) the seriousness, extent or complexity of the charge or charges;
(f) any actual or potential prejudice which the delay may have caused to the State, to the accused or his or her legal representative or to any other person concerned in the proceedings;
(g) the effect of the delay on the administration of justice;
(h) the adverse effect on the interests of the public or the victims in the event of the prosecution being stopped or discontinued.

(3) If after an investigation in terms of subsection (1) the court finds that— (*a*) the completion of the proceedings is being unduly delayed; or

(*b*) there has been an unreasonable delay in bringing the accused to trial or in completing the trial; the court may issue such order as it considers appropriate in order to eliminate the delay and any prejudice arising from it or to prevent further delay or prejudice, including an order—

(i) refusing further postponement of the proceedings;
(ii) granting a postponement subject to such conditions as the court may determine;
(iii) that the prosecution of the accused for the offence be permanently stayed;
(iv) that the matter be referred to the appropriate authority for an administrative investigation and possible disciplinary action against any person responsible for the delay.

(4) The Prosecutor-General may appeal against an order referred to in subsection (3) (iii) as if it were an acquittal of the accused.

[Section inserted by section 35 of Act 2 of 2016]

168 Accused to plead to indictment, summons or charge

At the time appointed for the trial or sentence of the accused upon any indictment, summons or charge, he shall appear, and shall be informed in open court of the offence with which he is charged as set forth in the in-

dictment, summons or charge, and shall, subject to section *three hundred and fifty-six*, be required to plead instantly thereto except where, there being an indictment or summons and the accused having objected so to plead, the court finds that he has not been duly served with a copy thereof.

169 Termination of bail on plea to indictment in High Court

If the accused is indicted in the High Court after having been admitted to bail, his plea to the indictment shall, unless the court otherwise directs, have the effect of terminating his bail, and he shall thereupon be detained in custody until the conclusion of the trial in the same manner in every respect as if he had not been admitted to bail.

170 Objections to indictment, how and when to be made

(1) Any objection to an indictment for any formal defect apparent on the face thereof shall be taken by exception or by application to quash such indictment before the accused has pleaded, but not afterwards.

(2) Any objection to a summons or charge for any formal defect apparent on the face thereof which is to be tried by a magistrates court shall be taken by exception before the accused has pleaded, but not afterwards.

(3) Any court before which any objection is taken in terms of subsection (1) or (2) may, if it is thought necessary and the accused is not prejudiced as to his defence, cause the indictment, summons or charge to be forthwith amended in the requisite particular by some officer of the court or other person, and thereupon the trial shall proceed as if no such defect had appeared.

171 Exceptions

(1) When the accused excepts only and does not plead any plea, the court shall proceed to hear and determine the matter forthwith and if the exception is overruled, he shall be called upon to plead to the indictment, summons or charge.

(2) When the accused pleads and excepts together, it shall be in the discretion of the court whether the plea or exception shall be first disposed of.

172 Certain omissions or imperfections not to invalidate indictment

No indictment, summons or charge in respect of any offence shall be held insufficient—

(a) for want of the averment of any matter unnecessary to be proved; or

(b) because any person mentioned therein is designated by a name of office or other descriptive appellation instead of by his proper name; or

(c) because of an omission to state the time at which the offence was committed in any case where time is not of the essence of the offence; or

(d) because the offence is stated to have been committed on a day subsequent to the lodging of the indictment or the service of the summons or charge or, subject to section *one hundred and seventy-four*, on an impossible day or on a day that never happened; or

(e) for want of or imperfection in the addition of any accused or any other person; or

(f) for want of the statement of the value or price of any matter or thing or the amount of damage, injury or spoil in any case where the value or price or the amount of damage, injury or spoil is not of the essence of the offence.

173 Averments as to time of commission of offence

If any particular day or period is alleged in any indictment, summons or charge as the day on or period during which any act or offence was committed—

(a) proof that such act or offence was committed on any other day or time not more than three months before or after the day or period stated therein shall be taken to support such allegation if time is not of the essence of the offence;

(b) proof may be given that the act or offence in question was committed on a day or time more than three months before or after the day or period stated in the indictment, summons or charge, unless it is made to appear to the court before which the trial is being held that the accused is likely to be prejudiced thereby in his defence upon the merits, and if the court considers that the accused is likely to be thereby prejudiced in his defence upon the merits, it shall reject such proof and the accused shall be in the same position as if he had not pleaded.

174 Proceedings where indictment alleges offence committed on impossible day

If in any case no day is stated in the indictment, summons or charge or an impossible day or a day that never happened is stated, the accused may, at any time before pleading, apply to the High Court or any judge, or to the

court in which he is indicted or charged, and such court or judge shall, upon being satisfied by affidavit or otherwise that the accused is likely to be prejudiced in his defence upon the merits unless some day or time were stated, make such order in that behalf as in the circumstances of the particular case seems just.

175 Proceedings if defence is an alibi

If in any case the defence of the accused is that commonly called an *alibi*, and the court before which the trial is held considers that the accused might be prejudiced in making such defence if proof were admitted that the act or offence in question was committed on some day or time other than the day or time stated in the indictment,

summons or charge, then, although the day or time proposed to be proved is within a period of three months before or after the day stated in the indictment, summons or charge, the court shall reject such proof, and thereupon the same consequences shall take place as in paragraph (*b*) of section *one hundred and seventy-three* mentioned, anything in that section to the contrary notwithstanding.

176 Indictments relating to blasphemous, seditious, obscene or defamatory matters

No count for publishing a blasphemous, seditious, obscene or defamatory matter, or for selling or exhibiting any obscene book, pamphlet, newspaper or other printed or written matter, shall be open to objection or deemed insufficient on the ground that it does not set out the words thereof:

Provided that the court may order that particulars shall be furnished by the prosecutor stating what passages in such book, pamphlet, newspaper, printing or writing are relied on in support of the charge.

177 Court may order delivery of particulars

(1) The court may either before or at the trial, in any case if it thinks fit, direct that particulars be delivered to the accused of any matter alleged in the indictment, summons or charge, and may, if necessary, adjourn the trial for the purpose of the delivery of such particulars.

(2) Such particulars shall be delivered to the accused or to his legal representative without charge, and shall be entered in the record, and the trial shall proceed in all respects as if the indictment, summons or charge had been amended in conformity with such particulars.

(3) ….

[Subsection repealed by section 13 of Act 9 of 2006.]

178 Application to quash indictment

(1) The accused may, before pleading, apply to the court to quash the indictment, summons or charge on the ground that it is calculated to prejudice or embarrass him in his defence.

(2) Upon an application in terms of subsection (1), the court may quash the indictment, summons or charge or may order it to be amended in such manner as the court thinks just or may refuse to make any order on the application.

(3) If the accused alleges that he is wrongly named in the indictment, summons or charge, the court may, on being satisfied by affidavit or otherwise of the error, order it to be amended.

179 Notice of application to quash indictment and of certain pleas to be given

When the accused intends to apply to have an indictment, summons or charge quashed under section *one hundred and seventy-eight* or to except or to plead any of the pleas mentioned in section *one hundred and eighty*, except the plea of guilty or not guilty, he shall give reasonable notice, regard being had to the circumstances of each particular case, to the Prosecutor-General or his representative if the trial is before the High Court, or to the public prosecutor if the trial is before a magistrates court, or when the prosecution is a private one to the private prosecutor, stating the grounds upon which he seeks to have the indictment, summons or charge quashed or upon which he bases his exception or plea:

Provided that—

(i) the Prosecutor-General or prosecutor, as the case may be, may waive such notice;

(ii) on good cause shown, the court may dispense with such notice or adjourn the trial to enable such notice to be given.

180 Pleas

(1) If the accused does not object that he has not been duly served with a copy of the indictment, summons or charge or apply to have it quashed under section *one hundred and seventy-eight*, he shall either plead to it or except to it on the ground that it does not disclose any offence cognizable by the court.

(2) If the accused pleads, he may plead—

(a) that he is guilty of the offence charged or, with the concurrence of the prosecutor, of any other offence of which he might be convicted on the indictment, summons or charge; or

(b) that he is not guilty; or

(c) that he has already been convicted of the offence with which he is charged; or

(d) that he has already been acquitted of the offence with which he is charged; or

(e) that he has received the pardon of the President for the offence charged or is immune from liability to prosecution for the offence, whether in terms of section 267(2) or any other law; or

[Paragraph amended by section 36 of Act 2 of 2016]

(f) that the court has no jurisdiction to try him for the offence; or

(g) that the prosecutor has no title to prosecute; or

(h) that he or she is entitled to an order under section 167A permanently staying the prosecution on the ground that there has been an unreasonable delay in bringing him or her to trial for the offence; or

[Paragraph inserted by section 36 of Act 2 of 2016]

(i) that a court has given an order under section 167A permanently staying the prosecution of the offence.

[Paragraph inserted by section 36 of Act 2 of 2016]

(3) Two or more pleas may be pleaded together, except that the plea of guilty cannot be pleaded with any other plea to the same charge.

(4) The accused may plead and except together.

(5) Subject to section *one hundred and eighty-eight*, the accused may, together with his plea, offer an explanation of his attitude in relation to the charge or statement indicating the basis of his defence and such explanation or statement shall be recorded and shall form part of the record of the case.

(6) Any person who has been called upon to plead to any indictment, summons or charge shall, except as is otherwise provided in this Act or in any other enactment, be entitled to demand that he be either acquitted or found guilty by the judge or magistrate before whom he pleaded:

Provided that—

(i) where a plea of not guilty has been recorded, whether in terms of section *two hundred and seventy-two* or otherwise, the trial may be continued before another judge or magistrate if no evidence has been adduced;

(ii) where a plea of guilty has been recorded, the trial may be continued before another judge or magistrate if no evidence has been adduced or no explanation has been given or inquiry made in terms of paragraph (*b*) of subsection (2) of section *two hundred and seventy-one*.

181 Person committed or remitted for sentence

(1) When a person has, in terms of subsection (4) of section *ninety*, been committed to the High Court by a magistrate for sentence, or his case has been remitted by the Prosecutor-General to a magistrates court for sentence, he shall be called upon to plead to the indictment, summons or charge in the same manner as if he had, in the case of such committal, been committed for trial, and in the case of such remittal, as if he were being tried summarily, and may plead either that he is guilty of the offence charged or, with the concurrence of the prosecutor, of any other offence of which he might be convicted on the indictment, summons or charge.

(2) If the accused pleads that he is not guilty, the court shall, upon being satisfied that he duly admitted before the magistrate that he was guilty of the offence charged and was so guilty, direct a plea of guilty to be entered or enter such plea, notwithstanding his plea of not guilty, and a plea so entered shall have the same effect as if it had been actually pleaded.

(3) If the court is not so satisfied, or if notwithstanding that the accused pleads guilty it appears upon an examination of the depositions of the witnesses that he has not in fact committed the offence charged or any other offence of which he might be convicted on the indictment, summons or charge, the plea of not guilty shall be entered and the trial shall proceed as in other cases when that plea is entered.

182 Accused refusing to plead

If the accused, when called upon to plead to an indictment, summons or charge, will not plead or answer directly thereto, the court may, if it thinks fit, order a plea of not guilty to be entered on behalf of the accused, and a plea so entered shall have the same effect as if it had been actually pleaded.

183 Truth of defamatory matter to be specially pleaded and to be proved by accused

(1) A person charged with the unlawful publication of defamatory matter who sets up as a defence that the defamatory matter is true, and that it was for the public benefit that the publication should be made, shall plead that matter specially and may plead it with any other plea, except the plea of guilty.

(2) Notice of any special plea in terms of subsection (1) shall, unless waived, be given as provided in section *one hundred and seventy-nine*. (3) The onus of proving the defence referred to in subsection (1) shall lie upon the accused.

184 Statement of accused sufficient plea of former conviction or acquittal

In any plea of a former conviction or acquittal it shall be sufficient for an accused to state that he has been lawfully convicted or acquitted, as the case may be, of the offence charged.

185 Trial on plea to jurisdiction

Upon a plea to the jurisdiction of the court, the court shall proceed to satisfy itself, in such manner and upon such evidence as it thinks fit, whether it has jurisdiction or not.

186 Issues raised by plea to be tried

If the accused pleads any plea or pleas other than the plea of guilty or a plea to the jurisdiction of the court, he is, by such plea without any further form, deemed to have demanded that the issues raised by such plea or pleas shall be tried by the court.

187 Lack of jurisdiction or title to prosecute not to be raised after conviction

Where an accused is convicted of an offence, the fact that—

(a) in the case of proceedings before a magistrates court, the court did not have jurisdiction to try the accused in terms of section 56 of the Magistrates Court Act [*Chapter 7:10*]; or

(b) in the case of proceedings before any court, the prosecutor did not have title to prosecute the accused;

shall not affect the validity of the conviction if the lack of such jurisdiction or title to prosecute, as the case may be, was not pleaded or raised during the proceedings and before such conviction.

188 Outline of State and defence cases

In a trial before a magistrate, if the accused pleads not guilty or a plea of not guilty is entered in terms of section *one hundred and eighty-two*—

(a) the prosecutor shall make a statement, outlining the nature of his case and the material facts on which he relies; and

(b) the accused shall be requested by the magistrate to make a statement, if he or she wishes, outlining the nature of his defence and the material facts on which he relies and, if he is not represented by a legal practitioner, his or her right to remain silent, and the consequences of exercising that right, shall be explained to him.

[Section amended by section 36 of Act 2 of 2016]

189 Statement made or withholding of relevant fact by accused may be used as evidence against him

(1) Any statement referred to in paragraph (*b*) of section *one hundred and eighty-eight* may—

(a) be taken into account in deciding whether the accused is guilty of the offence charged or any other offence of which he may be found guilty on that charge; and

(b) except in so far as it amounts to an admission of any allegation made by the State, not be taken into account for the purpose of deciding whether the accused should be found not guilty in terms of subsection (3) of section *one hundred and ninety-eight*.

(2) If an accused, when so requested in terms of paragraph (*b*) of section *one hundred and eighty-eight*, has failed to mention any fact relevant to his defence, being a fact which in the circumstances existing at the time, he could reasonably have been expected to have mentioned, the court, in determining whether there is any evidence that the accused committed or whether the accused is guilty of the offence charged or any other offence of which he may be convicted on that charge, may draw such inferences from the failure as appear proper and the failure may, on the basis of such inferences, be treated as evidence corroborating any other evidence given against the accused.

PART XII

PROCEDURE AFTER COMMENCEMENT OF TRIAL

A. In all courts

190 Separate trials

When two or more persons are charged in the same indictment, summons or charge, whether with the same offence or with different offences, the court may at any time during the trial on the application of the prosecutor or of any of the accused, direct that the trial of the accused or any of them shall be held separately from the trial of the other or others of them, and may abstain from giving a judgment as to any of such accused.

191 Legal representation

Every person charged with an offence may make his defence at his trial and have the witnesses examined or cross-examined—

(a) by a legal practitioner representing him; or
(b) in the case of an accused person under the age of sixteen years who is being tried in a magistrates court, by his natural or legal guardian; or
(c) where the court considers he requires the assistance of another person and has permitted him to be so assisted, by that other person.

192 Trial of mentally disordered or defective persons

If at any time after the commencement of any criminal trial it is alleged or appears that the accused is not of sound mind, or if on such a trial the defence is set up that the accused was not criminally responsible on the ground of mental disorder or defect for the act or omission alleged to constitute the offence with which he is charged, he shall be dealt with in the manner provided by the Mental Health Act [*Chapter 15:06*].

193 Detention of persons who are deaf or mute or both

(1) Subject to section *one hundred and ninety-two*, in any criminal proceedings, if it appears to the court that the accused is unable properly to conduct his defence by reason of deafness or muteness or both, the court may, if it is satisfied, after hearing such evidence as the State may lead and such other evidence as the court may think necessary or desirable, that it is necessary in the interests of the safety of the public or for the protection of the accused that the accused should not be released from custody or should be kept in custody, as the case may be, order the accused to be kept in custody in some prison pending the decision of the President in terms of subsection (3).

(2) A certified copy of an order in terms of subsection (1) shall be transmitted by the registrar or the clerk of the court to—

(a) a magistrate of the province in which the prison named in the order is situated; and
(b) the Minister, who shall thereupon ascertain the decision of the President in terms of subsection (3) and notify the magistrate referred to in paragraph (*a*) accordingly.

(3) The President may, from time to time, give such directions as he thinks fit as to the further detention or care in an institution or other place of a person detained in terms of subsection (1) and may at any time order the discharge of that person.

194 Presence of accused

(1) Every criminal trial shall take place and the witnesses shall, except as is otherwise specifically provided by this Act or any other enactment, give their evidence *viva voce* in open court in the presence of the accused, unless he so conducts himself as to render the continuance of the proceedings in his presence impracticable, in which event the court may order him to be removed and direct that the trial proceed in his absence.

(2) If the accused absents himself during the trial without leave, the court may direct a warrant to be issued to arrest him and bring him before the court forthwith.

(3) The court may, at any time during the trial, order that any or every person who is to be called as a witness, other than the accused himself, shall leave the court and remain absent until he is called, and that he shall remain in court after his evidence has been given.

(4) …

[Subsection repealed by section 6 of Act 8 of 1997.]

(5) ...

[Subsection repealed by section 38 of Act 2 of 2016]

(6) …

[Subsection repealed by section 6 of Act 8 of 1997.]

(7) …

[Subsection repealed by section 6 of Act 8 of 1997.]

(8) …

[Subsection repealed by section 6 of Act 8 of 1997.]

195 Concealment of identity of juvenile on trial

(1) No person shall at any time publish by radio or television or in any document produced by printing or any other method of multiplication, the name, address, school or place of occupation or any other information likely to reveal the identity of any person under the age of eighteen years who is being or has been tried in any court on a charge of having committed any offence:

Provided that, if—

(a) the judge or magistrate presiding at the trial; or

(b) the Minister at any time after the trial; is of the opinion that publication referred to in this subsection would in the circumstances of the particular case be just and equitable and in the public interest or in the interests of any particular person, he may consent to such publication and the consent shall be conveyed by a document signed by the judge or the registrar of the High Court or by the magistrate or the clerk of the magistrates court or by the Minister, as the case may be.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding twelve months or to both such fine and such imprisonment.

[Subsection amended by section 28 of Act 9 of 2006 which incorrectly identified it as section 196(2). Law Reviser.]

196 Concealment of identity of complainant and witnesses in certain cases

(1) Where an accused is charged with committing or attempting to commit—

(a) any indecent act towards another person; or

(b) any act for the purpose of procuring or furthering the commission of an indecent act towards or in connection with any other person; or

(c) extortion or a statutory offence of demanding from any other person some advantage which is not due and, by inspiring fear in such person's mind, compelling him to render such advantage;

no person shall at any time publish by radio or television or in any document produced by printing or any other method of multiplication the name, address, place of occupation or any other information likely to reveal the identity of any person referred to in paragraph (*a*), (*b*) or (*c*) or of any witness unless the judge or magistrate presiding at the trial, after consulting the person concerned or, if he is a minor, his guardian, has given his consent in writing to such publication conveyed in a document signed by the judge or the registrar of the High Court or by the magistrate or the clerk of the magistrates court, as the case may be.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

[Subsection amended by section 4 of Act 22 of 2001.]

197 Identity of juvenile witness not to be revealed

(1) No person shall at any time publish by radio or television or in any document produced by printing or any other method of multiplication, the name, address, school or place of occupation or any other information likely to reveal the identity of any person under the age of eighteen years who is giving or has given or will give evidence at any trial unless the judge or magistrate, after consulting the person concerned and his guardian, has given his consent to such publication conveyed in a document signed by the judge or the registrar of the High Court or by the magistrate or the clerk of the magistrates court or by the Minister, as the case may be.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

[Subsection amended by section 4 of Act 22 of 2001.]

198 Conduct of trial

(1) The prosecutor may, at any trial before any evidence is given, address the court for the purpose of explaining the charge and opening the evidence intended to be adduced for the prosecution, but without comment thereon.

(2) The prosecutor—

(a) shall examine the witnesses for the prosecution; and

(b) may put in and read any documentary evidence which is admissible:

Provided that the prosecutor may, if the accused consents, put in the documentary evidence without reading it.

(3) If at the close of the case for the prosecution the court considers that there is no evidence that the accused committed the offence charged in the indictment, summons or charge, or any other offence of which he might be convicted thereon, it shall return a verdict of not guilty.

(4) If the Prosecutor-General is dissatisfied with a decision

(a) of a judge of the High Court in terms of subsection (3), he may with the leave of a judge of the Supreme Court appeal against the decision to the Supreme Court; or

(b) of a magistrate in terms of subsection (3), he may with the leave of a judge of the High Court appeal against the decision to the High Court.

[Subsection as substituted by section 10 of Act 9 of 1997.]

(4a) In an appeal in terms of subsection (4)

(a) the person who was the accused shall have the right at his own expense to appear in person or to be legally represented; or

(b) a judge of the Supreme Court or the High Court, as the case may be, may order that the person who was the accused should be legally represented, in which event the expenses of his representation shall be defrayed out of moneys appropriated for the purpose by Act of Parliament.

[Subsection as inserted by section 10 of Act 9 of 1997.]

(5) On an appeal by the Prosecutor-General in terms of subsection (4) the Supreme Court or the High Court, as the case may be, may—

(a) confirm the decision made in terms of subsection (3); or

(b) allow the appeal and—

(i) remit the case to the court concerned for continuation of the trial; or

(ii) remit the case to the court concerned for trial *de novo* before a different presiding officer; or

(*c*) make such order or give such directions as it deems fit.

[Subsection amended by section 10 of Act 9 of 1997.]

(6) Subject to subsection (3), at the close of the case for the prosecution the court shall—

(a) ask the accused or, if he is legally represented, his legal representative whether it is intended to adduce evidence for the defence and whether the accused intends himself to give evidence; and

(b) if the accused is not legally represented, inform him of the provisions of the proviso to subsection (8) and of subsection (9) and of subsection (1) of section *one hundred and ninety-nine*.

(7) If the accused or his legal representative states that it is intended to adduce evidence for the defence or that the accused intends himself to give evidence, he may, by himself or his legal representative, address the court for the purpose of opening the evidence intended to be adduced for the defence, but without comment thereon.

(8) Subject to Part XIVA, any witnesses called for the defence shall be examined by the accused or his legal representative and the accused, if he gives evidence himself, shall be examined by his legal representative, if any,

and the accused or his legal representative shall put in and read any documentary evidence which may be admissible:

Provided that no evidence shall be adduced for the defence before the accused is called to give evidence or is, in terms of subsection (9), questioned by the prosecutor or the court, unless the court in its discretion otherwise allows.

[Subsection amended by section 7 of Act 8 of 1997.]

(9) If the accused declines to give evidence, the prosecutor and the court may nevertheless question him and, if the accused is legally represented, his legal representative may thereafter question him subject to the rules applicable to a party re-examining his own witness.

199 Refusal of accused giving evidence or being questioned to answer question without just cause may be used as evidence against him

(1) If an accused who gives evidence or is questioned in terms of subsection (7), (8) or (9), as the case may be, of section *one hundred and ninety-eight* refuses to answer any question, he shall be asked to give his reasons for so refusing and, if he persists in his refusal, the court, in determining whether the accused is guilty of the offence charged or any other offence of which he may be convicted on that charge, may, unless satisfied that he had just cause for so persisting, draw such inferences from the refusal as appear proper and the refusal may, on the basis of such inferences, be treated as evidence corroborating any other evidence given against the accused.

(2) For the purposes of subsection (1), an accused who refuses to answer any question shall be deemed to do so without just cause—

(a) in the case of an accused giving evidence in terms of subsection (8) of section *one hundred and ninetyeight*, unless he is entitled in terms of this Act to refuse to answer the question on the ground of privilege;

(b) in the case of an accused who is questioned in terms of subsection (9) of section *one hundred and ninety-eight*, unless he would be entitled in terms of this Act to refuse to answer the question on the ground of privilege if he were giving evidence on his own behalf.

200 Summing up

After all the evidence has been adduced, the prosecutor shall be entitled to address the court, summing up the whole case, and the accused, or each of the accused if more than one, shall be entitled by himself or his legal representative to address the court and if, in his address, the accused or his legal representative raises any matter of law, the prosecutor shall be entitled to reply, but only on the matter of law so raised.

201 Validity of verdict

(1) No verdict or judgment or other proceedings whatever of a court in a criminal case shall be invalid by reason of its happening on a Sunday.

(2) When by mistake a wrong judgment or sentence is delivered, the court may, before or immediately after it is recorded, amend the judgment or sentence, and it shall stand as ultimately amended.

202 Certain discrepancies between indictment and evidence may be corrected

(1) When on the trial of any indictment, summons or charge there appears to be any variance between the statement therein and the evidence offered in proof of such statement, or if it appears that any words or particulars that ought to have been inserted in the indictment, summons or charge have been omitted, or that any words or particulars that ought to have been omitted have been inserted, or that there is any other error in the indictment, summons or charge, the court may at any time before judgment, if it considers that the making of the necessary amendment in the indictment, summons or charge will not prejudice the accused in his defence, order that the indictment, summons or charge, whether or not it discloses an offence, be amended, so far as is necessary, by some officer of the court or other person, both in that part thereof where the variance, omission, insertion or error occurs and in every other part thereof which it may become necessary to amend.

(2) The amendment may be made on such terms, if any, as to postponing the trial as the court thinks reasonable and the indictment, summons or charge shall thereupon be amended in accordance with the order of the court, and after any such amendment the trial shall proceed at the appointed time upon the amended indictment, summons or charge in the same manner and with the same consequences in all respects as if it had been originally in its amended form.

(3) The fact that an indictment, summons or charge has not been amended as provided in this section shall not, unless the court has refused to allow the amendment, affect the validity of the proceedings thereunder.

203 Defect in indictment, summons or charge may be cured by evidence

When an indictment, summons or charge in respect of any offence is defective for want of the averment of any matter which is an essential ingredient of the offence, the defect shall be cured by evidence at the trial in respect of the offence proving the presence of such a matter which should have been averred, unless the want of such averment was brought to the notice of the court before judgment.

204 Verdict to be of same effect as if indictment had been originally correct

Any verdict or judgment which is given after the making of any amendment under this Act shall be of the same effect in all respects as if the indictment, summons or charge had originally been in the same form in which it was after such amendment was made.

B. In cases remitted to magistrates court

205….

206 ….

[Sections 205 and 206 repealed by section 15 of Act 9 of 2006.]

C. Verdicts possible on particular indictments, summonses and charges

207 Conviction for part of crime charged

For the avoidance of doubt it is declared that where a court finds that part but not all of the facts of an offence charged have been proved, it shall nevertheless convict the accused of that offence if the facts that are proved disclose all the essential elements of that offence.

[Section substituted by Act 23 of 2004]

208- 224 ….

[Sections 208 – 224 repealed by Act 23 of 2004]

PART XIII

PROCEDURE IN RESPECT OF CASES ADJOURNED UNDER SECTION 54 OF MAGISTRATES COURT ACT [*CHAPTER 7:10*]

225 Powers of Prosecutor-General

[Heading substituted by Act 5 of 2014]

Where a magistrate has adjourned a case and submitted a report to the Prosecutor-General in terms of section

54 of the Magistrates Court Act [*Chapter 7:10*], the Prosecutor-General may—

(a) if the magistrate acted in terms of subsection (1) of that section, in writing—

(i)

[Subparagraph repealed by section 16 of Act 9 of 2006.]

(ii) direct that the case be continued by such magistrate; or

(iii) where such magistrate is not a regional magistrate, direct that proceedings be commenced afresh in the court of a regional magistrate; or

(b) if the magistrate acted in terms of subsection (2) of that section, in writing direct that the case— (i) be transferred to the High Court for sentence; or (ii) be continued by such magistrate.

226 Duties of magistrate

Upon the receipt of the Prosecutor-General's direction in terms of section *two hundred and twenty-five* the magistrate shall cause the accused or the person convicted, as the case may be, to be informed of the ProsecutorGeneral's decision and shall—

(a) where the Prosecutor-General has given a direction in terms of subparagraph (i) or (ii) of paragraph (*a*) of that section, comply with that direction; or

(b) where the Prosecutor-General has given a direction in terms of subparagraph (iii) of paragraph (*a*) of that section, grant a warrant committing the accused to prison, there to be detained till brought to trial before the court of a regional magistrate or till admitted to bail or liberated in due course of law; or

(c) where the Prosecutor-General has given a direction in terms of subparagraph (i) of paragraph (*b*) of that section—

(i) grant a warrant committing the person convicted to prison, there to be detained till brought before a judge for sentence or till admitted to bail or liberated in due course of law; and

(ii) forthwith transmit the record of the proceedings, together with his reasons for convicting the person concerned, to the registrar of the High Court;

or

(d) where the Prosecutor-General has given a direction in terms of subparagraph (ii) of paragraph (*b*) of that section, cause the person convicted to be brought before him and pass sentence upon that person.

227 Powers of judge in respect of case transferred to High Court for sentence

(1) Upon receipt of the documents mentioned in subparagraph (ii) of paragraph (*c*) of section *two hundred and twenty-six*, the registrar of the High Court shall with all convenient speed lay them before a judge in chambers and, if the judge considers the proceedings to be in accordance with real and substantial justice, he shall cause the accused to be brought before him in open court, on a date and at a place to be notified by the registrar to the accused and to the Prosecutor-General, to receive sentence in respect of the offence of which he was convicted by the magistrate or such other offence as the judge, in the exercise of the powers conferred upon him by section (2), has substituted for such first-mentioned offence.

(2) The judge may in respect of the proceedings exercise such of the powers conferred upon the High Court by subsections (1) and (2) of section 29 of the High Court Act [*Chapter 7:06*], as may be appropriate.

228 Sentence by judge

When an accused is brought before a judge in terms of subsection (1) of section *two hundred and twentyseven*, he shall not be called upon to plead to the charge but shall be dealt with as if he had been convicted by the High Court of the offence concerned.

PART XIV

WITNESSES AND EVIDENCE IN CRIMINAL PROCEEDINGS

A. Securing attendance of witnesses

229 Process for securing attendance of witnesses

(1) In this section—

"prescribed officer" means the registrar, assistant registrar or clerk of the court or any officer prescribed by rules of court.

(2) Either party desiring to compel the attendance of any person to give evidence or to produce any books, papers or documents in any criminal case may take out of the office prescribed by rules of court the process of the court for that purpose.

(3) When the accused desires to have any witnesses subpoenaed and satisfies the prescribed officer of the court that—

(a) he is unable to pay the necessary costs and fees; and

(b) such witnesses are necessary and material for his defence; the prescribed officer of the court shall subpoena such witnesses.

(4) In any case where the prescribed officer of the court is not so satisfied, he shall, upon the request of the accused, refer the application to the judge or magistrate who may grant or refuse such application or may defer giving his decision until he has heard the other evidence in the case or any part thereof.

230 Service of subpoenas

Service of subpoenas in criminal cases shall be effected in the manner provided by rules of court.

231 Duty of witness to remain in attendance

Every witness duly subpoenaed to attend and give evidence at any criminal trial shall be bound to attend and to remain in attendance throughout the trial, unless excused by the court.

232 Subpoenaing of witnesses or examination of persons in attendance by court

The court—

(a) may at any stage subpoena any person as a witness or examine any person in attendance though not subpoenaed as a witness, or may recall and re-examine any person already examined;

(b) shall subpoena and examine or recall and re-examine any person if his evidence appears to it essential to the just decision of the case.

233 Powers of court in case of default of witness in attending or giving evidence

(1) When any person appearing either in obedience to the subpoena or by virtue of a warrant, or being present and being verbally required by the court to give evidence, refuses to be sworn or, having been sworn, refuses to answer such questions as are put to him or refuses or fails to produce any document or thing which he is required to produce, without in any such case offering any just excuse for such refusal or failure, the court may adjourn the proceedings for any period not exceeding eight days, and may in the meantime, by warrant, commit the person so refusing or failing to a prison, unless he sooner consents to do what is required of him.

(2) If a person who has been committed in terms of subsection (1) upon being brought up at the adjourned hearing again refuses or fails to do what is so required of him, the court, if it sees fit, may again adjourn the proceedings and commit him for a like period, and so again from time to time until such person consents to do what is required of him.

(3) Nothing in this section shall prevent the court from giving judgment in any case or otherwise disposing of the same in the meantime according to any other sufficient evidence taken.

(4) No person shall be bound to produce any document or thing not specified or otherwise sufficiently described in the subpoena unless he actually has it in court.

234 Requiring witness to enter into recognizance

(1) Any court before which a trial is pending or proceeding may lawfully require any witness, either alone or together with one or more sufficient sureties to the satisfaction of the court, to enter into recognizance under condition that the witness shall at any time within twelve months from the date thereof appear and give evidence at the trial upon being served with a subpoena at some certain place to be selected by the witness.

(2) If any witness being required in terms of subsection (1) to enter into any such recognizance, refuses or fails so to do the court may commit to and detain in a prison the witness so refusing or failing until such recognizance has been entered into in terms of that subsection.

(3) The court may, in exercising its powers in terms of subsection (1), add to the recognizance conditions relating to one or more of the following matters which it thinks necessary or desirable in the interests of justice—

(a) the surrender by the witness of his passport;

(b) the times and places at which, and the persons to whom, the witness shall personally present himself; (*c*) the places where the witness is forbidden to go;

(*d*) the prohibition of communication by the witness with the accused or any other witness; (*e*) any other matter relating to the conduct of the witness.

(4) Any recognizance entered into in terms of this section shall specify the forenames and surname of the person entering into it, his occupation or profession, if any, the place of his residence and the name and number, if any, of the street in which that place is, and whether he is an owner or tenant thereof or a lodger therein.

(5) Any recognizance entered into in terms of this section shall be liable to be estreated in the same manner as any forfeited recognizance is by law liable to be estreated by the court before which the principal party thereto was bound to appear.

235 Absconding witnesses

(1) When any person is bound by recognizance to give evidence or is likely to give material evidence before any court in respect of any offence, any magistrate may, upon information in writing and on oath that such person is about to abscond or has absconded, issue a warrant for the arrest of such person.

(2) If any person is arrested under a warrant issued in terms of subsection (1), any magistrate, if satisfied that the ends of justice would otherwise be defeated, may commit him to a prison until the time at which he is required to give evidence, unless in the meantime he produces sufficient sureties, but such person shall be entitled on demand to receive a copy of the information upon which the warrant for arrest was issued.

(3) If a peace officer believes on reasonable grounds that the delay in obtaining a warrant under subsection (1) would lead to a person who is bound by recognizance to give evidence or who is likely to give material evidence in respect of any offence absconding, he may arrest the person without warrant and shall, as soon as possible, bring him before a magistrate who may, upon being satisfied that the ends of justice would otherwise be defeated, commit the person to prison until the time at which he is required to give evidence, unless in the meantime he produces sufficient sureties.

(4) A person arrested in terms of subsection (3) shall be informed forthwith by the person arresting him of the cause of the arrest.

236 Committal of witness who refuses to enter into recognizance

Any witness who refuses to enter into any recognizance in terms of section *two hundred and thirty-four* may be committed by the court by warrant to the prison for the place where the trial is to be held, there to be kept until after the trial or until the witness enters into such a recognizance before a magistrate having jurisdiction in the place where the prison is situated:

Provided that, if the accused is afterwards discharged, any magistrate having jurisdiction shall order such witness to be discharged.

237 Arrest and punishment for failure to obey subpoena or to remain in attendance

(1) If any person subpoenaed to attend a criminal trial without reasonable excuse fails to obey the subpoena and it appears from the return or from the evidence given under oath that the subpoena was served upon the person to whom it is directed, or if any person who has attended in obedience to a subpoena fails to remain in attendance, the judge or magistrate may issue a warrant directing that such person be arrested and brought at a time and place stated in the warrant, or as soon thereafter as possible, before him or some other judge or magistrate.

(2) When a person has been arrested under a warrant issued in terms of subsection (1), he may be detained thereunder before the judge or magistrate who issued it or in any prison or lock-up or other place of detention or in the custody of the person who is in charge of him, with a view to securing his presence as a witness at the trial, or such judge or magistrate may release him on a recognizance, with or without sureties, for his appearance to give evidence as required and for his appearance at the inquiry mentioned in subsection (3).

(3) The judge or magistrate may in a summary manner inquire into the said person's failure to obey a subpoena or to remain in attendance and, unless it is proved that the said person had a reasonable excuse for such failure, the judge or magistrate may sentence him to a fine not exceeding level three or to imprisonment for a period not exceeding one month or to both such fine and such imprisonment.

[Subsection amended by Act 22 of 2001]

(4) Any person sentenced by a magistrate to a fine or imprisonment in terms of subsection (3) shall have the same right of appeal as if he had been convicted and sentenced by a magistrates court in a criminal trial.

(5) If a person who has entered into a recognizance for his appearance to give evidence at a criminal trial or for his appearance at an inquiry referred to in subsection (3) fails so to appear, he may, apart from the estreatment of his recognizance, be dealt with as if he had failed to obey a subpoena to attend a criminal trial.

238 Service of subpoena to secure attendance of witness residing outside jurisdiction of court

(1) In this section—

"proper officer" includes the Sheriff, a deputy sheriff, messenger or deputy messenger or any other officer who by any enactment is charged with the duty of serving subpoenas to witnesses in criminal cases.

(2) When a subpoena to give evidence in a criminal case has been issued out of any court and it appears that the person whose attendance is thereby required resides or is for the time being in a province or, as the case may be, regional division outside the area of jurisdiction of that court, the subpoena shall be delivered to the proper

officer within that province or, as the case may be, regional division and shall be served by him as soon as possible on such person:

Provided that—

(i) the necessary expenses to be incurred by the person subpoenaed in going to and returning from the court whereout the subpoena was issued, and his detention at the place whereat and for the purpose for which his attendance is required, shall be tendered to him with the subpoena;

(ii) if the subpoena is not sued out by the State, a sum sufficient to cover the expenses of serving the subpoena shall be lodged with the registrar or clerk of the court by the person suing out the subpoena.

(3) If any person who has been served in terms of subsection (2) with a subpoena and to whom has been tendered the expenses referred to in that subsection fails, without lawful excuse, to attend at the time and place mentioned in the subpoena, a magistrate of the province or, as the case may be, regional division within which that person resides or is for the time being may issue a warrant for the arrest of that person, who shall be liable to be dealt with in the same manner as he might have been dealt with if he had failed to attend without lawful excuse, when served with a subpoena to attend a like court in the area wherein he resides or is for the time being.

(4) The return to the proper officer showing that service of the subpoena has been duly effected, together with a certificate under the hand of the registrar or clerk of the court that the person whose attendance was required by the subpoena failed to attend when called upon, and has established no lawful excuse for the nonattendance, shall be sufficient proof of the non-attendance for the purpose of dealing with that person under subsection (3).

239 Payment of expenses of persons attending court

(1) Subject to this section, any court or magistrate may order the payment of an allowance, in accordance with a prescribed tariff, to any person attending a trial or other criminal proceedings:

Provided that an allowance shall be paid to a witness for the accused, or a person accompanying such a witness, only in such circumstances as may be prescribed.

[Subsection amended by section 28 of Act 9 of 2006.]

(2) Any allowance paid in terms of subsection (1) shall be paid out of moneys appropriated for the purpose by Act of Parliament.

B. Evidence on commission

240 Taking evidence on commission

(1) When in the course of a trial or other criminal proceedings it appears to a judge or magistrate that the examination of a witness is necessary for the ends of justice, and that the attendance of such witness cannot be procured without an amount of delay, expense or inconvenience which in the circumstances of the case would be unreasonable, such judge or magistrate may dispense with the attendance of such witness and may issue a commission to any magistrate or, where the witness is outside Zimbabwe, to any fit and proper person outside Zimbabwe, authorizing such magistrate or person to take the evidence of such witness:

Provided that—

(i) the specific fact or facts with regard to which the evidence of the witness is required shall be set out, and the judge or magistrate may confine the examination of the witness to those facts;

(ii) when the commission is issued at the request of the prosecutor, the judge or magistrate shall, unless the accused states that he does not wish to be represented, direct as a condition of the issue of the commission that the expense necessary to the representation of the accused at the examination of the witness shall be paid by the prosecution in such amount or at such rate as may seem reasonable to the judge or magistrate granting the commission.

[Subsection amended by section 28 of Act 9 of 2006.]

(2) The witness, before giving his evidence, shall make an oath or affirmation before the commissioner by whom he is to be examined that in the whole of his deposition he will tell the truth, the whole truth and nothing but the truth, and the evidence of such witness shall be taken down in writing by the commissioner and read over to him.

(3) Where the person appointed as commissioner and the witness to be examined are outside Zimbabwe, they shall be entitled to be paid out of moneys appropriated for the purpose by Act of Parliament such fee as may be approved by the Minister responsible for finance.

241 Parties may examine witness

(1) Any party to any criminal proceedings in which a commission is issued may transmit any interrogatories in writing which the judge or magistrate directing the commission may think relevant to the issue, and the magistrate or other person to whom the commission is directed shall examine the witness upon such interrogatories.

(2) Any such party may appear before such magistrate or other person by his legal representative or, if not in custody, in person, and may examine, cross-examine and re-examine, as the case may be, the witness.

242 Return of commission

(1) After a commission under section *two hundred and forty* has been duly executed, it shall be returned, together with the deposition of the witness examined thereunder, to the court which issued it.

(2) The commission, the return thereto and the deposition shall be open at all reasonable times to the inspection of the parties, and may, subject to all just exceptions, be read in evidence in the case by either party, and shall form part of the record.

(3) Any deposition taken in terms of the commission may also be received in evidence at any subsequent stage of the case before another court.

243 Adjournment of inquiry or trial

Where a commission is issued under section *two hundred and forty*, the trial or other criminal proceedings may be adjourned for a specified time, reasonably sufficient for the execution and return of the commission.

[Section amended by section 28 of Act 9 of 2006.]

C. Competency of witnesses

244 No person to be excluded from giving evidence except under this Act

Every person not expressly excluded by this Act from giving evidence shall be competent and compellable to give evidence in a criminal case in any court in Zimbabwe.

[Section amended by section 28 of Act 9 of 2006.]

245 Court to decide questions of competency of witnesses

It shall be competent for the court in which any criminal case is depending to decide upon all questions concerning the competency and compellability of any witness to give evidence.

[Section amended by section 28 of Act 9 of 2006.]

246 Incompetency from mental disorder or defect and intoxication

No person appearing or proved to be afflicted with idiocy or mental disorder or defect or labouring under any imbecility of mind arising from intoxication or otherwise, whereby he is deprived of the proper use of reason, shall be competent to give evidence while under the influence of any such malady or disability.

247 Evidence for prosecution by husband or wife of accused

(1) In this section—

"children" means sons, daughters and adopted children of any age.

(2) The wife or husband of an accused person shall be competent and compellable to give evidence for the prosecution without the consent of the accused person where such person is prosecuted for any offence against the person of either of them or any of the children of either of them, or for any of the following offences— (*a*) rape;.

(b) aggravated indecent assault;

(c) sexual intercourse or performing an indecent act with a young person;

(d) sexual intercourse within a prohibited degree of relationship; (*e*) kidnapping or unlawful detention of a child;

(f) bigamy;

(g) perjury committed in connection with or for the purpose, of any judicial proceedings instituted or to be instituted or contemplated by the one of them against the other, or in connection with or for the purpose of any criminal proceedings in respect of any offence included in this subsection.

[Subsection substituted by section 17 of Act 9 of 2006.]

(3) The wife or husband of an accused person shall be competent, but not compellable, to give evidence for the prosecution without the consent of the accused person where such person is prosecuted for an offence against the separate property of the wife or husband of the accused person.

248 Evidence of accused and husband or wife on behalf of accused

(1) Any accused person, and the wife or husband, as the case may be, of an accused person, shall be a competent witness for the defence at every stage of the proceedings, whether the accused person is charged solely or jointly with any other person:

Provided that—

(i) an accused person shall not be called as a witness, except upon his own application;

(ii) the wife or husband of an accused person shall not be called as a witness for the defence, except upon the application of the accused person.

(2) An accused person may elect to give his evidence from, or to be questioned in, the dock or the witness box or other place from which the other witnesses give their evidence or, with the consent of the judge or magistrate, any other place in the court room.

D. Oaths and affirmations

249 Oaths

(1) It shall not be lawful to examine as a witness any person other than a person described in section *two hundred and fifty* or *two hundred and fifty-one* except upon oath.

(2) The oath to be administered to any person as a witness shall be administered in the form which most clearly conveys to him the meaning of the oath, and which he considers to be binding on his conscience.

250 Affirmations in lieu of oaths

(1) In any case where any person who is or may be required to take an oath objects to do so, it shall be lawful for such person to make an affirmation in the words following:—"I do truly affirm and declare that" (*here state the matter to be affirmed or declared*).

(2) An affirmation or declaration made in terms of subsection (1) shall be of the same effect as if the person making it had taken an oath.

(3) Every person authorized, required or qualified by law to take or administer an oath shall accept in lieu thereof an affirmation or declaration made in terms of this section.

(4) The same penalties, punishments and disabilities which are respectively in force and are attached to any refusal or false or corrupt taking or subscribing of any oath administered in accordance with section *two hundred and forty-nine* shall apply and attach in like manner in respect of the refusal or false or corrupt making or subscribing respectively of any such affirmation or declaration as in this section mentioned.

251 When unsworn or unaffirmed testimony admissible

Any person produced for the purpose of giving evidence who, from ignorance arising from youth, defective education or other cause, is found not to understand the nature or to recognize the religious obligation of an oath or affirmation may be admitted to give evidence in any court without being sworn or being upon oath or affirmation:

Provided that—

(i) before any such person proceeds to give evidence, the judge or magistrate before whom he is called as a witness shall admonish him to speak the truth, the whole truth and nothing but the truth, and shall further administer or cause to be administered to him any form of admonition which appears, either from his own statement or from any other source of information, to be calculated to impress his mind and bind his conscience, and which is not, as being of an inhuman, immoral or irreligious nature, obviously unfit to be administered;

(ii) any such person who wilfully and falsely states anything which, if sworn, would have amounted to perjury or any offence declared by any enactment to be equivalent to perjury or punishable as perjury, shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

[Section amended by section 4 of Act 22 of 2001 and by section 28 of Act 9 of 2006.]

E. Admissibility of evidence

252 Inadmissibility of irrelevant evidence

No evidence as to any fact, matter or thing shall be admissible which is irrelevant or immaterial and cannot conduce to prove or disprove any point or fact at issue in the case which is being tried.

253 Hearsay evidence

(1) No evidence which is of the nature of hearsay evidence shall be admissible in any case in which such evidence would be inadmissible in any similar case depending in the Supreme Court of Judicature in England.

(2) When evidence of a statement, oral or written, made in the ordinary course of duty, contemporaneously with the facts stated and without motive to misrepresent, would be admissible in the Supreme Court of Judicature in England if the person who made the statement were dead, such evidence shall be admissible in any criminal proceedings if the person who made the statement is dead or unfit by reason of his bodily or mental condition to attend as a witness or cannot with reasonable diligence be identified or found or brought before the court.

[Subsection amended by section 28 of Act 9 of 2006.]

(3) The court may, in deciding whether or not the person in question—

(a) is unfit to attend as a witness, act on a certificate purporting to be a certificate of a medical practitioner;

(b) is dead or cannot with reasonable diligence be identified or found or brought before the court, act on evidence submitted by way of affidavit.

254 Admissibility of dying declarations

(1) A declaration made by any deceased person upon the apprehension of death shall be admissible or inadmissible in evidence in every case in which such declaration would be admissible or inadmissible in any similar case depending in the Supreme Court of Judicature in England.

(2) When it is made to appear to the satisfaction of any magistrate that any person is dangerously ill and, in the opinion of a medical practitioner, not likely to recover from such illness and is able and willing to give material information relating to any offence or to any person accused of any offence, and it is not practicable to examine in accordance with any other provision of this Act the person so being ill, it shall be lawful for the said magistrate to take in writing the statement on oath of such person.

(3) The magistrate taking a statement in terms of subsection (2) shall sign it and set out his reason for taking the same, the date and place of taking it and the names of the persons, if any, present at the time.

(4) If afterwards, upon the trial of any offender or offence to which the same may relate, the person who made a statement taken in terms of subsection (2) is proved to be dead, or if it is proved that there is no reasonable probability that such person will ever be able to travel or give evidence, it shall be lawful to read such statement in evidence either for or against the accused without further proof thereof—

(a) if the same purports to be signed by the magistrate by or before whom it purports to be taken; and

(b) if it is proved to the satisfaction of the court that reasonable notice of the intention to take such statement has been served upon the person, whether prosecutor or accused, against whom it is proposed to be read in evidence and that such person or his legal representative had or might have had, if he had chosen to be present, full opportunity of cross-examining the person who made the same.

255 Admissibility in criminal cases of evidence of absent witnesses in certain circumstances

(1) The evidence of any witness— (*a*) given at a former criminal trial of an accused on the same or a different charge and recorded in a document purporting—

(i) to be a transcript of the original record of the said evidence; and

(ii) to have been certified as correct under the hand of the person who transcribed it; or

(*b*) whose deposition has been verified in terms of section 115A; shall, subject to subsection (2), be admissible in evidence on the trial of the accused for any offence.

(2) The evidence of a witness referred to in subsection (1) shall not be admissible unless— (*a*) it is proved on oath to the satisfaction of the court that the witness—

(i) is dead or is incapable of giving evidence, or that he or she is too ill to attend; or

(ii) is kept away from the trial by the means and contrivance of the accused; or

(iii) cannot be found after diligent search, or cannot be compelled to attend; or

(iv) is an expert witness whose evidence is given in his or her capacity as an expert witness, and that the nature of the witness's professional commitments is such as to render it impossible to secure his or her attendance at the trial on any given day; and that the evidence is the same that was given at the previous criminal trial or at the conference referred to in section 115A, as the case may be, without any alteration; and

(*b*) it appears on the record or is proved to the satisfaction of the court that the accused, personally or by his or her legal representative, had a full opportunity of cross-examining the witness, even if the accused or his or her legal representative, did not avail himself or herself of that opportunity.

(3) Where is proved on oath to the satisfaction of the court that any witness, other than one whose deposition was verified as mentioned in subsection (1)(*b*)—

(a) is dead or incapable of giving evidence, or is too ill, to attend; or

(b) has been kept away from the trial by the means and contrivance of the accused; or

(c) cannot be found after diligent search or cannot be compelled to attend; or

(d) is an expert witness whose evidence is given in his or her capacity as an expert witness, and that the nature of the witness's professional commitments is such as to render it impossible to secure his or her attendance at the trial on any given day;

the evidence of such witness may, at the discretion of the court, be admissible in evidence on the trial of the accused for any offence.

[Section substituted by section 18 of Act 9 of 2006.]

256 Admissibility of confessions and statements by accused

(1) Any confession of the commission of an offence and any statement which is proved to have been freely and voluntarily made by an accused person without his having been unduly influenced thereto shall be admissible in evidence against such accused person if tendered by the prosecutor, whether such confession or statement was made before or after his arrest, or after committal and whether reduced into writing or not:

Provided that—

(i) a certified copy of the record produced in terms of section 115B shall be admissible in evidence against the accused;

(ii) any information given under any enactment which provides a penalty for a failure or refusal to give such information shall not, on that account alone, be inadmissible.

[Subsection amended by section 19 of Act 9 of 2006.]

(2) A confession or statement confirmed in terms of subsection (3) of section *one hundred and thirteen* shall be received in evidence before any court upon its mere production by the prosecutor without further proof:

Provided that the confession or statement shall not be used as evidence against the accused if he proves that the statement was not made by him or was not made freely and voluntarily without his having been unduly influenced thereto, and if, after the accused has presented his defence to the indictment, summons or charge, the prosecutor considers it necessary to adduce further evidence in relation to the making of such confession or statement, he may re-open his case for that purpose.

(3) If in any confession or statement made or evidence given by an accused person which would otherwise be admissible there is contained matter which may be prejudicial to the accused and which is not relevant to the charge preferred against him, the prosecutor may delete such matter from the confession, statement or evidence, as the case may be, and such confession, statement or evidence, as the case may be, shall be admissible against such accused person:

Provided that no confession, statement or evidence from which any matter has been deleted shall be adduced or received in evidence unless a copy of the confession, statement or evidence from which such matter has been deleted has been served upon the accused and he has not, within five days of such service, demanded that the whole or part of any matter so deleted shall be included in the confession, statement or evidence if it is adduced in evidence by the prosecutor.

(4) If an accused person demands that the whole or any part of any matter referred to in subsection (3) shall be included in his confession, statement or evidence if it is adduced in evidence by the prosecutor, then such confession, statement or evidence containing such matter shall, notwithstanding anything to the contrary in this Act, be admissible in evidence against him.

257 Failure of accused to mention certain facts to police may be treated as evidence

Where in any proceedings against a person evidence is given that the accused, on being— (*a*) questioned as a suspect by a police officer investigating an offence; or

(b) charged by a police officer with an offence; or

(c) informed by a police officer that he might be prosecuted for an offence; failed to mention any fact relevant to his or her defence in those proceedings, being a fact which, in the circumstances existing at the time, he or she could reasonably have been expected to have mentioned when so questioned, charged or informed, as the case may be, the court, in determining whether there is any evidence that the accused committed or whether the accused is guilty of the offence charged or any other offence of which he or she may be convicted on that charge, may draw such inferences from the failure as appear proper and the failure may, on the basis of such inferences, be treated as evidence corroborating any other evidence given against the accused.

[Section substituted by section 20 of Act 9 of 2006.]

258 Admissibility of facts discovered by means of inadmissible confession

(1) It shall be lawful to admit evidence of any fact otherwise admissible in evidence, notwithstanding that such fact has been discovered and come to the knowledge of the witness who gives evidence respecting it only in consequence of information given by the person under trial in any confession or statement which by law is not admissible in evidence against him on such trial, and notwithstanding that the fact has been discovered and come to the knowledge of the witness against the wish or will of the accused.

(2) It shall be lawful to admit evidence that anything was pointed out by the person under trial or that any fact or thing was discovered in consequence of information given by such person notwithstanding that such pointing out or information forms part of a confession or statement which by law is not admissible against him on such trial.

258A Admissibility or inadmissibility of illegally-obtained evidence

(1) In determining, for the purposes of section 70(3) of the Constitution, whether to exclude evidence that has been obtained in a manner that violates any provision of Chapter 4 of the Constitution, a court shall endeavour to strike a proper balance between—

(*a*) safeguarding—

(i) the rights of the accused concerned; and

(ii) the integrity of the criminal justice system against serious or persistent breaches of the law by the police or other employees of the State;

and

(*b*) the public interest in—

(i) doing justice to the victim or victims of the crime in question; and

(ii) upholding the confidence of the public in the ability of the criminal justice system to protect members of the public from crime, especially grave, violent or prevalent crime.

(2) In applying the test referred to in subsection (1) a court must bear in mind that, in general, where the questioned evidence is obtained by a contravention of Chapter 4 of the Constitution that is—

(a) inadvertent or trivial, the considerations referred to in subsection (1)(*b*) shall override the ones referred to in subsection (1)(*a*);

(b) not inadvertent or not trivial or both, only compelling reasons will justify the considerations referred to in subsection (1)(*b*) overriding the ones referred to in subsection (1)(*a*), where the State has shown that those compelling reasons are the motive for that contravention.

(3) Evidence that is obtained in a manner that violates any provision of Chapter 4 of the Constitution, but which is admitted by a court after taking into account the considerations referred to in subsections (1) and (2), shall not be regarded as rendering the trial unfair or otherwise as being detrimental to the administration of justice or the public interest.

(4) For the avoidance of doubt, the fact that a court has admitted illegally obtained evidence in accordance with this section does not prejudice the right of an accused person to pursue a civil remedy for any breach of the law in consequence of which the evidence was obtained.

[Section inserted by section 39 of Act 2 of 2016]

259 Confession not admissible against other persons

No confession made by any person shall be admissible as evidence against any other person.

260 Evidence of character—when admissible

Except as is provided in section *two hundred and ninety*, no evidence as to the character of the accused or as to the character of any woman on whose person any rape or assault with intent to commit a rape or indecent assault is alleged to have been committed shall, in any such case, be admissible or inadmissible if such evidence would be inadmissible or admissible in any similar case depending in the Supreme Court of Judicature of England.

261 Evidence of genuineness of disputed writings

Comparison of a disputed writing with any writing proved to the satisfaction of the court to be genuine shall be permitted to be made by witnesses, and such writings and the evidence of witnesses respecting the same may be submitted to the court or magistrate, as the case may be, as evidence of the genuineness or otherwise of the writing in dispute.

[Section amended by section 28 of Act 9 of 2006.]

262 Certified copy of record of criminal proceedings sufficient without production of record

When it is necessary to prove the trial and conviction or acquittal of any person charged with any offence, it shall not be necessary to produce the record of the conviction or acquittal of such person, or a copy thereof, but it shall be sufficient that it is certified or purports to be certified under the hand of the registrar or clerk of the court or other officer having the custody of the records of the court where such conviction or acquittal took place, or by the deputy of such registrar, clerk or other officer, that the paper produced is a copy of the record of the indictment, summons or charge and of the trial, conviction and judgment or acquittal, as the case may be, omitting the formal parts thereof.

263 Issue estoppel

When it is legally competent, notwithstanding the former conviction of an accused, again to charge the accused with an offence arising out of the same act or omission upon which the former conviction was based, a certified copy of the record of the former proceedings shall be admissible on its mere production by the prosecutor as conclusive proof that the accused committed the former offence.

264 Evidence of bodily appearance, health or prints of accused

(1) Whenever it is relevant in criminal proceedings to ascertain whether any finger-print, palm-print or footprint of an accused person corresponds to any other finger-print, palm-print or foot-print, or to ascertain the state of health of an accused person or whether the body of an accused person has or had any mark, characteristic or distinguishing feature or shows or showed any condition or appearance—

(*a*) the court may order that all necessary steps be taken to ascertain those matters, including arrangements for—

(i) the taking of the accused person's finger-prints, palm-prints or foot-prints; and

(ii) the taking of a blood, saliva or tissue sample from the accused person; and

(iii) the examination of the accused person;

(*b*) evidence of the finger-prints, palm-prints or foot-prints of the accused person or that the body of the accused person has or had any mark, characteristic or distinguishing feature or shows or showed any condition or appearance, including evidence of the result of the testing of any blood, saliva or tissue sample taken from the accused person, shall be admissible in those criminal proceedings.

(2) Any examination of an accused person conducted pursuant to an order of a court in terms of subsection (1)(*a*) shall be conducted with strict regard for decency and decorum.

(3) Evidence referred to in subsection (1)(*b*) shall not be inadmissible solely on the ground that it was taken or ascertained against the wish or the will of the accused person.

(4) Any finger-prints, palm-prints, footprints, photographs or samples and the records of any steps taken under this section shall be destroyed if the person concerned is found not guilty at his or her trial or if his or her conviction is set aside by a superior court or if the charge against him or her is withdrawn.

(5) Section 41B(6) applies, with such changes as may be necessary, to a person referred to in subsection (4).

[Section inserted by section 40 of Act 2 of 2016]

265 Appointment to public office

Any evidence which would be admissible in any criminal case depending in the Supreme Court of Judicature of England as evidence of the appointment of any person to any office or of the authority of any person to act as a public officer shall be admissible in criminal cases in Zimbabwe.

[Section amended by section 28 of Act 9 of 2006.]

266 Proof of signature of public officer not necessary

In any criminal proceedings any document—

(a) purporting to bear the signature of any person holding a public office; and

(b) bearing a seal or stamp which purports to be a seal or stamp of the Ministry, department, office or institution to which such person is attached;

shall on its mere production, without proof of such signature, seal or stamp, be presumed to be signed by such person unless it is proved not to have been signed by him.

266A Admissibility of evidence obtained from certain foreign countries

(1) Subject to this section

(a) the record of any evidence taken; or

(b) any document or other article produced or obtained; in response to a request made by the Prosecutor-General in terms of section 10 of the Criminal Matters (Mutual Assistance) Act [*Chapter 9:06*] shall be admissible in evidence in any court on its mere production by any person, if the court considers that it should be admitted in the interests of justice.

(2) In deciding whether or not it is in the interests of justice for any record, document or article to be admitted in evidence in terms of subsection (1), the court shall have regard to

(a) the nature of the proceedings; and

(b) the nature of the record, document or article; and

(c) the purpose for which the record, document or article is tendered in evidence; and

(d) any prejudice that may be occasioned to the accused or the prosecution if the record, document or article is admitted in evidence; and

(e) any other factor which, in the court's opinion, should be taken into account.

(3) In estimating the weight, if any, to be given to any record, document or article admitted in terms of subsection (1), the court shall have regard to all the factors which, in its opinion, affect its probative value.

(4) Where a document is admissible in evidence only if it has been prepared, attested, certified, compiled or executed by a particular person or by a person holding a particular office, possessing a particular qualification, performing a particular function or engaged in a particular activity, a similar document emanating from a foreign country shall not be admissible in terms of subsection (1) unless it has been prepared, attested, certified, compiled or executed, as the case may be, by an equivalent person in that foreign country.

(5) For the purposes of subsection (4), the Minister may, by statutory instrument, declare that any person or class of persons in a foreign country shall be regarded as equivalent to any person or class of persons in Zimbabwe:

Provided that an omission by the Minister to make such a declaration shall not prevent a court from determining for itself whether or not any person in a foreign country is equivalent to a person in Zimbabwe.

(6) A certificate purporting to be signed by the Prosecutor-General or the National Director of Public Prosecutions and stating that any record, document or article was produced or obtained in response to a request in terms of section 10 of the Criminal Matters (Mutual Assistance) Act [*Chapter 9:06*] shall be admissible in evidence in any court on its mere production by any person, and shall be *prima facie* proof of the facts stated therein.

[Subsection amended by Act 5 of 2014]

(7) This section shall not be construed as affecting the admissibility under any other law of any record, document or article referred to in subsection (1).

[Section as inserted by section 2 of Act 8 of 1998.)

F. Evidence of accomplices

267 Accomplices as witnesses for prosecution

(1) When the prosecutor at any trial informs the court that any person produced by him or her as a witness on behalf of the prosecution has, in his or her opinion, been an accomplice, either as principal or accessory, in the commission of the offence alleged in the charge, such person shall, notwithstanding anything to the contrary in this Act, be compelled to be sworn or to make affirmation as a witness and to answer any question the reply to which would tend to incriminate him or her in respect of such offence.

[Subsection substituted by section 22 of Act 9 of 2006.]

(2) If a person referred to in subsection (1) fully answers to the satisfaction of the court all such lawful questions as may be put to him, he shall, subject to subsection (3), be discharged from all liability to prosecution for the offence concerned and the court or magistrate, as the case may be, shall cause such discharge to be entered on the record of the proceedings.

(3) A discharge in terms of subsection (2) shall be of no effect and the entry thereof on the record of the proceedings shall be deleted if, when called as a witness at the trial of any person upon a charge of having committed the offence concerned, the person concerned refuses to be sworn or to make affirmation as a witness or refuses or fails to answer fully to the satisfaction of the court all such lawful questions as may be put to him.

[Subsection amended by section 22 of Act 9 of 2006.]

268 Evidence of accomplice cannot be used against him

No evidence given by an accomplice on behalf of the prosecution at any trial in respect of any offence shall, if the said accomplice is thereafter prosecuted for such offence, be admissible in evidence against him at his trial:

Provided that if such accomplice is subsequently prosecuted for perjury or for an offence in terms of subsection (3) of section *one hundred and fifty* arising from the giving of such evidence, nothing contained in this section shall prevent the admission against him in evidence at his trial for the said perjury or for such offence of the evidence so given.

[Section amended by section 28 of Act 9 of 2006.]

G. Sufficiency of evidence

269 Sufficiency of one witness in criminal cases, except perjury and treason

It shall be lawful for the court by which any person prosecuted for any offence is tried to convict such person of any offence alleged against him in the indictment, summons or charge under trial on the single evidence of any competent and credible witness:

Provided that it shall not be competent for any court—

(a) to convict any person of perjury on the evidence of any one witness as to the falsity of any statement made by the accused unless, in addition to and independently of the testimony of such witness, some other competent and credible evidence as to the falsity of such statement is given to such court;

(b) to convict any person of treason, except upon the evidence of two witnesses where one overt act is charged in the indictment or, where two or more such overt acts are so charged, upon the evidence of one witness to each such overt act;

(c) to convict any person on the single evidence of any witness of an offence in respect of which provision to the contrary is made by any enactment.

270 Conviction on single evidence of accomplice, provided the offence is proved aliunde

Any court which is trying any person on a charge of any offence may convict him of any offence alleged against him in the indictment, summons or charge under trial on the single evidence of any accomplice:

Provided that the offence has, by competent evidence other than the single and unconfirmed evidence of the accomplice, been proved to the satisfaction of such court to have been actually committed.

271 Procedure on plea of guilty

(1) Where a person arraigned before the High Court on any charge pleads guilty to the offence charged or to any other offence of which he might be found guilty on that charge and the prosecutor accepts that plea, the court may, if the accused has pleaded guilty to any offence other than murder, convict and sentence him for that offence without hearing any evidence.

(2) Where a person arraigned before a magistrates court on any charge pleads guilty to the offence charged or to any other offence of which he might be found guilty on that charge and the prosecutor accepts that plea—

(*a*) the court may, if it is of the opinion that the offence does not merit punishment of imprisonment without the option of a fine or of a fine exceeding level three, convict the accused of the offence to which he has pleaded guilty and impose any competent sentence other than—

(i) imprisonment without the option of a fine; or

(ii) a fine exceeding level three; or deal with the accused otherwise in accordance with the law;

[Paragraph amended by section 8 of Act 8 of 1997.]

(*b*) the court shall, if it is of the opinion that the offence merits any punishment referred to in subparagraph

(i) or (ii) of paragraph (*a*) or if requested thereto by the prosecutor—

(i) explain the charge and the essential elements of the offence to the accused and to that end require the prosecutor to state, in so far as the acts or omissions on which the charge is based are not apparent from the charge, on what acts or omissions the charge is based; and

(ii) inquire from the accused whether he understands the charge and the essential elements of the offence and whether his plea of guilty is an admission of the elements of the offence and of the acts or omissions stated in the charge or by the prosecutor;

and may, if satisfied that the accused understands the charge and the essential elements of the offence and that he admits the elements of the offence and the acts or omissions on which the charge is based as stated in the charge or by the prosecutor, convict the accused of the offence to which he has pleaded guilty on his plea of guilty and impose any competent sentence or deal with the accused otherwise in accordance with the law:

Provided that, if the accused is legally represented, the court may, in lieu of the procedure provided in subparagraphs (i) and (ii), satisfy itself that the accused understands the charge and the essential elements of the offence and that he admits the elements of the offence and the acts or omissions on which the charge is based as stated in the charge or by the prosecutor by relying upon a statement to that effect by the legal representative of the accused.

(3) Where a magistrate proceeds in terms of paragraph (*b*) of subsection (2)— (*a*) the explanation of the charge and the essential elements of the offence; and

(b) any statement of the acts or omissions on which the charge is based referred to in subparagraph (i) of that paragraph; and

(c) the reply by the accused to the inquiry referred to in subparagraph (ii) of that paragraph; and

(d) any statement made to the court by the accused in connection with the offence to which he has pleaded guilty;

shall be recorded.

(4) The court may—

(a) call upon the prosecutor to present evidence on any aspect of the charge; and

(b) with regard to sentence, hear any evidence, including evidence or a statement made by or on behalf of the accused.

(5) Where an accused has been convicted in terms of this section, the prosecutor and the court may, whether or not he gives evidence, question him with regard to sentence and, if the accused is represented by a legal practitioner, his legal representative may thereafter question him subject to the rules applicable to a party re-examining his own witness.

272 Procedure where there is doubt in relation to plea of guilty

If the court, at any stage of the proceedings in terms of section *two hundred and seventy-one* and before sentence is passed—

(a) is in doubt whether the accused is in law guilty of the offence to which he has pleaded guilty; or

(b) is not satisfied that the accused has admitted or correctly admitted all the essential elements of the offence or all the acts or omissions on which the charge is based; or

(c) is not satisfied that the accused has no valid defence to the charge; the court shall record a plea of not guilty and require the prosecution to proceed with the trial:

Provided that any element or act or omission correctly admitted by the accused up to the stage at which the court records a plea of not guilty and which has been recorded in terms of subsection (3) of section *two hundred and seventy-one* shall be sufficient proof in any court of that element or act or omission.

273 Conviction on confession

Any court which is trying any person on a charge of any offence may convict him of any offence with which he is charged by reason of a confession of that offence proved to have been made by him, although the confession is not confirmed by other evidence:

Provided that the offence has, by competent evidence other than such confession, been proved to have been actually committed.

274 Sufficiency of proof of appointment to public office

Any evidence which would, if credible, be considered in any criminal case depending in the Supreme Court of Judicature in England to be sufficient proof of the appointment of any person to any public office or of the authority of any person to act as a public officer shall, if credible, be deemed, in criminal cases in Zimbabwe, sufficient proof of such appointment or authority.

H. Documentary evidence

275 Certified copies or extracts of documents admissible

(1) When any book or other document is of such a public nature as to be admissible in evidence on its mere production from the proper custody, any copy thereof or extract therefrom shall be admissible in evidence in any court:

Provided that such copy or extract shall not be admissible in evidence unless—

(a) it is proved to be an examined copy or extract; or

(b) it purports to be signed and certified as a true copy or extract by the officer to whose custody the original is entrusted.

[Subsection amended by section 28 of Act 9 of 2006.]

(2) The officer to whose custody the original book or record is entrusted shall furnish a certified copy thereof or extract therefrom to any person applying at a reasonable time for the same upon payment of such sum as may be prescribed.

276 Production of official documents

Any original document in the custody or under the control of any officer of the State by virtue of his office may be produced in any criminal proceedings before any court unless the Minister certifies in writing that it is undesirable that such original document should be so produced.

[Section amended by section 28 of Act 9 of 2006.]

277 Copies of official documents sufficient

(1) Except when the original is produced, as provided in section *two hundred and seventy-six* it shall be sufficient to produce a copy of or extract from a document described in that section certified as a true copy by the head of the Ministry, department or office in whose custody or under whose control such document is.

(2) A copy or extract certified in terms of subsection (1) shall be admissible in evidence before any court and shall be of like effect as the original document.

[Subsection amended by section 28 of Act 9 of 2006.]

(3) It shall not be necessary for any head of a Ministry, department or office of the State to appear in person to produce any original document in his custody or under his control as such officer, but it shall be sufficient if such document is produced by some person authorized by him so to do.

(4) Certified copies of or extracts from any document referred to in subsection (3) may be handed in to the court by the party who desires to avail himself of the same.

(5) If any officer authorized or required by this Act to furnish any certified copies or extracts wilfully certifies any document as being a true copy or extract knowing that the same is not a true copy or extract, as the case may be, he shall be guilty of an offence and liable to imprisonment for a period not exceeding two years.

278 Admissibility of affidavits in certain circumstances

(1) In any criminal proceedings in which it is relevant to prove—

(a) any fact ascertained by an examination or process requiring knowledge of or skill in bacteriology, chemistry, physics, microscopy, astronomy, mineralogy, anatomy, biology, haematology, histology, toxicology, physiology, ballistics, geography or the identification of finger-prints, palm-prints or footprints or any other knowledge or skill whatsoever;

(b) any opinion relating to any fact ascertained by an examination or process referred to in paragraph (*a*); a document purporting to be an affidavit relating to any such examination or process and purporting to have been made by any person qualified to carry out such examination or process who in that affidavit states that such fact was ascertained by him or under his direction or supervision and that he arrived at such opinion, if any, stated therein shall, on its mere production in those proceedings by any person, but subject to subsections (11) and (12), be *prima facie* proof of the fact and of any opinion so stated.

(2) In any criminal proceedings in which it is relevant to prove—

(a) any fact ascertained by a medical practitioner in any examination carried out by him which is proper to the duties of a medical practitioner;

(b) that any treatment, including the performance of an operation, was administered by a medical practitioner;

(c) any opinion of a medical practitioner referred to in paragraph (*a*) or (*b*) relating to any fact or treatment referred to in that paragraph;

a document purporting to be an affidavit relating to any such examination or treatment and purporting to have been made by a person who in that affidavit states that he is or was a medical practitioner and in the performance of his duties in that capacity he carried out such examination and ascertained such fact in such examination or administered such treatment, and, in either case, arrived at such opinion, if any, stated therein shall, on its mere production in those proceedings by any person, but subject to subsections (11) and (12), be *prima facie* proof of the facts and of any opinion so stated.

(3) In any criminal proceedings in which it is relevant to prove—

(a) any fact ascertained or thing done by a person registered in terms of the Health Professions Act [*Chapter 27:19*] in the course of his duties;

(b) any opinion of a person referred to in paragraph (*a*) relating to any fact or thing referred to in that paragraph;

a document purporting to be an affidavit relating to any such duties and purporting to have been made by a person who in that affidavit states that he is or was a person registered in terms of the Health Professions Act [*Chapter 27:19*] and in the performance of his duties in that capacity he ascertained such fact or did such thing and, in either case, arrived at such opinion, if any, stated therein shall, on its mere production in those proceedings by any person, but subject to subsections (11) and (12), be *prima facie* proof of the facts and of any opinion so stated.

[Subsection amended by section 151 of Act 6 of 2000.]

(3a) For the avoidance of doubt, and without derogating from subsection (3), it is declared that in any criminal proceedings for the prosecution of a sexual offence, an affidavit relating to the examination or treatment of the alleged victim of the offence made by a suitably qualified nurse who in that affidavit states he or she is a suitably qualified nurse and in the performance of his or her duties in that capacity ascertained any fact by treating or examining the alleged victim and arrived at any opinion relating to that fact, shall, on its mere production in those proceedings by any person, but subject to subsections (11) and (12), be *prima facie* proof of the facts and of any opinion so stated.

[Subsection inserted by section 23 of Act 9 of 2006.]

(4) In any criminal proceedings in which it is relevant to prove any fact relating to—

(a) the condition, efficiency, capability, design, dimensions or mass of any vehicle or part or accessory thereof; or

(b) any damage alleged to have been caused to any vehicle or part or accessory thereof; or

(c) the mass of any load alleged to have been carried on or in any vehicle; a document purporting to be an affidavit made by any person who in that affidavit states that he is or was an inspecting officer as defined

in the Road Traffic Act [*Chapter 13:11*] and in the performance of his official duties in that capacity he ascertained such fact by examining, testing, measuring or weighing such vehicle, part, accessory or load, shall, on its mere production in those proceedings by any person, but subject to subsections (11) and (12), be *prima facie* proof of that fact.

(5) In any criminal proceedings in which the physical condition or identity of a deceased person or dead body while such person or dead body was in or at a hospital, nursing-home, ambulance or mortuary, is relevant to the issue, a document purporting to be an affidavit made by a person who in that affidavit states that he is or was employed at or in connection with the hospital, nursing-home, ambulance or mortuary and that in the performance of his official duties there or in connection therewith he observed the physical characteristics of the deceased person or dead body described in the affidavit, or that while the deceased person or dead body was under his care, such person or dead body sustained the injuries or wounds described in the affidavit or sustained no injuries or wounds, or that he identified, pointed out or handed over the deceased person or dead body to another person or left the deceased person or dead body in the care of another person, or that the deceased person or dead body was identified, pointed out or handed over to him or left in his care by another person, shall, on its mere production in those proceedings by any person, but subject to subsections (11) and (12), be *prima facie* proof of the facts so stated.

(6) In any criminal proceedings in which the identity of a person since deceased or of the body of a deceased person is relevant to the issue, a document purporting to be an affidavit made by a person who in that affidavit states that he knew the deceased person in his lifetime and that he identified the person or dead body to another person shall, on its mere production in those proceedings by any person, but subject to subsections (11) and (12), be *prima facie* proof of the facts so stated.

(7) In any criminal proceedings in which the receipt, custody, packing, delivery or dispatch of any document, finger-print or palm-print, article of clothing, specimen, limb or organ or any object of whatever nature is relevant to the issue, a document purporting to be an affidavit made by a person who in that affidavit states that in the performance of his duties he received from, or delivered or dispatched to, a person, institute, Ministry, department or laboratory mentioned in the affidavit the object described in the affidavit or packed or marked in a manner so described, or that during the period mentioned in the affidavit he had the custody, in the manner so mentioned, of the object described in the affidavit or packed or marked in the manner so described, as the case may be, shall, on its mere production in those proceedings by any person, but subject to subsections (11) to (12), be *prima facie* proof of the facts so stated.

(8) In any criminal proceedings in which it is relevant to prove that the details set out in any—

(a) consignment note executed for the purpose of the transport of any goods by the National Railways of Zimbabwe or the Air Zimbabwe Corporation or any other person who carries on the business within Zimbabwe of transporting goods; or

(b) report executed by an employee of a person referred to in paragraph (*a*) revealing a discrepancy between the details relating to the goods dispatched on a consignment note referred to in that paragraph and the goods actually present on arrival at the destination specified in the consignment note;

are correct, such details may, subject to subsections (11) and (12), be proved *prima facie* by the production by any person of a document, purporting to be an affidavit made by the person who executed the consignment note or report, in which it is stated that the details set out in the consignment note or report are correct in relation to the goods described in the consignment note or report.

(9) In any criminal proceedings in which it is relevant to prove that any goods were delivered to the National Railways of Zimbabwe or the Air Zimbabwe Corporation or any other person who carries on the business within Zimbabwe of transporting goods for transport by that person, a document purporting to be an affidavit made by a person who in that affidavit states that, on a date specified in the affidavit, he delivered the goods or caused the goods to be delivered to the National Railways of Zimbabwe, the Air Zimbabwe Corporation or such other person, as the case may be, or caused such goods to be delivered to that person for transport by that person shall, on its mere production in those proceedings by any person, but subject to subsections (11) and (12), be *prima facie* proof of the facts so stated.

(10) In any criminal proceedings in which it is relevant to prove—

(a) that a person or thing has or has not been registered or licensed or that a permit, certificate or authority has or has not been issued in respect of any person or thing under an enactment; or

(b) where a person or thing has been registered or licensed or a permit, certificate or authority has been issued in respect of any person or thing under an enactment, any particulars of or connected with the registration, licence, permit, certificate or authority; or

(c) that anything relating to the registration, licence, permit, certificate or authority referred to in paragraph (*b*), including the cancellation or suspension thereof, has been done;

a document purporting to be an affidavit made by a person who in that affidavit states that—

(i) he is a person upon whom the enactment in question confers the power or imposes the duty to do any thing referred to in paragraph (*a*); and

(ii) in that capacity, he has the custody and control of the records relating to anything referred to in paragraph (*a*) done by himself or any other person in the exercise of that power or duty; and

(iii) he has examined the records referred to in subparagraph (ii) and ascertained—

A. that any person or thing is or is not registered or licensed or that a permit, certificate or authority has or has not been issued; or

B. any particular referred to in paragraph (*b*); or

C. that anything referred to in paragraph (*c*) has been done;

shall, on its mere production in those proceedings by any person, but subject to subsections (11) and (12), be *prima facie* proof of the facts so ascertained.

(11) An affidavit referred to in this section shall not be admissible unless the prosecutor or the accused, as the case may be, has received three days' notice of its intended production or consents to its production.

(12) The court in which any affidavit referred to in this section is produced in evidence may, of its own motion or at the request of the prosecutor or of the accused, cause the person who made the affidavit or any other person whose evidence the court considers to be necessary to give oral evidence in the proceedings in question in relation to any statement contained in the affidavit or may cause written interrogatories to be submitted to such person for reply, and such interrogatories or any reply thereto purporting to be a reply from such person shall, on their mere production in those proceedings by any person, be admissible in evidence.

(13) Nothing in this section shall be construed as affecting any provision of any enactment under which any certificate or other document is made admissible in evidence, and this section shall be deemed to be additional to, and not in substitution of, any such provision.

279 Admissibility of photographs, plans and reports

(1) A medical practitioner who has prepared a report after his examination of any person or body may read and put in such report at any trial and such report so read and put in shall, subject to all just exceptions, be admissible in evidence in any court.

[Subsection amended by section 28 of Act 9 of 2006.]

(2) A photograph or plan relating any matter which is relevant to the issue in any proceedings shall be admissible in evidence at any stage of such proceedings subject to the conditions that—

(*a*) any person who is a competent and compellable witness in such proceedings and upon whose indications or observations such photograph or plan was taken or prepared shall be called as a witness, either before or after such photograph or plan is put in by the party tendering such evidence; or (*b*) the evidence of such person is admitted in terms of section *two hundred and fifty-five*.

280 …

[Section repealed by section 24 of Act 9 of 2006.].

281 Admissibility of documents transmitted to or made or possessed by accused

(1) In this section—

"document" includes any thing on or in which information is recorded; "statement" includes any representation of fact, whether made in words or figures or otherwise.

(2) If, in any criminal proceedings against any person, direct oral evidence of a fact would be admissible, any statement of such fact contained in any document, whether such document purports to be an original or a copy, which—

(a) was made or kept by; or

(b) is proved to have been in the course of transmission to or at any time in the custody or under the control of;

that person, or any employee or agent of that person acting within the scope of his employment or authority, shall be admissible as evidence of that fact against that person.

(3) Where it is alleged that two or more persons are involved in the same offence, any statement that is admissible in evidence in terms of subsection (2) against one such person in respect of such offence shall be admissible in evidence against the other such person or persons.

(4) For the purposes of subsection (2), any document or copy thereof which was made or kept by or at any time was in the custody or under the control of an employee or agent of a person referred to in that subsection shall be presumed to have been made or kept by or to have been in the custody or under the control of such employee or agent within the scope of his employment or authority as such, unless the contrary is proved.

282 Admissibility of certain trade or business records

(1) In this section—

"document" includes any thing on or in which information is recorded;

"statement" includes any representation of fact, whether made in words or figures or otherwise.

(2) In any criminal proceedings in which direct oral evidence of a fact would be admissible, any statement of such fact contained in a document, whether such document purports to be an original or a copy, shall, upon the mere production of the document by any person, be admissible as evidence of that fact if—

(a) that fact relates to any transaction or intended transaction, either inside or outside Zimbabwe, in the course of any trade, business or occupation of whatsoever kind or to any other matter in connection with such trade, business or occupation; and

(b) that document is part of or that fact has been obtained from records kept in the course of that trade, business or occupation and compiled from information supplied, directly or indirectly, by a person who had or who may reasonably be supposed to have personal knowledge of the matter dealt with in that information; and

(c) the person who supplied that information is outside Zimbabwe or is unknown or is not available to give oral evidence for any reason whatsoever.

(3) For the purpose of deciding whether or not a statement is admissible as evidence in terms of subsection (2), the court may draw any reasonable inference from the form or content of the document in which the statement is contained or, in the case of a document received from outside Zimbabwe, from the form or content of any other document which accompanied such document when it was received in Zimbabwe.

283 Weight to be attached to statements admissible under section 281 or 282

In estimating the weight, if any, to be attached to a statement admissible in terms of section *two hundred and eighty-one* or *two hundred and eighty-two*, a court shall have regard to all the circumstances, whether appearing from the document concerned or otherwise.

284 Endorsements on negotiable instruments

(1) In this section—

"banking business" means the business of any commercial bank, accepting house, confirming house, discount house, building society, savings bank or other financial institution;

"negotiable instrument" means any bill of exchange, letter of credit, cheque, draft or other document, whether negotiable or not, which has been drawn or issued either inside or outside Zimbabwe and is intended to enable any person to obtain, either directly or indirectly, any sum of money, whether in Zimbabwean or foreign currency.

(2) Where in any criminal proceedings any negotiable instrument is produced before a court, and there appears upon such negotiable instrument any stamp, signature, writing, inscription or other mark which purports to have been made by any person or institution purporting to carry on banking business outside Zimbabwe, it shall be presumed, unless the contrary is proved, that such stamp, signature, writing, inscription or mark was made by that person or institution outside Zimbabwe and, if any date is specified in or in connection with such stamp, signature, writing, inscription or mark, that the same was made on that date.

I. Special provisions as to bankers books

285 Interpretation in sections 286, 287, 288 and 289

In this section and in sections *two hundred and eighty-six*, *two hundred and eighty-seven*, *two hundred and eighty-eight* and *two hundred and eighty-nine*—

"bank" means—

(a) any commercial bank, accepting house, discount house or finance house registered under the Banking Act [*Chapter 24:20*]; or

[Paragraph amended by section 82 of Act 9 of 1999]

(b) the People's Own Savings Bank of Zimbabwe operating under the People's Own Savings Bank Act [*Chapter 24:10*]; or

[Paragraph amended by section 49 of Act 2 of 2016]

(c) any building society registered under the Building Societies Act [*Chapter 24:02*]; or

(d) the Corporation as defined in section 2 of the Agricultural Finance Corporation Act [*Chapter 18:02*]; or

[Paragraph amended by section 29 of Act 14 of 1998]

(e) any foreign bank;

"bankers books" means ledgers, day-books, cash-books and other books or records of account kept by a bank in the usual and ordinary course of business;

"bankers document" means any form or document relating to the deposit, payment, transfer or removal of moneys which is received or executed by a bank in the usual and ordinary course of business and includes any instruction or notification in writing so received or executed by a bank in relation to any moneys held by or on account with that bank;

"foreign bank" means any person carrying on outside Zimbabwe, in a country specified by the Minister responsible for justice by notice in a statutory instrument, for the purposes of this section, the business of a bank, building society or other such financial institution as is mentioned in paragraph (*a*), (*b*), (*c*) or (*d*) of the definition of "bank".

286 Entries in bankers books and bankers documents admissible in evidence in certain cases

(1) The entries in any bankers books shall be admissible as *prima facie* evidence of the matters, transactions and accounts recorded therein on proof being given by the affidavit of any director, manager or officer of the bank concerned or by other evidence that—

(a) such bankers books are or have been the ordinary books of the bank; and

(b) the said entries have been made in the usual and ordinary course of business; and (*c*) the bankers books are in, or come immediately from, the custody or control of the bank.

(2) Any bankers documents shall be admissible as *prima facie* evidence of the matters or transactions recorded therein or endorsed thereon on proof being given by the affidavit of any director, manager or officer of the bank concerned or by other evidence that such document—

(*a*) has been received or executed and kept by the bank in the usual and ordinary course of business; and (*b*) is in, or comes immediately from, the custody or control of the bank.

(3) Any document which purports—

(a) to be an affidavit of a person who is director, manager or officer of a bank; and

(b) to have been made before a person who is qualified in the country concerned to administer an oath; shall be admissible upon its mere production.

287 Examined copies admissible after due notice

(1) Subject to this section and section *two hundred and eighty-nine*, a copy of any entry in any bankers book or of any bankers document may be proved in any criminal proceedings as evidence of such entry or document without production of the original by means of the affidavit of a person who has examined the same stating—

(a) the fact of that examination; and

(b) that the copy sought to be put in evidence is correct.

(2) No bankers book or copy of an entry therein contained and no bankers document or copy thereof shall be adduced or received in evidence under subsection (1) unless ten days' notice in writing, or such other notice as may be ordered by the court before which the proceedings are being or are to be conducted, containing a copy of the entries or documents proposed to be adduced and of the intention to adduce the same in evidence has been given by the party proposing to adduce the same in evidence:

Provided that such notice shall not be necessary if the other party to the proceedings waives his right to such notice.

(3) On the application of any party who has received notice in terms of subsection (2) which relates to the bankers books or bankers documents of a bank which—

(a) is not a foreign bank, the court before which the proceedings are being or are to be conducted may order that such party be at liberty to inspect and to take copies of any entry or entries in the bankers books or of the bankers documents of the bank concerned and such orders may be made by the court in its discretion, either with or without summoning before it such bank or the other party, and shall be intimated to such bank at least three days before the copies are required;

(b) is a foreign bank, the court before which the proceedings are being or are to be conducted may issue a commission to any fit and proper person outside Zimbabwe authorizing that person to take the evidence of any witness specified in the commission as to the correctness of the copies sought to be adduced and as to any matters that may be contained in the bankers books or the bankers documents of the bank concerned relating to the matters in question in the criminal proceedings and the provisions of sections *two hundred and forty*, *two hundred and forty-one*, *two hundred and forty-two* and *two hundred and fortythree* shall apply, *mutatis mutandis*, to such commission.

(4) Any document which purports—

(a) to be an affidavit of a person who has examined an entry in a bankers book or a bankers document and stating the things referred to in paragraphs (*a*) and (*b*) of subsection (1); and

(b) to have been made before a person who is qualified in the country concerned to administer an oath; shall be admissible upon its mere production.

288 Bank not compelled to produce any books unless ordered by court

A bank shall not be compelled to produce its bankers books or any bankers documents in any criminal proceedings unless the court specially orders that such bankers books or bankers documents shall be produced.

289 Sections 286, 287 and 288 not to apply to proceedings to which bank is party

Nothing in sections *two hundred and eighty-six*, *two hundred and eighty-seven* and *two hundred and eightyeight* shall apply to any criminal proceedings to which the bank whose bankers books or bankers documents may be required to be produced in evidence is a party.

J. Privileges of witnesses

290 Privileges of accused persons when giving evidence

An accused person called as a witness upon his own application shall not be asked, and if asked shall not be required to answer, any question tending to show that he has committed, or has been convicted of, or has been charged with, any offence other than that with which he is then charged, or is of bad character, unless—

(a) he has personally or by his legal representative asked questions of any witness with a view to establishing, or has himself given evidence of, his own good character, or unless the nature or conduct of the defence is such as to involve imputation of the character of the prosecutor or the witnesses for the prosecution; or

(b) he has given evidence against any other person charged with the same offence; or

(c) the proceedings against him are such as are described in section *three hundred and five* or *three hundred and six*, and the notice required by the section concerned has been given to him; or

(d) the proof that he has committed or been convicted of such other offence is admissible to show that he is guilty of the offence wherewith he is then charged.

291 Privilege arising out of marital state

(1) A husband shall not be compelled to disclose any communication made to him by his wife during marriage, and a wife shall not be compelled to disclose any communication made to her by her husband during the marriage.

(2) A person whose marriage has been dissolved or annulled by a competent court shall not be compelled to give evidence as to any matter or thing which occurred during the subsistence of the marriage or supposed marriage, and as to which he or she could not have been compelled to give evidence if the marriage still subsisted.

292 No witness compellable to answer question which witness' husband or wife might decline

No person shall be compelled to answer any question or to give any evidence if the question or evidence is such that under the circumstances the husband or wife of such person, if under examination as a witness, might lawfully refuse and could not be compelled to answer or give.

293 Witness not excused from answering question by reason that answer would establish civil claim against him

A witness in criminal proceedings may not refuse to answer a question relevant to the issue, the answering of which has no tendency to accuse himself or to expose him to penalty or forfeiture of any nature whatsoever by reason only that the answering of such question may establish or tend to establish that he owes a debt or is otherwise subject to a civil suit.

294 Privilege of professional advisers

No legal practitioner duly qualified to practise in any court, whether within Zimbabwe or elsewhere, shall be competent to give evidence against any person by whom he has been professionally employed or consulted, without the consent of that person, as to any fact, matter or thing as to which such legal practitioner, by reason of

such employment or consultation and without such consent, would not be competent to give evidence in any similar proceedings depending in the Supreme Court of Judicature in England:

Provided that no such legal practitioner shall in any proceedings, by reason of any such employment or consultation, be incompetent or not legally compellable to give evidence as to any fact, matter or thing relative to or connected with the commission of any offence for which the person by whom such legal practitioner has been so employed or consulted is in such proceedings prosecuted, when such fact, matter or thing came to the knowledge of such legal practitioner before he was professionally employed for or consulted with reference to the defence of such person against such prosecution.

295 Privilege from disclosure of facts on grounds of public policy

No witness shall, except as in this Act is provided, be compellable or permitted to give evidence in any criminal proceedings as to any fact, matter or thing, or as to any communication made to or by such witness, as to which, if the case were depending in the Supreme Court of Judicature in England, such witness would not be compellable or permitted to give evidence by reason that such fact, matter or thing or communication, on grounds of public policy and from regard to public interest, ought not to be disclosed and is privileged from disclosure:

Provided that it shall be competent for any person to produce or to give evidence of any communication alleging the commission of an offence at any trial upon a charge that the making of such communication constituted perjury or the statutory offence of making a false statement in an affidavit or solemn or attested declaration.

[Section amended by section 28 of Act 9 of 2006.]

296 Privilege arising out of State security

(1) Notwithstanding this Act or any other law, no person shall be compellable or permitted to give evidence or to furnish any information in any criminal proceedings as to any fact, matter or thing or as to any communication made to or by such person and no book or document shall be produced in any such proceedings if an affidavit, purporting to have been signed by the Minister responsible in respect of such fact, matter, thing, communication, book or document, is produced to the court or magistrate to the effect that the Minister has personally considered the said fact, matter, thing, communication, book or document and that, in his opinion, it affects the security of the State and disclosure thereof would, in his opinion, prejudicially affect the security of the State.

(2) Nothing in subsection (1) shall derogate from any law relating to the matters referred to therein and that subsection shall be additional to, and not in substitution of, any such law.

297 Witness excused from answering questions answers to which would expose him to penalties or degrade his character

No witness in any criminal proceedings shall, except as provided by this Act or any other enactment, be compelled to answer any question which, if he were under examination in any similar case depending in the Supreme Court of Judicature in England, he would not be compelled to answer by reason that his answer might have a tendency to expose him to any pains, penalty, punishment or forfeiture or to a criminal charge or to degrade his character:

Provided that, notwithstanding anything to the contrary in this section, an accused person called as a witness on his own application in accordance with section *two hundred and forty-eight* may be asked any question in cross-examination, notwithstanding that it would tend to incriminate him as to the offence charged against him.

K. Special rules of evidence in particular cases

298 Evidence on charge of treason

On the trial of a person charged with treason, evidence shall not be admitted of any overt act not alleged in the indictment, unless relevant to prove some other overt act alleged therein.

299 Evidence on charge of perjury or subornation

On the trial of a person charged with an offence of which the giving of false testimony by any person at the trial of a person charged with an offence is an element, a certificate setting out the substance and effect only, without the formal parts, of the indictment, summons or charge, and the proceedings at the trial, and purporting to be signed by the officer having the custody of the records of the court where the indictment, summons or charge was tried, or by his deputy, shall be sufficient evidence of the trial without proof of the signature or official character of the person who appears to have signed the certificate.

300 Evidence on charge of bigamy

(1) Subject to this section and section *three hundred and one*, on the trial of a person charged with bigamy, it must be proved that a lawful and binding marriage between the accused and another person existed at the time when the offence is alleged to have been committed.

(2) On the trial of a person charged with bigamy, as soon as the fact of a marriage ceremony in Zimbabwe between the accused and another person has been proved, the marriage shall be deemed to have been lawful and binding as between them at the date thereof unless it is shown that they were within the prohibited degrees of

consanguinity or affinity, or that owing to a then subsisting marriage one of them was incapable of contracting a lawful and binding marriage with the other.

(3) On the trial of a person charged with bigamy, as soon as the alleged bigamous marriage, wherever solemnized, has been proved, the fact that shortly before the alleged bigamous marriage the accused had been cohabiting with the person to whom the accused is alleged to be lawfully married and had been treating and recognizing such person as a spouse shall, if in addition there is evidence of the performance of a marriage ceremony between the accused and such person, be *prima facie* evidence that there was a lawful and binding marriage subsisting between the accused and such person at the time of the solemnization of the alleged bigamous marriage.

301 Proof of marriage

When the fact that any lawful and binding marriage was contracted is relevant to the issue at any criminal trial, such fact shall be presumed unless the contrary is proved—

(*a*) where the marriage is alleged to have been solemnized in any part of Zimbabwe, as soon as there has been produced to the court—

(i) in the case of a marriage in terms of the Marriage Act [*Chapter 5:11*] or any Act repealed by that Act, a copy of an entry in a marriage register or a duplicate original thereof which purports to be certified by a district administrator or the Registrar of Marriages referred to in section 30 of that Act, as the case may be, or a duplicate original register of the entry;

(ii) in the case of a marriage in terms of the Customary Marriages Act [*Chapter 5:07*] or any Act repealed by that Act, a copy from the marriage register, which purports to be certified as a true copy by a customary marriage officer as defined in section 2 of that Act, or a duplicate original register of the entry;

(b) where the marriage is alleged to have been solemnized outside Zimbabwe, as soon as there has been produced to the court a document which purports to be an extract from a marriage register kept according to law in the country where the marriage is alleged to have been solemnized, and which also purports to be certified as such by an officer or person having the custody of that register:

Provided that the signature of such officer or person to the certificate shall be authenticated in accordance with any enactment governing the authentication of documents executed outside Zimbabwe;

(c) wherever the marriage is alleged to have been solemnized, as soon as the fact of the marriage ceremony has been proved.

302 Evidence of relationship on charge of incest

On the trial of a person charged with incest—

(a) it shall be sufficient to prove that the woman or girl on whose person or by whom the offence is alleged to have been committed is reputed to be related within the prohibited degree of consanguinity or affinity to the other party to the incest;

(b) the accused person shall, until the contrary is proved, be presumed to have had knowledge at the time of the alleged offence of the relationship existing between him or her and the other party to the incest.

302A Testing of persons accused of sexual offences for HIV infection

(1) In this section—

"accused person" means a person accused of committing a sexual offence; "designated person" …

[Definition repealed by section 25 of Act 9 of 2006.]

"sexual offence"…..

[Definition repealed by section 25 of Act 9 of 2006.]

(2) For the purposes of section 80 of the Criminal Law Code ("Sentence for certain crimes where accused is infected with HIV"), and without derogation from any other law, when an accused person is first brought before a court for remand on a charge of committing a sexual offence, or at any later stage, the court shall direct that an appropriate sample or samples be taken from the accused person, at such place and subject to such conditions as the court may direct, for the purpose of ascertaining whether or not he or she is infected with HIV.

(3) Where a court has given a direction under subsection (2), any medical practitioner or suitably qualified nurse shall, if so requested in writing by a police officer above the rank of constable, take an appropriate sample from the accused person, and may use such force as is reasonably necessary in order to take the sample:

Provided that the medical practitioner or suitably qualified nurse may decline to take an appropriate sample in terms of this subsection if he or she considers that such taking would be prejudicial to the health or proper care or treatment of the accused person.

[Subsection amended by section 25 of Act 9 of 2006.]

(4) An appropriate sample taken in terms of subsection (3)—

(a) shall consist of blood, urine or other tissue or substance as may be determined by the medical practitioner or suitably qualified nurse concerned, in such quantity as is reasonably necessary for the purpose of determining whether or not the accused person is infected with HIV; and

(b) in the case of a blood or tissue sample, shall be taken from a part of the accused person's body selected by the medical practitioner or suitably qualified nurse concerned in accordance with accepted medical practice.

[Subsection amended by section 25 of Act 9 of 2006.]

(5) The sample or samples taken from an accused person in terms of this section shall be tested for HIV as soon as possible and be stored at an appropriate place until the conclusion of the trial:

Provided that—

(i) the results of the testing shall not be revealed at any time before or during the trial, and only be revealed after the conclusion of the trial if the accused person is convicted of a sexual offence;

(ii) every sample taken from an accused person in terms of this section shall be destroyed if the accused person is acquitted.

(6) Without prejudice to any other defence or limitation that may be available in terms of any law, no claim shall lie and no set-off shall operate against— (*a*) the State; or

(b) any Minister; or

(c) any medical practitioner or suitably qualified nurse; in respect of any detention, injury or loss caused by or in connection with the taking of an appropriate sample in terms of subsection (3), unless the taking was unreasonable or done in bad faith or the person who took the sample acted negligently.

[Subsection amended by section 25 of Act 9 of 2006.]

(7) Any person who, without reasonable excuse, hinders or obstructs the taking of an appropriate sample in terms of subsection (3) shall be guilty of an offence and liable to a fine not exceeding level seven or imprisonment for a period not exceeding two years or both.

[Section inserted by Act 23 of 2004]

303 Evidence on charge of infanticide or concealment of birth

(1) On the trial of a person charged with infanticide in terms of the Infanticide Act [*Chapter 9:12*], or with murder or culpable homicide of a newly born child, the child in respect of which the offence was committed shall be deemed to have been born alive if it is proved to have breathed, whether or not it has had an independent circulation, and it shall not be necessary to prove that such child was at the time of its death entirely separated from the body of its mother.

(2) On the trial of a person charged with the concealment of the birth of a child, it shall not be necessary to prove whether the child died before, at or after its birth.

304 Evidence as to counterfeit coin

When upon the trial of any person it becomes necessary to prove that any coin produced in evidence against him is false or counterfeit, it shall be sufficient to prove that fact by the evidence of any credible witness.

305 Evidence on charge of receiving

(1) When proceedings are taken against any person for having received stolen goods knowing them to be stolen, or for having in his possession stolen property or anything obtained by means of an offence knowing the same to have been stolen or so obtained, evidence may be given at any stage of the proceedings that there was found in the possession of such person other property stolen or obtained by some such offence as aforesaid within the period of twelve months preceding the time when such person was first charged before a magistrate with the offence in respect of which proceedings are being taken.

(2) Evidence such as is referred to in subsection (1) may be taken into consideration for the purpose of proving that the person concerned knew the property which forms the subject of the proceedings taken against him to have been stolen or obtained by an offence referred to in that subsection:

Provided that not less than three days' notice in writing shall be given to the accused that proof is intended to be given of such other property stolen or obtained by some such offence as aforesaid within the preceding period of twelve months having been found in his possession, and such notice shall specify the nature or description of such other property and the person, if known, from whom the same was stolen or obtained by means of an offence.

306 Evidence of previous conviction on charge of receiving

When proceedings are taken against any person for having received stolen goods knowing them to be stolen, or for having in his possession stolen property or property obtained by means of an offence, and evidence has been given that the stolen property or property obtained by means of an offence has been found in his possession, then if

such person has, within five years immediately preceding the time when such person was first charged before a magistrate with the offence for which he is being proceeded against, been convicted of an offence involving fraud or dishonesty, evidence of such previous conviction may be given at any stage of the proceedings and may be taken into consideration for the purpose of proving that the accused knew that the property which was proved to be in his possession was stolen or was property obtained by means of an offence:

Provided that not less than three days' notice in writing shall be given to the accused that proof is intended to be given of such previous conviction.

307 Evidence of counterfeit coin

Upon the trial of any person accused of any offence respecting currency or coin, no difference in the date or year or in any legend marked upon the lawful coin described in the indictment and the date or year or legend marked upon the false coin counterfeited to resemble or pass for such lawful coin, or upon any die, plate, press, tool or instrument used, constructed, devised, adapted or designed for the purpose of counterfeiting or imitating any such lawful coin, shall be considered a just or lawful cause or reason for acquitting any such person of such offence, and it shall in any case be sufficient to prove such general resemblance to the lawful coin as will show an intention that the counterfeit should pass for it.

308 Evidence on trial for defamation

On the trial of a person charged with the unlawful publication of defamatory matter which is contained in a periodical, after evidence sufficient in the opinion of the court has been given of the publication by the accused of the number or part of the periodical containing the matter complained of, other writings or prints purporting to be other numbers or parts of the same periodical previously or subsequently published and containing a printed statement that they were published by or for the accused shall be admissible in evidence on either side without further proof of their publication.

309 Evidence on charge of theft against employee or agent

(1) At the trial of any person charged with theft while employed in any capacity by the State of money or any other property which belonged to the State or vested in the President, or which came into such person's possession by virtue of the employment, or charged with theft while an employee or agent of money or any other property which belonged to his employer or principal, or which came into his possession on account of his employer or principal, an entry in any book of account kept by the accused, or kept under or subject to his charge or supervision, purporting to be an entry of the receipt of any money or other property, shall be evidence that the money or other property so purporting to have been received was so received by him.

[Subsection amended by Act 5 of 2014 and by section 49 of Act 2 of 2016]

(2) On the trial of a person charged with any offence referred to in subsection (1), it shall not be necessary to prove the theft by the accused of any specific sum of money or specific goods or articles if, on the examination of the books of account or entries kept or made by him or kept or made in, under or subject to his charge or supervision, or by any other evidence, there is proof of a general deficiency, and if the court is satisfied that the accused stole the deficient money or part of it or the deficient goods or articles or any part thereof.

310 Evidence on charge relating to seals and stamps

On the trial of a person charged with any offence relating to any seal or stamp used for purposes of the public revenue or of the post office in any foreign country, a dispatch from the officer administering the government of such country, transmitting to the President any stamp, mark or impression and stating it to be a genuine stamp, mark or impression of a die, plate or other instrument provided, made or used by or under the direction of the proper authority of such country for the purpose of denoting any stamp duty or postal charge, shall be admissible as evidence of the facts stated in the dispatch, and the stamp, mark or impression so transmitted may be used by the court or witnesses for the purposes of comparison.

L. Miscellaneous matters relating to evidence in criminal proceedings

311 Impounding documents

When any instrument which has been forged or fraudulently altered is admitted in evidence, the court, judge or person who admits the instrument may, at the request of the State or of any person against whom it is admitted in evidence, direct that it shall be impounded and kept in the custody of some officer of the court or other proper person for such period and subject to such conditions as to the court, judge or person admitting the instrument seems fit.

312 Cutting counterfeit coin

If any false or counterfeit coin is produced on any trial for an offence against currency or coin, the court shall order the same to be cut in pieces in open court or in the presence of a magistrate, and then delivered to or for the lawful owner thereof if such owner claims the same.

313 Unstamped instruments admissible in criminal cases

Any instrument liable to stamp duty shall be admitted in evidence in any criminal proceedings, although it may not be stamped as required by law.

314 Admissions of fact

(1) In any criminal proceedings the accused or his legal representative or the prosecutor may admit any fact relevant to the issue and any such admission shall be sufficient evidence of that fact.

(2) If he considers it desirable for the purpose of clarifying the facts in issue or for obviating the adduction of evidence on facts which do not appear to be in dispute, the judge or magistrate may, during the course of a trial

and on application by the prosecutor, the accused or his legal representative ask the accused or his legal representative or the prosecutor, as the case may be, whether any fact relevant to the issue is admitted in terms of this section.

[Subsection amended by section 28 of Act 9 of 2006.]

(3) Subject to this Act, an accused who is not represented by a legal practitioner shall be warned that he is not obliged to make any admission.

315 Presumption that accused possessed particular qualification or acted in particular capacity

If an act or omission constitutes an offence only when committed by a person possessing a particular qualification or vested with a particular authority or acting in a particular capacity, a person charged with such offence upon an indictment, summons or charge alleging that he possessed such qualification or was vested with such authority or was acting in such capacity shall, at his trial, be deemed to have possessed such qualification or to have been vested with such authority or to have been acting in such capacity at the time of the commission of the alleged offence, unless he has denied that allegation within three days of notice being served upon him calling upon him to admit it:

Provided that if after the prosecutor has closed his case the allegation is denied or evidence is led to disprove it, the prosecutor may adduce any evidence and submit any argument in support of the allegation as if he had not closed his case.

316 Impeachment and support of witness credibility

It shall be competent for any party in criminal proceedings to impeach or support the credibility of any witness called against or on behalf of that party in any manner and by any evidence in and by which, if the proceedings were before the Supreme Court of Judicature in England, the credibility of such witness might be impeached or supported by such party, and in no other manner and by no other evidence whatever:

Provided that any such party who has called a witness who has given evidence in any such proceedings, whether that witness is or is not, in the opinion of the judge or judicial officer presiding at such proceedings, adverse to the party calling him, may, after the said party or the said judge or judicial officer has asked the witness whether he has or has not previously made a statement with which his testimony in the said proceedings is inconsistent and after sufficient particulars of the alleged previous statement to designate the occasion when it was made have been mentioned to the witness, prove that he previously made a statement with which his said testimony is inconsistent.

317 Cases not provided for by this Part

In criminal proceedings, in any case not provided for in this Part, the law as to admissibility of evidence and as to the competency, examination and cross-examination of witnesses in force in criminal proceedings in the Supreme Court of Judicature in England shall be followed in like cases by the courts of Zimbabwe.

318 English laws applicable

The laws in force in the Supreme Court of Judicature in England which are applied by this Act shall not include any amendment thereto made on or after the 1st June, 1927, by any statute of England.

319 Saving as to special provisions in any other enactment

Nothing in this Part shall be construed as modifying those provisions of any enactment whereby in any criminal matter specially referred to or provided in such enactment a person is deemed to be a competent witness or certain specified facts and circumstances are deemed to be evidence, or a particular fact or circumstance may be proved in a manner specified therein.

PART XIVA

PROTECTION OF VULNERABLE WITNESSES

319A Interpretation in Part XIVA

In this Part

"intermediary" means a person appointed as an intermediary in terms of paragraph (i) of section *three hundred and nineteen B:*

"support person" means a person appointed as a support person in terms of paragraph (ii) of section *three hundred and nineteen B*;

"vulnerable witness" means a person for whom any measure has been or is to be taken in terms of section *three hundred and nineteen B.*

319B Measures to protect vulnerable witnesses

If it appears to a court in any criminal proceedings that a person who is giving or will give evidence in the proceedings is likely—

(a) to suffer substantial emotional stress from giving evidence or

(b) to be intimidated, whether by the accused or any other person or by the nature of the proceedings or by the place where they are being conducted, so as not to be able to give evidence fully and truthfully;

the court may, subject to this Part, do any one or more of the following, either *mero motu* or on the application of a party to the proceedings—

(i) appoint an intermediary for the person;

(ii) appoint a support person for the person;

(iii) direct that the person shall give evidence in a position or place, whether in or out of the accused's presence, that the court considers will reduce the likelihood of the person suffering stress or being intimidated:

Provided that, where the person is to give evidence out of the accused's presence, the court shall ensure that the accused and his legal representative are able to see and hear the person giving evidence, whether through a screen or by means of closed-circuit television or by some other appropriate means;

(iv) adjourn the proceedings to some other place, where the court considers the person will be less likely to be subjected to stress or intimidation;

(v) subject to section 70(1)(*g*) of the Constitution, make an order in terms of the Courts and Adjudicating Authorities (Publicity Restriction) Act [*Chapter 7:04*] excluding all persons or any class of persons from the proceedings while the person is giving evidence.

[Paragraph amended by section 49 of Act 2 of 2016]

319C Factors to be considered in deciding whether or not to protect vulnerable witness

(1) When deciding whether or not to take any measure under section *three hundred and nineteen B*, the court shall pay due regard to the following considerations—

(a) the vulnerable witness's age, mental and physical condition and cultural background; and

(b) the relationship, if any, between the vulnerable witness and any other party to the proceedings; and (*c*) the nature of the proceedings; and

(*d*) the feasibility of taking the measure concerned; and (*e*) any views expressed by the parties to the proceedings; and (*f*) the interests of justice.

(2) To assist the court in deciding whether or not to take any measures under section *three hundred and nineteen B*, the court may interview the vulnerable witness concerned out of the sight and hearing of the parties to the proceedings: Provided that at such an interview the merits of the case shall not be canvassed or discussed.

319D Court to give parties opportunity to make representations

Before taking a measure under section *three hundred and nineteen B*, the court shall afford the parties to the proceedings an opportunity to make representations in the matter.

319E Court may rescind measure taken to protect vulnerable witness

Without derogation from any other law, a court may at any time rescind a measure taken by it under section *three hundred and nineteen B*, and shall do so if the court is satisfied that it is in the interests of justice to do so.

319F Persons who may be appointed as intermediaries or support persons

(1) Except in special circumstances, which the court shall record, a court shall not appoint a person as an intermediary unless that person—

(a) is or has been employed by the State as an interpreter in criminal cases; and

(b) has undergone such training in the functions of an intermediary as the Minister may approve.

(2) In appointing a support person for a vulnerable witness, the court shall select a parent, guardian or other relative of the witness, or any other person who the court considers may provide the witness with moral support whilst the witness gives evidence.

319G Functions of intermediary or support person

(1) Where an intermediary has been appointed for a vulnerable witness, no party to the criminal proceedings concerned shall put any question to the vulnerable witness except through the intermediary:

Provided that the court may put any question to the witness directly or through the intermediary.

(2) Subject to any directions given by the court, an intermediary—

(a) shall be obliged to convey to the vulnerable witness concerned only the substance and effect of any question put to the witness;

(b) may relay to the court the vulnerable witness's answer to any question put to the witness:

Provided that when doing so the intermediary shall, so far as possible, repeat to the court the witness's precise words.

(3) Where a support person has been appointed for a vulnerable witness, the support person shall be entitled to sit or stand near the witness whilst the witness is giving evidence in order to provide moral support for the witness, and shall perform such other functions for that purpose as the court may direct.

319H Weight to be given to evidence of witness for whom intermediary or support person appointed

When determining what weight, if any, should be given to the evidence of a vulnerable witness for whom an intermediary or a support person has been appointed, the court shall pay due regard to the effect of the appointment on the witness's evidence and on any cross-examination of the witness.

[Part as inserted by section 9 of Act 8 of 1997.]

PART XV

DISCHARGE OF ACCUSED PERSONS

320 Dismissal of charge in default of prosecution

(1) If the prosecutor, whether public or private, does not appear on the court day appointed for the trial, the accused may move the court to discharge him, and the indictment, summons or charge may be dismissed and, when the accused or any other person on his behalf has been bound by recognizance for the appearance of the accused so to take his trial, may further move the court that such recognizance be discharged, and such recognizance may thereupon be discharged.

(2) Where the indictment is at the instance of a private party, the accused may move the court that the private prosecutor and his sureties shall be called on their recognizance and, in default of his appearance, that the same be estreated and the accused may also apply for an order directing the private prosecutor to pay the costs incurred by the accused in preparing his defence.

(3) Nothing in this section shall be construed as depriving the Prosecutor-General, or public prosecutor with his authority or on his behalf, of the right of withdrawing any indictment, summons or charge at any time before the accused has pleaded, and lodging a fresh indictment or charge or issuing and serving a fresh summons for hearing before the same or any other competent court.

321 Liberation of accused persons

Any person who is acquitted on any indictment, summons or charge or whose case has been dismissed for want of prosecution shall forthwith be discharged from custody.

322 Further proceedings against accused discharged for want of prosecution or whose recognizance has expired

(1) A person who—

(a) has been discharged in terms of section *three hundred and twenty-one* for want of prosecution; or

(b) has been admitted to bail but not duly brought to trial; may be brought to trial in any competent court for any offence for which he was formerly committed to prison or admitted to bail at any time before the period of prescription for the offence has run out:

Provided that, subject to subsection (2), a person referred to in—

(a) paragraph (*a*) or (*b*) of this subsection shall not be liable to be committed to custody; or

(b) paragraph (*b*) of this subsection shall not be liable to find further bail; in respect of proceedings for an offence referred to in this subsection.

(2) A person referred to in subsection (1) who was committed for trial for an offence referred to in that subsection may be prosecuted by the Prosecutor-General before the High Court for that offence, and if that person, having been duly served with an indictment and notice of trial, fails to appear at the time mentioned in such notice, the court may, on the application of the Prosecutor-General, issue a warrant for his arrest and detention in prison until he can be brought to trial or until he finds bail for his appearance to stand his trial on the said indictment.

PART XVI

PREVIOUS CONVICTIONS, FINGER-PRINTS, ETC.

323 Previous conviction not to be charged in indictment

Except where the fact of a previous conviction is an essential element of the offence with which a person is charged, it shall not be lawful in any indictment, summons or charge against any person for any offence to allege that such person had been previously convicted of any offence, whether in Zimbabwe or elsewhere.

[Section as amended by Act 23 of 2004]

324 Previous conviction not to be proved, except in certain circumstances

Except in circumstances specifically described in this Act, it shall not be lawful to prove at the trial of any person for any offence that he has been previously convicted of any offence, whether in Zimbabwe or elsewhere, or to ask any accused person, charged and called as a witness, whether he has been so convicted.

325 Tendering admission of previous conviction after accused has pleaded guilty or been found guilty

When any person indicted before the High Court for any offence has been previously convicted of any offence, whether in Zimbabwe or elsewhere, it shall be lawful for the prosecutor if the accused has in terms of section *eighty-six* admitted that he has been so previously convicted and his admission has also been subscribed by the magistrate in accordance with that section, and if further he has pleaded guilty to or has been found guilty of the offence, and before sentence is pronounced, to tender the admission in proof of the previous conviction, and such admission shall be received by the court upon its mere production as proof of the previous conviction unless it is shown that the admission was not in fact duly made or that the signatures or marks thereto are not in fact the signatures or marks of the accused and the magistrate respectively:

Provided that if the accused made the admission in terms of section *eighty-six*, but refused to subscribe the same by signature or mark, a solemn declaration signed by the magistrate in terms of section *eighty-six*, stating that the accused did so make the admission but refused to subscribe the same, shall, upon its mere production, be sufficient evidence that the accused admitted the previous conviction.

326 Notice that proof of former conviction will be offered

(1) When any person indicted in the High Court for any offence has been previously convicted, whether in Zimbabwe or elsewhere, it shall be lawful for the prosecutor in that court, in cases in which the procedure prescribed by section *eighty-six* has not been followed or when he has denied such previous conviction, to give notice to him that, in the event of his pleading guilty or being found guilty of the offence for which he is indicted, proof will be given of such previous conviction. (2) The period of the notice required under subsection (1) shall be not less than seventy-two hours.

327 Mode of proof of previous conviction

(1) When notice has been duly served on the accused that evidence of a previous conviction will be given against him as provided by section *three hundred and twenty-six* it shall be lawful, if the accused pleads guilty or after he has been found guilty, for the prosecutor before sentence is pronounced to offer to prove such previous conviction, and thereupon the court shall ask the accused whether he confesses that he is the person so appearing to have been previously convicted and whether he was so convicted as alleged.

(2) If such person does not confess that he has been so convicted, the court shall determine the truth as to such of the alleged previous convictions as the accused has not confessed or admitted in the manner aforesaid.

[Subsection amended by section 28 of Act 9 of 2006.]

(3) If the trial is before a magistrates court, the prosecutor may, after the accused has pleaded guilty or has been found guilty, tender evidence of such previous convictions as he may allege in respect of the accused and thereupon the court shall ask the accused whether he is the person so alleged to have been previously convicted,

and shall proceed to determine the truth as to such of the alleged previous convictions as the accused has not confessed or admitted.

(4) If on any trial any previous conviction is lawfully proved against the accused or if he confesses or has admitted such previous conviction, the court shall take it into consideration in determining sentence for the offence to which he has pleaded or of which he has been found guilty.

328 Taking of finger-prints, palm-prints or footprints after conviction

The court which has convicted an accused person may, at the request of the prosecutor, order that the fingerprints, palm-prints or footprints of that person be taken.

329 Finger-print and other records to be *prima facie* evidence of previous conviction

Notwithstanding any provision of the law of evidence, any finger-print records, photographs or other documents purporting to be certified under the hand of any police officer, prison officer or immigration officer of Zimbabwe or elsewhere shall, at the trial of any person accused of any crime or offence, be admissible before any court as *prima facie* evidence against such accused person, either in proof of any previous conviction or of any other fact relative to the issue:

Provided that the said finger-print records, photographs or documents shall be produced to such court by a police officer, prison officer or immigration officer of Zimbabwe having the custody for the time being of such finger-print records, photographs or documents.

PART XVII

JUDGMENT ON CRIMINAL TRIAL

330 Withdrawing charges

(1) When an indictment, summons or charge containing more counts than one is framed against the same person, and when a conviction has been obtained on one or more of them, the prosecutor may withdraw the remaining charge or charges.

(2) A withdrawal in terms of subsection (1) shall have the effect of an acquittal on such charge or charges, unless the conviction is set aside.

(3) On the withdrawal of any charge, the court, subject to the order of the court setting aside the conviction, may, upon the application of the Prosecutor-General, proceed with the trial of the charge or charges so withdrawn.

331 Arrest of judgment

(1) A person convicted of an offence by the High Court, whether on his plea of guilty or otherwise, may at any time before sentence apply to that court that judgment be arrested on the ground that the indictment does not disclose any offence.

(2) Upon the hearing of the application, the court may allow any such amendment of the indictment as it might have allowed before verdict.

(3) The court may either hear and determine the application forthwith or may reserve the question of law for the consideration of the Supreme Court and may nevertheless pass sentence forthwith.

332 Decision may be reserved

Any judge or magistrate presiding over a court before which any person is tried for an offence may reserve the giving of his final decision on questions raised at the trial, and his decision when given shall be considered as given at the time of trial.

333 Sentence in High Court

(1) If an application for arrest of judgment is not made or is dismissed, the High Court may either pass sentence upon the convicted person forthwith or may discharge him on his recognizance, as provided in Part XVIII, on condition that he shall appear and receive judgment at some future session of the court or when called upon. (2) If sentence is not passed forthwith, any judge may pass sentence upon the convicted person.

334 Provisions applicable to sentences in all courts

(1) All judgments and sentences in criminal proceedings before any court against persons who are of or above the age of eighteen years shall be pronounced in open court.

(2) A court may order that no person shall be present when judgment and sentence are pronounced in any criminal proceedings before any court against a person under the age of eighteen years or during the proceedings mentioned in subsection (3) in respect of the accused except—

(a) the accused and any person against whom such proceedings are being held jointly with the accused;

(b) the legal representative or spouse of the accused and any co-accused;

(c) a parent or guardian or person *in loco parentis* of the accused and of any co-accused who is under the age of eighteen years;
(d) an officer of court;
(e) a person whose presence is necessary in connection with such proceedings;
(f) a person authorized to be present at such proceedings by the judge or magistrate presiding thereat. (3) The court may, before passing sentence and for the purpose of informing itself as to proper sentence to be passed, receive—
(a) evidence on oath, including hearsay evidence;
(b) affidavits and written reports which may be tendered by the prosecutor, the accused or his legal representative;
(c) written statements made by the prosecutor, the accused or his legal representative; (*d*) statements not on oath made by the accused:

Provided that—

(i) no hearsay evidence, other than evidence of a statistical nature, and no affidavit, written report or written statement shall be called or tendered by the prosecutor unless the accused or his legal representative consents thereto;
(ii) no hearsay evidence, other than evidence of a statistical nature, and no affidavit, written report or written statement shall be called or tendered by the accused or his legal representative unless the prosecutor consents thereto;
(iii) the court in which any affidavit or written report is tendered may cause the person making it to be summoned to give oral evidence in the proceedings;
(iv) no hearsay evidence, other than evidence of a statistical nature, shall be given by a witness called by the court pursuant to its powers conferred by section *two hundred and thirty-two* unless both the prosecutor and the accused or his legal representative consent thereto.

(4) …..

[Subsection repealed by section 26 of Act 9 of 2006.]

(5) Where an accused has been convicted of any offence otherwise than in terms of section *two hundred and seventy-one*, the provisions of subsection (5) of that section shall apply, *mutatis mutandis*.

(6) Any warrant for the execution of any sentence passed in a criminal case by any court may be issued either by the judge or magistrate who passed the sentence or by any other judge or magistrate of that court.

(7) If, in a magistrates court, sentence is not passed upon an offender forthwith upon his conviction or if, by reason of any decision or order of the Supreme Court or High Court, as the case may be, on appeal, review or otherwise, it is necessary to add to or vary any sentence passed in a magistrates court, or to pass sentence anew in such court, any magistrate of that court may, in the absence of the magistrate who convicted the offender or passed the sentence, as the case may be, pass sentence on the offender after consideration of the evidence recorded and in the presence of the offender.

334A Sentencing guidelines

(1) In this section—

"draft sentencing guidelines" means sentencing guidelines that have not been published in accordance with subsection (10) or (11)(*b*)(i) or (ii);

"judicial conference" means a conference convened in terms of subsection (3);

"presumptive penalty" means a penalty expressed as a specific amount of a fine or a specific period of imprisonment or both that is midway between an augmented penalty which may be imposed in aggravating circumstances (whether or not these circumstances are specified in the enactment concerned), and a diminished penalty which may be imposed in mitigating circumstances (whether or not these circumstances are specified in the enactment concerned);

"sentencing guidelines" means guidelines relating to the sentencing of offenders, which have been formulated in terms of this section;

"table of presumptive penalties" means a table setting forth for each offence included in the table, a presumptive penalty, together with the aggravating and mitigating circumstances that may justify a court in departing from the presumptive penalty.

(2) For the avoidance of any doubt it is declared that this section must not be construed as derogating from or infringing upon the exclusive competence of the Legislature to enact punishments for breaches of any law, including the enactment of maximum, minimum and presumptive levels of any fine or maximum, minimum and presumptive lengths of any sentence of imprisonment.

(3) The Judicial Service Commission may from time to time convene a conference bringing together representatives of---

(a) judges of the Constitutional Court, the Supreme Court and the High Court; and
(b) magistrates; and
(c) the National Prosecuting Authority; and
(d) the Police Service; and
(e) the Prisons and Correctional Service; and
(f) the Law Society of Zimbabwe; and
(g) such other organisations and bodies as, in the Commission's opinion, have expertise or an interest in crime, punishment and the rehabilitation or treatment of criminals;

for the purpose of studying and discussing the objectives, policies, standards and criteria for sentencing offenders, and formulating draft sentencing guidelines

(4) The procedure to be followed at a judicial conference shall be as prescribed or, in relation to any matter that is not prescribed, as determined by the Judicial Service Commission.

(5) Draft sentencing guidelines may relate to all matters relating to the sentencing of offenders and, in particular, to—

(a) inquiries and investigations to be conducted by courts prior to sentencing offenders;
(b) the factors to be considered by courts when sentencing offenders;
(c) forms of punishment that may be imposed as alternatives to custodial sentences;
(d) principles and criteria which will assist in promoting consistency in sentencing and the equitable administration of criminal justice in Zimbabwe;

and they may be formulated so as to be general in nature or so as to apply to particular offences or classes of offences or to particular classes of offenders.

(6) In formulating draft sentencing guidelines, a judicial conference shall pay regard to—

(*a*) the need to promote consistency in sentencing; and (*b*) the impact of sentencing decisions on offenders and their families as well as on victims of offences; and
(c) the need to promote public confidence in the criminal justice system; and
(d) the cost of different sentences and their relative effectiveness in rehabilitating offenders and reducing crime.

(7) Unless a judicial conference agrees upon some other form, draft sentencing guidelines shall be in the form of a table of presumptive penalties supplemented by additional guidelines addressing such of the factors referred to in subsection (5) as are relevant to each offence or class of offence included in the table.

(8) As soon as practicable after a judicial conference has formulated draft sentencing guidelines, the Judicial Service Commission shall approve them, with or without amendments, for submission to the Minister in terms of subsection (9).

(9) As soon as practicable after approving the draft sentencing guidelines, with or without amendments, the Judicial Service Commission shall, subject to subsection (10), submit them to the Minister for publication as regulations in terms of section 389, and upon such publication the courts shall pay due regard to the applicable sentencing guidelines when sentencing offenders and, while not being bound by the guidelines, must, when departing from them in any case, record the reasons for doing so.

(10) The Minister must publish the draft sentencing guidelines substantially in the form in which he or she receives them from the Judicial Service Commission, unless he or she has any substantial objections to them, in which event the Minister must return them (together with written notification of his or her objections and of the reasons for them) to Judicial Service Commission for consideration of his or her objections by the Judicial Service Commission or, if the Commission so determines, at the next judicial conference following the notification of his or her objections.

(11) If after notification of the Minister's objections to the draft sentencing guidelines the Judicial Service Commission or, as the case may be, the next judicial conference—

(a) upholds the Minister's objections, the Judicial Service Commission shall resubmit them with the appropriate amendments to the Minister for publication as regulations in terms of section 389;

(b) declines, in whole or in part, to uphold the Minister's objections, the Judicial Service Commission shall resubmit them, together with the reasons for the Commission or the judicial conference so declining, to the Minister, who may thereupon—

(i) publish them substantially in the form in which he or she first received them from the Judicial Service Commission; or

(ii) publish such part of them as the Minister did not object to in his or her original notification of objections under subsection (7); or

(iii) refuse to publish them as regulations in terms of section 389.

(12) Sentencing guidelines may be amended, replaced or revoked by a subsequent judicial conference, and thereupon subsections (5) to (11) shall apply to such amendment, replacement or revocation.

[Section inserted by section 41 of Act 2 of 2016]

335 Consideration of other offences admitted by accused

(1) Upon convicting an accused of any offence, the court may, with the prosecutor's consent and on application by the accused, pass sentence upon the accused for other untried offences as if they had been separately charged if the court is satisfied that the accused freely and voluntarily admits having committed those other offences.

(2) Notwithstanding anything to the contrary in section 56 of the Magistrates Court Act [*Chapter 7:10*], a magistrates court may, in terms of subsection (1), pass sentence upon the accused for an offence notwithstanding the fact that no act, omission or event which is an element of the offence took place in the province or regional division for which the court is established.

(3) If the court passes sentence upon the accused for an offence in terms of subsection (1), the court shall record—

(a) the date, place and nature of the offence; and

(b) the sentence passed upon the accused in respect thereof; and the accused shall be deemed to have been convicted and sentenced for the offence.

(4) If the conviction of the offence with which the accused was charged is set aside on appeal or review, the conviction and sentence referred to in subsection (3) shall be deemed to be set aside:

Provided that no person shall be entitled to plead that he has already been acquitted of an offence with which he is charged by virtue of the setting aside of a conviction in terms of this subsection.

PART XVIII

PUNISHMENTS

335A Interpretation in Part XVIII

In this Part—

"community service" means any service for the benefit of the community or a section thereof which an offender is required to render in terms of community service order or an order made under section *three hundred and forty-seven* or *three hundred and fifty-eight*;

"community service order" means an order under section *three hundred and fifty A*.

[Section inserted by section 10 of Act 8 of 1997.]

336 Nature of punishments

(1) Subject to this Act and any other law, a court may impose the following punishments upon a convicted offender—

(a) in the case of the High Court, sentence of death, where the offender is convicted of murder in aggravating circumstances;

[Paragraph substituted by section 42 of Act 2 of 2016]

(b) imprisonment for life;

[Paragraph as substituted by section 11 of Act 8 of 1997.]

(*b*1) imprisonment for a determinate period;

[Paragraph inserted by section 11 of Act 8 of 1997.]

(c) extended imprisonment in terms of section *three hundred and forty-six*; (*d*) a fine;

(*d*1) community service;

[Paragraph inserted by section 11 of Act 8 of 1997.]

(*e*) where the convicted person is a male person under the age of eighteen years, corporal punishment; (*f*) putting the convicted person under recognizance with conditions.

(2) Nothing in subsection (1) shall be construed as—

(a) authorizing a court to impose for any offence a punishment other than, or in excess of, the punishment which by law it is competent for that court to impose for that offence; or

(b) preventing a court from imposing a punishment other than a punishment referred to in subsection (1), where the court is specially authorized by any enactment to impose such other punishment.

A. Sentence of death

337 Sentence for murder

(1) Subject to section 338, the High Court may pass sentence of death upon an offender convicted by it of murder if it finds that the murder was committed in aggravating circumstances.

(2) In cases where a person is convicted of murder without the presence of aggravating circumstances, or the person is one referred to in section 338(*a*), (*b*) or (*c*), the court may impose a sentence of imprisonment for life, or any sentence other than the death sentence or imprisonment for life provided for by law if the court considers such a sentence appropriate in all the circumstances of the case.

[Section substituted by section 43 of Act 2 of 2016]

338 Persons upon whom death sentence may not be passed

The High Court shall not pass sentence of death upon an offender who— (*a*) was less than twenty-one years old when the offence was committed; or

(*b*) is more than seventy years old; or (*c*) is a woman.

[Section substituted by section 43 of Act 2 of 2016]

339 Sentence of death

(1) The form of sentence to be pronounced upon a person who is convicted of an offence punishable with death and sentenced to death shall be that he be returned to custody and that the sentence of death shall be executed according to law.

(2) Where the sentence of death is carried out the person sentenced shall be hanged by the neck until he is dead.

340 Copy of evidence to be transmitted to President

(1) If any sentence of death is pronounced by the High Court, a copy of the evidence shall be transmitted to the President and the sentence shall not be carried out until confirmed by him. (2) The President may signify his confirmation in terms of subsection (1) by telegraph.

341 Examination of woman convicted of certain offences

(1) Where upon the conviction of a woman of any offence referred to in paragraph (*a*) or (*b*) of section *three hundred and thirty-seven* a judge is of the opinion that the death sentence is the appropriate penalty and has reason to suspect that the woman is pregnant, he shall not pass sentence upon her until he has determined from evidence led before him whether the woman is pregnant or not.

(2) For the purpose of making the determination referred to in subsection (1), the judge shall direct one or more medical practitioners who are registered in terms of the Health Professions Act [*Chapter 27:19*] to examine the woman privately, either together or successively, and to ascertain whether she is pregnant or not.

[Subsection amended by section 151 of Act 6 of 2000.]

342 Manner of carrying out death sentence

(1) As soon as practicable after a sentence of death is passed the judge who passed the sentence or any other judge of the court shall issue his warrant to the Sheriff or his deputy for the execution of the sentence, but such warrant shall not be executed until the Prosecutor-General has, in writing signed by him, given notice to the Sheriff or the deputy that the President has decided not to grant a pardon to or reprieve the person so sentenced or otherwise exercise the prerogative of mercy in respect of him.

(2) As soon after the receipt of the notice referred to in subsection (1) by the Sheriff or his deputy as fitting arrangements for the carrying out of the sentence can be made in or in the precincts of a prison appointed in accordance with law for the carrying out of sentences of capital punishment, the Sheriff or his deputy shall execute the judge's warrant issued to him in terms of subsection (1) in the appointed prison or its precincts:

Provided that the Sheriff or his deputy shall not execute the judge's warrant if at any time the ProsecutorGeneral, by notice in writing under his own hand to the Sheriff or the deputy sheriff, intimates that the President has decided to grant a pardon or reprieve to the person so sentenced or otherwise to exercise the prerogative of mercy with regard to him.

(3) Any notice by the Prosecutor-General under the proviso to subsection (2) shall be construed for all purposes as a cancellation of the judge's warrant.

B. Imprisonment and fine

343 Cumulative or concurrent sentences

(1) When a person is convicted at one trial of two or more different offences or when a person under sentence or undergoing punishment for one offence is convicted of another offence, the court may sentence him to such several punishments for such offences or for such last offence, as the case may be, as the court is competent to impose.

(2) When sentencing any person to punishments in terms of subsection (1), the court may direct the order in which the sentences shall be served or that such sentences shall run concurrently.

344 Discretion of court as to amount and nature of punishment

(1) Where any person is liable by law to a sentence of imprisonment for life or for any period, he may be imprisoned for any shorter period.

[Subsection amended by section 13 of Act 8 of 1997 and by section 49 of Act 2 of 2016.]

(2) A person liable by law to be sentenced to pay a fine of any amount may be sentenced to pay a fine of any lesser amount.

(3) Subsections (1) and (2) shall not apply to any offence for which a minimum penalty is prescribed in the enactment prescribing a punishment for the offence.

344A Imprisonment for life

Subject to any other law, the effect of a sentence of imprisonment for life imposed on or after the date of commencement of the Criminal Procedure and Evidence Amendment Act, 1997, shall be that the person so sentenced shall remain imprisoned for the rest of his life.

[Section inserted by section 14 of Act 8 of 1997.]

345 Periodical imprisonment

(1) For the purposes of this section—

"appropriate prison" means a prison specified by the Minister, by statutory instrument, as a prison in which a person may be sentenced to undergo periodical imprisonment in terms of this section.

(2) If a court convicts a person of an offence specified in the Sixth Schedule, it may, in lieu of any other punishment referred to in subsection (2) of section *three hundred and thirty-six* and after ascertaining from the officer in charge of the appropriate prison that accommodation for the purpose is available, sentence that person to undergo, in accordance with the law relating to prisons, periodical imprisonment in that prison for a period of not less than ninety-six hours and not more than two thousand hours.

(3) The court imposing a sentence of periodical imprisonment upon any person in terms of this section shall—

(a) cause such photographs, finger-prints, palm-prints or footprints of that person to be taken as are reasonably necessary for identification purposes; and

(b) cause that person to be furnished with a written notice in the prescribed form directing that he shall, on a date and at a time specified in the notice or, if prevented from doing so by circumstances beyond his control, as soon as possible thereafter, surrender himself for the purpose of undergoing that imprisonment to the officer in charge of the prison specified in the notice.

(4) A copy of the notice referred to in subsection (3) shall serve as a warrant for the admission into the prison concerned of the convicted person and his confinement therein in accordance with the law relating to prisons.

(5) A person who—

(a) without lawful excuse, the proof whereof shall be on him, fails to comply with a notice with which he has been furnished in terms of paragraph (*b*) of subsection (3); or

(b) surrenders himself for the purpose of undergoing periodical imprisonment while under the influence of intoxicating liquor or narcotic drugs; or

(c) impersonates or falsely represents himself to be a person who has been directed to surrender himself for the purpose of undergoing periodical imprisonment;

shall be guilty of an offence and liable to imprisonment for a period not exceeding three months.

(6) If, before the expiry of a sentence of periodical imprisonment imposed on a person in terms of this section, that person undergoes punishment consisting of any other form of detention imposed by any court, any magistrate before whom that person is brought shall set aside the unexpired portion of the sentence of periodical imprisonment and, after considering the evidence recorded in respect of the offence in respect of which the sentence of periodical imprisonment was imposed, may impose, in lieu of such unexpired portion, any punishment which is competent for that offence and does not exceed his own punitive jurisdiction in respect of that offence.

(7) The Minister may, by notice in a statutory instrument, add to, amend or replace the whole or any part of the Sixth Schedule:

Provided that it shall not be competent to include in the Sixth Schedule any offence for which a sentence of death or a minimum penalty is prescribed by any enactment.

(8) A sentence of periodical imprisonment provided for by this section shall not be regarded as a sentence of imprisonment without the option of a fine for the purposes of any enactment relating to a disqualification unless that enactment provides otherwise.

346 Extended imprisonment

(1) Subject to this section, in the exercise of his powers in terms of section *two hundred and twenty-eight* or *three hundred and thirty-three*, a judge may sentence to extended imprisonment any person who has been convicted of an offence specified in the Seventh Schedule if that person—

(a) has, either in Zimbabwe or elsewhere, been previously convicted in at least three separate trials of any one or more of the offences specified in the Seventh Schedule; and

(b) had attained the age of twenty-five years when he sustained the last of the three convictions referred to in paragraph (*a*).

(2) In deciding whether or not to sentence a person to extended imprisonment in terms of this section, a judge shall have regard to all the circumstances of the case and of the offender, and in particular to—

(a) the seriousness of the offences specified in the Seventh Schedule of which the offender has been convicted; and

(b) the need to protect the public; and (*c*) the prospects for reforming the offender.

(3) A sentence of extended imprisonment imposed in terms of this section shall endure—

(a) where the offender has not previously been sentenced to extended imprisonment, for not less than seven years and not more than fifteen years;

(b) where the offender has previously been sentenced to extended imprisonment, for not less than fifteen years and not more than twenty years; and, when imposing such a sentence, a judge shall inform the offender of the maximum and minimum periods of the sentence specified in paragraph (*a*) or (*b*), as may be appropriate.

(4) A person sentenced to extended imprisonment in terms of this section shall be dealt with as provided in any enactment relating to the management of prisons and the treatment of persons so sentenced.

(5) For the purposes of subsection (3), a person who, before the 6th May, 1983, had been declared a habitual criminal shall be deemed to have previously been sentenced to extended imprisonment.

346A ….

[Section repealed by Act 23 of 2004

347 Imprisonment or community service in default of payment of fine

(1) Subject to this section, a court which imposes a sentence of a fine upon an offender may do either or both of the following

(a) impose, as an alternative punishment to the fine, a sentence of imprisonment of any duration within the limits of the court's punitive jurisdiction;

(b) permit the offender, as an alternative to paying the fine, to render such community service as may be specified by the court.

(2) The period of any sentence of imprisonment imposed in terms of paragraph (*a*) of subsection (1) shall not, either alone or together with any period of imprisonment imposed on the offender as a direct punishment for the same offence, exceed the longest period of imprisonment prescribed by any enactment as a punishment for the offence.

(3) Where a court has imposed upon an offender a sentence of a fine without an alternative referred to in paragraph (*a*) or (*b*) of subsection (1) and the fine has not been paid in full or has not been recovered in full by a levy in terms of section *three hundred and forty-eight*, the court may issue a warrant directing that the offender be

arrested and brought before the court, which may thereupon impose such sentence of imprisonment and additionally, or alternatively, permit him to render such community service, as is provided in subsection (1).

(4) Nothing in this section shall be construed as limiting the power of a court under section *three hundred and fifty-eight* to postpone or suspend any sentence.

(5) A court may exercise the powers conferred upon it by this section even in relation to an offence prescribed in an enactment which purports

(*a*) to limit the duration of a sentence of imprisonment that may be imposed as an alternative to a fine; or (*b*) to permit only a sentence of imprisonment to be imposed as an alternative to a fine:

Provided that this subsection shall not apply where a minimum penalty is prescribed in the enactment concerned as punishment for the offence.

[Section substituted by section 15 of Act 8 of 1997.]

348 Recovery of fine

(1) When an offender is sentenced to pay a fine, the court passing the sentence may in its discretion issue a warrant addressed to the Sheriff or messenger of the court authorizing him to levy the amount by attachment and sale of any movable property belonging to the offender, although the sentence directs that in default of payment of the fine the offender shall be imprisoned or shall be permitted to render community service.

[Subsection amended by section 16 of Act 8 of 1997.]

(2) The amount which may be levied in terms of subsection (1) shall be sufficient to cover, in addition to the fine, the costs and expenses of the warrant and of the attachment and sale thereunder.

(3) A warrant in terms of subsection (1), if issued by the High Court, may be executed anywhere within Zimbabwe.

(4) A warrant in terms of subsection (1), if issued by a magistrate, shall authorize the attachment and sale of the movable property of the offender within the local limits of such magistrate's jurisdiction, and also without such limits when endorsed by a magistrate having jurisdiction in the place where the property is found.

(5) If the proceeds of the sale of the movable property are insufficient to satisfy the amount of the fine and the costs and expenses aforesaid, the High Court may issue a warrant or, in the case of a sentence by a magistrates court, may authorize such magistrates court to issue a warrant for the levy against the immovable property of the offender of the amount unpaid.

(6) Where a court issues a warrant under this section, it may suspend the execution of any sentence of imprisonment imposed as an alternative to the fine and may release the offender upon his executing a bond with or without sureties as the court thinks fit, conditioned for his appearance before the court or some other court on the day appointed for the return of the warrant, such day not being more than fifteen days from the time of executing the bond, and in the event of the amount of the fine not having been recovered, the sentence of imprisonment may be carried into execution at once or may be suspended as before for a further period or further periods of not more than fifteen days, as the court thinks fit.

[Subsection amended by section 16 of Act 8 of 1997.]

(7) In any case in which an order for the payment of money has been made on non-recovery of which imprisonment may be awarded and the money is not paid forthwith, the court may require the person ordered to make such payment to enter into a bond as provided in subsection (6), and in default of his doing so, may at once pass sentence of imprisonment as if the money had not been recovered.

(8) …

[Subsection repealed by section 16 of Act 8 of 1997.]

(9) …

[Subsection repealed by section 16 of Act 8 of 1997.]

(10) …

[Subsection repealed by section 16 of Act 8 of 1997.]

348A Effect of part payment of fine or part performance of community service

(1) Where part only of a fine imposed on an offender has been paid or recovered by levy under section *three hundred and forty-eight*—

(a) any period of imprisonment to be served by the offender as an alternative to the fine shall be reduced by the same proportion, as nearly as possible, as the amount so paid or recovered bears to the total amount of the fine;

(b) any community service which the offender is permitted to render as an alternative to the payment of the fine shall be reduced to such extent as the court may determine in order to take into account the amount so paid or recovered.

(2) Where an offender renders only part of any community service he is permitted in terms of section *three hundred and forty-seven* to render as an alternative to a fine, the court may reduce any period of imprisonment which it has imposed as an additional alternative to the fine, to such extent as the court may determine in order to take into account the service the offender has rendered.

(3) A determination in terms of paragraph (*b*) of subsection (1) or subsection (2) shall be made in the presence of the offender concerned, and subsections (5) and (6) of section *three hundred and fifty-eight* shall apply, mutatis mutandis, in regard to bringing the offender before the court for that purpose.

(4) No amount shall be accepted in part payment of a fine if it would have the effect of reducing the imprisonment to be served in terms of subsection (1) by a fractional part of a day.

[Section inserted by section 17 of Act 8 of 1997]

349 Court may enforce payment of fine from moneys on accused or salary or wages of accused

Where a person is sentenced to pay a fine, whether with or without an alternative sentence of imprisonment, the court may, without prejudice to any other power under this Act relating to the payment of a fine, enforce payment of the fine, whether as to the whole or part thereof— (*a*) by seizure of moneys upon the person concerned; or

(*b*) if money is due or is to become due as salary or wages from any employer of the person concerned, by—

(i) from time to time ordering the employer to deduct a specified amount from the salary or wages so due and to pay over such amount to the clerk of the court in question; or

(ii) ordering the employer to deduct from time to time a specified amount from the salary or wages from the employer due and to pay over such amount to the clerk of the court in question.

350 Levy of fine and costs on conviction of defamation

When any person is convicted of the unlawful publication of any defamatory matter which was published by means of printing, the prosecutor may levy the fine, if any, and costs out of any property of the offender in like manner as in civil actions.

350A Community service orders

(1) Subject to this section and to regulations made in terms of section *three hundred and eighty-nine*, a court which convicts a person of any offence may, instead of sentencing him to imprisonment or a fine, make a community service order requiring him to render service for the benefit of the community or any section of the community for such number of hours as shall be specified in the order.

(2) Where a court makes community service orders in respect of two or more offences of which the offender has been convicted, the court may direct that all or any of the hours of service specified in any of the orders shall be concurrent with those specified in any other order, and in the absence of such a direction the hours shall run concurrently.

(3) A court which makes a community service order in respect of an offender may sentence the offender to a fine and additionally, or alternatively, to imprisonment as an alternative punishment, to be paid or served, as the case may be, if he fails to render the service specified in the order.

(4) A court may make a community service order in respect of an offender even if he has been convicted of an offence under an enactment which makes provision only for a fine and additionally, or alternatively, imprisonment as punishment for the offence:

Provided that this subsection shall not apply where a minimum penalty is prescribed in the enactment concerned as punishment for the offence.

[Section inserted by section 18 of Act 8 of 1997.]

350B Performance of community service

(1) Subject to this section and to such conditions and requirements as may be prescribed, an offender in respect of whom a community service order is in force shall render the service specified in the order for the number of hours specified therein.

(2) Unless revoked, a community service order shall remain in force until the offender has rendered the number of hours' service specified in it.

[Section inserted by section 18 of Act 8 of 1997.]

350C Breach of community service order

(1) Subject to this section, if a magistrate has reason to believe, whether from information on oath or otherwise, that an offender has failed to comply with any requirement of a community service order, the magistrate may order the offender to be brought—

(a) before the High Court, where the community service order was made by that court; or

(b) before a magistrates court, where the community service order was made by that court; for the purposes of subsection (3).

(2) The magistrate may, if necessary for the purpose of an order under subsection (1), order the offender to be arrested without warrant and, unless the offender is admitted to bail in terms of Part XI, to be detained in prison.

(3) If the court is satisfied that an offender who has been brought before it in terms of subsection (1) has failed to comply with any requirement of a community service order, the court may—

(a) amend or extend the order in such manner as the court thinks will best ensure that the offender renders the service specified in the order; or

(b) revoke the order and

(i) order the offender to pay any fine or undergo any imprisonment that was imposed on him as an alternative punishment in terms of subsection (3) of section *three hundred and fifty A*; or

(ii) where the court that made the order did not impose an alternative punishment in terms of subsection (3) of section *three hundred and fifty A*, deal with the offender for the offence in respect of which the order was made in any manner in which that court could have dealt with him;

or

(*c*) make such other order or direction in the matter as the court considers just.

(4) Where a court makes an order referred to in subparagraph (i) of paragraph (*b*) of subsection (3), the court may reduce any fine to be paid or imprisonment to be undergone by the offender concerned to such extent as the court considers appropriate in order to take into account any service the offender rendered in compliance with the community service order concerned.

(5) An offender who is dealt with by a court under the powers conferred on it by subparagraph (ii) of paragraph (*b*) of subsection (3) shall have the same right of appeal against any sentence or order of the court as if the sentence or order had been imposed in a criminal trial.

[Section inserted by section 18 of Act 8 of 1997.]

350D Amendment or revocation of community service order

(1) Subject to this section, on the application of

(a) the offender concerned or, if he is a minor, his parent or lawful guardian; or

(b) the Prosecutor-General or a public prosecutor; a court may

(i) amend a community service order; or

(ii) revoke a community service order and deal with the offender for the offence in respect of which the order was made in any manner in which the court which made the order could have dealt with him;

if the court considers it would be in the interests of justice to do so having regard to circumstances which have arisen since the order was made.

(2) A community service order made by

(a) the High Court, shall not be amended or revoked in terms of subsection (1) except by the High Court;

(b) a magistrate, shall not be amended or revoked in terms of subsection (1) except by that magistrate or by another magistrate who has the same or greater jurisdiction to impose punishment in criminal cases.

(3) A court may order an offender to be brought before it for the purposes of an application in terms of subsection (1) and, if necessary, may order him to be arrested without warrant and, unless admitted to bail in terms of Part XI, to be detained in prison.

(4) An offender who is dealt with by a court under the powers conferred on it by paragraph (ii) of subsection (1) shall have the same right of appeal against any sentence or order of the court as if the sentence or order had been imposed in a criminal trial.

[Section inserted by section 18 of Act 8 of 1997.]

C. Special provisions relating to punishment of juveniles

351 Manner of dealing with convicted juveniles

(1) In this section—

"reform school" means a reform school as defined in section 1 of the Children's Act of the Republic of South Africa, as amended from time to time;

"training institute" means a training institute as defined in section 2 of the Children's Act [*Chapter 5:06*].

[Definition amended by section 49 of Act 23 of 2001.]

(2) Any court before which a person under the age of nineteen years has been convicted of any offence may, instead of imposing a punishment of a fine or imprisonment for that offence, subject to subsection (1) of section *three hundred and thirty-seven*—

(a) order that he shall be taken before a children's court and dealt with in terms of the Children's Act [*Chapter 5:06*]; or

[Paragraph amended by section 4;9 of Act 23 of 2001.]

(b) after ascertaining from the Minister responsible for social welfare that accommodation is available, order that he shall be placed in a training institute in Zimbabwe or in a reform school in the Republic of South Africa for the period specified in subsection (1) of section *three hundred and fifty-two*.

(3) Any court before which a person who is nineteen years of age or more but who is under twenty-one years of age has been convicted of any offence other than murder, treason or rape may, instead of imposing a punishment of a fine or imprisonment on him for that offence—

(a) order that he shall be placed under the supervision of a probation officer or any other suitable person designated in the order for the period specified in subsection (1) of section *three hundred and fifty-two* and that he shall reside as directed by the court from time to time; or

(b) after ascertaining from the Minister responsible for social welfare that accommodation is available, order that he shall be placed in a training institute in Zimbabwe or in a reform school in the Republic of South Africa for the period specified in subsection (1) of section *three hundred and fifty-two*.

(4) Where a magistrates court orders that any person shall be placed in a training institute or reform school in terms of subsection (2) or (3), such court shall forward the proceedings to the registrar of the High Court for review and the provisions of section 57 of the Magistrates Court Act [*Chapter 7:10*] and section 29 of the High Court Act [*Chapter 7:06*] shall apply, *mutatis mutandis*, in relation to any such review.

(5) When any court orders a person to be detained in a training institute or reform school in terms of subsection (2) or (3), a warrant shall be issued by the court for the purpose setting forth the offence for which such person has been convicted and his age and the said warrant shall be transmitted to the Director of Social Welfare and shall be the authority for the conveyance of that person to that training institute or reform school and his detention therein.

(6) With a warrant referred to in subsection (5) the court shall also transmit to the Director of Social Welfare an account of the history and antecedents of the person who is the subject of the warrant so far as may be ascertainable by the court.

(7) If an order has been made in terms of paragraph (*a*) of subsection (2) or paragraph (*a*) of subsection (3) upon the conviction of a person, that conviction shall not, for the purposes of any enactment, be regarded as a conviction:

Provided that if such person is convicted on a second or subsequent occasion before he attains the age of eighteen years, it shall be lawful to prove that earlier conviction as a conviction.

352 Period of retention or supervision

(1) In this section—

"the period of retention" means the period during which a person shall, in terms of subsection (2), remain in a training institute, reform school, certified institution or South African institution.

(2) Any person in respect of whom an order in terms of paragraph (*b*) of subsection (2) or paragraph (*a*) or (*b*) of subsection (3) of section *three hundred and fifty-one* has been made shall remain in the training institute or reform school or under the supervision in which he has been placed or in the certified institution, training institute or South African institution or under the supervision or custody to which he has been transmitted in terms of the Children's Act [*Chapter 5:06*]—

(a) until a period of three years from the date of the order has elapsed; or

(b) until he is released on licence in terms of the Children's Act [*Chapter 5:06*]; or

(c) until he has been discharged from the effect of the order in terms of the Children's Act [*Chapter 5:06*]; whichever is the soonest.

(3) After the expiration of the period of retention of a person in a training institute, reform school or certified institution, whether by effluxion of time or release on licence, he shall remain under the supervision of the management of the training institute, reform school or certified institution—

(a) for a period not exceeding three years from the time of the expiry of his period of retention; or

(b) until he is discharged from the supervision in terms of the Children's Act [*Chapter 5:06*]; or

(c) until he attains the age of twenty years; whichever is the soonest.

(4) Where a court is satisfied, on the application of—

(a) the Minister to whom the administration of the Children's Act [*Chapter 5:06*] is assigned; or

(b) the parent or legal guardian of the person concerned; that a further period in a training institute, reform school or certified institution would advance the education or welfare of a person who has been placed in such an institute, school or institution and whose period of retention has expired or is about to expire, the court may order that person to return to or remain in the institute, school or institution concerned for a further period or periods, as it may fix, and may at any time revoke such order.

(5) Where the Minister to whom the administration of the Children's Act [*Chapter 5:06*] has been assigned is satisfied that a further period in a training institute, reform school or certified institution would advance the education or welfare of a person who has been placed in such an institute, school or institution and whose period of retention has expired or is about to expire, the Minister may order that person to return to or remain in the institute, school or institution concerned for a further period or periods, as he may fix, and may at any time revoke such order:

Provided that the Minister shall not make such order unless the parent or legal guardian of the person concerned has consented to the making of the order.

(6) The period or aggregate of the periods fixed in terms of subsection (4) or (5) shall not extend beyond—

(a) three years from the date of expiry of the period of retention of the person concerned; or

(b) the date on which the person concerned attains the age of twenty years; whichever is the sooner.

353 Corporal punishment of male juveniles

(1) Where a male person under the age of eighteen years is convicted of any offence the court which imposes sentence upon him may—

(a) in lieu of any other punishment; or

(b) in addition to a wholly suspended sentence of a fine or imprisonment; or

(c) in addition to making an order in terms of subsection (1) of section *three hundred and fifty-one*; sentence him to receive moderate corporal punishment, not exceeding six strokes.

(2) Subject to subsection (3), corporal punishment in terms of this section shall be inflicted in private.

(3) The parent or guardian of a person sentenced to corporal punishment in terms of this section shall have the right to be present when the punishment is inflicted, and the court shall advise the parent or guardian, if present when the sentence is imposed, of his right to be present when it is inflicted.

(4) Corporal punishment shall not be inflicted in terms of this section unless a medical practitioner has examined the person on whom it is to be inflicted and has certified that he is in a fit state to undergo the punishment.

(5) If a medical practitioner has certified that a person on whom corporal punishment is to be inflicted in terms of this section is not in a fit state to receive the punishment or any part of it, the person who was to have inflicted the punishment shall forthwith submit the certificate to the court that passed the sentence or to a court of like jurisdiction and the court may thereupon, if satisfied that the person concerned is not in a fit state to receive the punishment or any part of it, amend the sentence as it thinks appropriate.

(6) Subject to this section, the manner in which and place at which corporal punishment shall be inflicted, and the person who shall inflict it, shall be as prescribed.

D. Recognizances

354 Recognizances to keep the peace and be of good behaviour

(1) A person convicted of an offence not punishable with death may, in lieu of or in addition to any punishment to which he is liable, be ordered by the High Court to enter into his own recognizances, with or without sureties, in such amount as the court thinks fit that he shall keep the peace and be of good behaviour for a time to be fixed by the court, and may be ordered to be imprisoned until such recognizances with sureties, if so directed, are entered into:

Provided that the imprisonment for not entering into the recognizance shall in no case exceed one year.

(2) If any person is convicted of an offence involving assault or injury to the person, a magistrates court may, in lieu of or in addition to any other punishment, order that the convicted person shall give recognizances, with or without sureties, in an amount not exceeding level six for a period not exceeding one year to keep the peace and to refrain from committing any injury against the complainant.

[Subsection amended by section 28 of Act 9 of 2006.]

(3) If any person having been ordered to give recognizances under subsection (2) refuses or fails to do so, the court may order him to be committed to prison for a period not exceeding one month, unless such recognizances are sooner found.

(4) Upon information being made on oath that a person bound by recognizances referred to in subsection (1) or (2) has failed to observe the conditions of the recognizances, any magistrate may—

(a) in the case of recognizances referred to in subsection (1), order the person to appear before a judge;

(b) in the case of recognizances referred to in subsection (2), order the person to appear before a magistrate; and, if necessary, may cause that person to be arrested and brought before a judge or magistrate, as the case may be.

(5) When the person referred to in subsection (4) appears before a judge or magistrate, as the case may be, the judge or magistrate shall inquire into the alleged breach of the recognizances and may, for the purpose, take evidence on oath from the person concerned and any other person.

(6) Where it appears to a judge or magistrate, whether after an inquiry in terms of subsection (5) or otherwise, that any person has failed to observe the conditions of the recognizances referred to in subsection (1) or (2), as the case may be, he may order the recognizances to be forfeited.

(7) An order in terms of subsection (6) shall have the effect of a civil judgment of the court.

(8) If a peace officer believes on reasonable grounds that the conditions of recognizances referred to in subsection (1) or (2) are not being observed by any person, he may arrest the person without warrant and shall, as soon as possible, bring him—

(a) in the case of the recognizances referred to in subsection (1), before a judge;

(b) in the case of recognizances referred to in subsection (2), before a magistrate; for the purposes of inquiry in terms of subsection (5) and the provisions of this section shall thereafter apply, *mutatis mutandis*.

(9) A person arrested in terms of subsection (8) shall be informed forthwith by the person arresting him of the cause of the arrest.

355 Recognizances to appear for judgment

When a person is convicted of an offence not punishable with death, the High Court may, instead of passing sentence, discharge the offender upon his entering into his own recognizances, with or without sureties, in such sum as the court may think fit to appear and receive judgment at some future sitting of the court or when called upon. *E. General and miscellaneous provisions as to punishments*

356 Payment by accused persons of fines which may be imposed for minor offences in lieu of appearance in court

(1) When any person has been summoned or warned to appear in a magistrates court or has been arrested or has been informed by a peace officer, by written notice referred to in subsection (1) of section *one hundred and forty-one* or otherwise, that it is intended to institute criminal proceedings against him for any offence, and a prescribed officer has reasonable grounds for believing that the court which will try the said person for such offence will, on convicting such person of such offence, not impose a sentence of imprisonment or a fine exceeding level three, such person may sign and deliver to such prescribed officer a document admitting that he is guilty of the said offence and—

(a) deposit with such prescribed officer such sum of money as the latter may fix; or

(b) furnish to such prescribed officer such security as the latter thinks sufficient for the payment of any fine which the court trying the case in question may lawfully impose therefor;

not exceeding level three or the maximum of the fine with which such offence is punishable, whichever is the lesser, and such person shall thereupon not be required to appear in court to answer a charge of having committed the said offence.

[Subsection amended by section 4 of Act 22 of 2001.]

(2) The document, when signed and delivered in terms of subsection (1), shall forthwith be transmitted to the clerk of the court before which the person was summoned or warned to appear or, where he has not been summoned

or warned to attend a particular court, to the clerk of any magistrates court and shall be entered by the clerk in the records of that court. (3) As soon as the document has been recorded in terms of subsection (2) it shall be laid before the court and the court shall thereupon—

(a) proceed to convict such person of the offence charged and forthwith sentence him to a fine not exceeding level three in accordance with law, whether or not it has jurisdiction in terms of section 56 of the Magistrates Court Act [*Chapter 7:10*]; or

Paragraph amended by section 4 of Act 22 of 2001.]

(b) by endorsement on the document signify its refusal to convict such person in accordance with this section.

(4) If payment of the fine has not been made in accordance with the terms of the security, the security may, if movable property has been accepted therefor, be enforced by the sale thereof, and if any balance of the proceeds of sale remains, after deduction of the amount of the fine, it shall be paid to the offender.

(5) If the sum deposited is not sufficient to pay the fine imposed, the balance remaining due shall be recovered from the offender in a manner provided by section *three hundred and forty-eight*.

(6) If the sum deposited is greater than the fine imposed by the court, the difference shall be refunded to the offender.

(7) Where the court has refused to convict the person concerned, as provided in paragraph (*b*) of subsection (3), the sum deposited shall be refunded to the person concerned and he may be prosecuted in the ordinary course and, in that case, if he has already been summoned or warned, he shall be summoned afresh to answer such charge as the public prosecutor may prefer against him.

(8) Any magistrate of the court which will try the person concerned for the offence may advise the prescribed officer as to the sum of money which the court is likely to consider an appropriate fine in any case and, in fixing the sum of money to be deposited under this section, the prescribed officer shall have regard to such advice.

(9) For the purpose of deciding whether to convict the person concerned in accordance with this section or determining the amount of the fine to be imposed, the court may have regard to any statements relevant to the offence charged which have been given to the police by any person having knowledge thereof.

(10) Where the document mentioned in subsection (1) purports to have been signed by a director, manager or secretary of a corporate body as the representative of such corporate body, such director, manager or secretary shall, notwithstanding anything contained in proviso (i) to subsection (3) of section *three hundred and eighty-five*, be presumed to have been authorized by such corporate body to plead guilty on its behalf, unless the contrary is proved.

(11) The magistrate who convicted a person under paragraph (*a*) of subsection (3) may, notwithstanding anything contained in any enactment, set aside any such conviction and order the refund to the person concerned of the fine paid by him in respect thereof, in any case in which the magistrate is satisfied that such person should not have been convicted.

357 Adjudication of minor cases in absence of accused

(1) When a summons has been issued in respect of any case in which the court has summary jurisdiction and in which the penalty prescribed by law is a fine, and only in default of payment of such fine, imprisonment, the person summoned need not appear personally and may appear through a legal practitioner duly authorized thereto:

Provided that, where there is no legal practitioner available practising before such court, then any other person may appear on behalf of the accused.

(2) Should the person summoned fail to appear, either personally or through a legal practitioner, the court may, if satisfied that such summons was duly served, and if further satisfied that the ends of justice will be met, proceed to hear such case and adjudicate thereon as fully and effectually as if such person had appeared.

(3) When a person has been convicted of an offence in his absence in terms of subsection (2), the court may direct the collection of any fine imposed, together with the costs of such collection, and further direct that, on failure to pay such fine and costs, the offender be arrested and committed to prison to undergo any sentence of imprisonment that may have been imposed as an alternative to such fine, and such direction shall be by warrant in the prescribed form.

358 Powers of courts as to postponement or suspension of sentences

(1) In this section—

"postponement" means the postponement of the passing of sentence under paragraph (*a*) of subsection (2) and includes any further postponement granted in terms of paragraph (*a*) of subsection (7);

"suspension" means the suspension of the operation of the whole or part of a sentence under paragraph (*b*) of

subsection (2) or of a warrant under paragraph (*c*) of that subsection, and includes any further such suspension granted in terms of paragraph (*a*) of subsection (7).

(2) When a person is convicted by any court of any offence other than an offence specified in the Eighth Schedule, it may—

(a) postpone for a period not exceeding five years the passing of sentence and release the offender on such conditions as the court may specify in the order; or

(b) pass sentence, but order the operation of the whole or any part of the sentence to be suspended for a period not exceeding five years on such conditions as the court may specify in the order; or

(c) pass sentence of a fine or, in default of payment, imprisonment, but suspend the issue of a warrant for committing the offender to prison in default of payment until the expiry of such period, not exceeding twelve months, as the court may fix for payment, in instalments or otherwise, of the amount of the fine, or until default has been made by the offender in payment of the fine or any such instalment, the amounts of any instalments and the dates of payment thereof being fixed by order of the court, and the court may in respect of the suspension of the issue of the warrant impose such conditions as it may think necessary or advisable in the interests of justice; or

(d) discharge the offender with a caution or reprimand.

(3) Conditions specified in terms of paragraph (*a*) or (*b*) of subsection (1) may relate to any one or more of the following matters— (*a*) good conduct;

(b) compensation for damage or pecuniary loss caused by the offence:

Provided that no such condition shall require compensation to be paid in respect of damage or loss that is the subject of an award of compensation in terms of Part XIX;

(c) the rendering of some specified benefit or service to any person injured or aggrieved by the offence:

Provided that no such condition shall be specified unless the person injured or aggrieved by the offence has consented thereto;

(d) the rendering of service for the benefit of the community or a section thereof;

(e) submission to instruction or treatment;

(f) submission to the supervision or control of a probation officer appointed in terms of the Children's Act [*Chapter 5:06*] or regulations made under section *three hundred and eighty-nine*, or submission to the supervision and control of any other suitable person;

(g) compulsory attendance or residence at some specified centre for a specified purpose;

(h) any other matter which the court considers it necessary or desirable to specify having regard to the interests of the offender or of any other person or of the public generally.

(4) If the offender has, during the period of any postponement or suspension ordered under paragraph (*a*) or (*b*) of subsection (2), observed all the conditions specified in the order, the sentence shall not be passed or enforced, as the case may be.

(5) Subject to section 55 of the Magistrates Court Act [*Chapter 7:10*] and of subsections (12) and (13), if a magistrate has reason to believe, whether from information on oath or otherwise, that a condition of any post-

ponement or suspension made in terms of paragraph (*a*), (*b*) or (*c*) of subsection (2) has been contravened or that the offender has failed to pay a fine or any instalment thereof on a date fixed in terms of paragraph (*c*) of subsection (2), he may, whether before or after the expiration of the period of postponement or suspension, order the offender to be brought—

(a) where the postponement or suspension was made by the High Court, before that court; or

(b) where the postponement or suspension was made by a magistrates court, before a magistrates court or the High Court;

for the purposes of subsection (7).

(6) The magistrate may, if necessary for the purpose of an order in terms of subsection (5), order the offender to be arrested without warrant and, unless the offender is admitted to bail in terms of Part IX, to be detained in prison.

(7) When the offender is brought before the court in accordance with an order made in terms of subsection (5), the court may commit him to undergo the sentence which may then be or has been lawfully passed or, in its discretion, the reasons whereof shall be recorded on good cause shown by the offender—

(a) grant a further postponement or suspension, as the case may be, for a further period not exceeding five years where the original postponement or suspension was in terms of paragraph (*a*) or (*b*) of subsection (2) or one year where the original suspension was in terms of paragraph (*c*) of subsection (2), subject to such conditions as might have been imposed at the time of the original postponement or suspension; or

(b) in the case of a postponement or suspension in terms of paragraph (*a*) or (*b*) of subsection (2), refuse to pass sentence or bring the suspended sentence into operation, as the case may be.

(8) Where—

(a) the condition or one of the conditions on which any period of imprisonment has been ordered to be suspended in terms of paragraph (*b*) of subsection (2) is that the offender pay by a specified date an amount of money to any person as compensation; and

(b) before the date part of such amount has been paid in terms of the order of suspension; and

(c) solely because of the contravention of the condition specified in paragraph (*a*) the court, in terms of subsection (7), commits the offender to undergo the suspended period of imprisonment;

the provisions of subsection (10) of section *three hundred and forty-eight* shall apply, *mutatis mutandis*, as though the amount referred to in paragraph (*a*) were a fine and the suspended period of imprisonment were the period of imprisonment referred to in that subsection.

(9) Where—

(a) the operation of a sentence of imprisonment or any part thereof has been suspended in terms of paragraph (*b*) of subsection (2) subject to a condition relating to any matter referred to in subsection (3); and

(b) the offender fulfils the condition in part only; the court may reduce the period of imprisonment to which it commits the offender in terms of subsection (7) to such extent as it considers appropriate in order to take account of the offender's partial compliance with the condition, and upon serving that reduced period of imprisonment the offender shall be deemed to have served the full period that was suspended subject to the condition concerned.

(10) Where the contravention of a condition of postponement or suspension made in terms of paragraph (*a*) or (*b*) of subsection (2) by the High Court consists of a conviction and sentence of a magistrates court, a record of the proceedings shall be obtained and transmitted to the registrar of the High Court and subsection (2) of section 55 of the Magistrates Court [*Chapter 7:10*] shall apply, *mutatis mutandis*.

(11) A magistrates court may, in terms of paragraph (*c*) of subsection (2), direct as a condition of the suspension of a warrant that the offender shall, if he fails to pay a fine or any instalment thereof at a specified time on any day fixed in terms of that paragraph, surrender himself to the clerk of the court concerned at such time on such day unless he has, before that time, obtained an extension of time from the court for the payment of the fine or instalment, as the case may be, and any direction in terms of this subsection shall be explained to the offender at the time of the passing of sentence.

(12) If the offender surrenders himself in accordance with a direction in terms of subsection (11) or any extension of time obtained in terms of that subsection, the provisions of subsection (7) shall apply, *mutatis mutandis*.

(13) If the offender fails to surrender himself in accordance with a direction in terms of subsection (11) or any extension of time obtained in terms of that subsection—

(a) subsections (5), (6) and (7) shall apply; and

(b) when the offender is brought before the court as referred to in subsection (7), the court may, in a summary manner, inquire into the failure of the offender to surrender himself and, unless it is proved that he has a reasonable excuse for such failure, the court may sentence him to a fine not exceeding level three or to imprisonment for a period not exceeding one month or to both such fine and such imprisonment.

[Subsection amended by section 4 of Act 22 of 2001.]

(14) Any person sentenced to a fine or imprisonment in terms of paragraph (*b*) of subsection (13) shall have the right of appeal as if he had been convicted and sentenced by the court concerned in a criminal trial.

(15) If an offender has been discharged with a caution or reprimand under paragraph (*d*) of subsection (2), the discharge shall have the effect of an acquittal, except for the purpose of— (*a*) subsection (3) or (4) of section *three hundred and twenty-seven*; or (*b*) section 62 of the Magistrates Court Act [*Chapter 7:10*].

(16) Where the court has acted under paragraph (*a*), (*b*) or (*c*) of subsection (2) and the offender changes his place of residence before the expiration of the period of the postponement or suspension, as the case may be, he shall forthwith give notice in writing to the registrar of the High Court, where the postponement or suspension was ordered by the High Court, or, where the postponement or suspension was ordered by another court, to the clerk of such court, and shall in such notice state fully and clearly where the place of residence to which he has removed is situated.

(17) Any person who contravenes subsection (16) shall be guilty of an offence and liable to a fine not exceeding level four.

[Subsection amended by section 4 of Act 22 of 2001.]

359 Magistrates court not to impose sentences of less than four days

No person shall be sentenced by a magistrates court to imprisonment for a period of less than four days, unless the sentence is that the offender be detained until the rising of the court.

360 …..

[Section repealed by section 282 of Act 23 of 2004]

PART XIX

COMPENSATION AND RESTITUTION

361 Interpretation in Part XIX

In this Part—

"injured party" means a person who is entitled to—

(a) an award of compensation in terms of section *three hundred and sixty-two, three hundred and sixtythree* or *three hundred and sixty-four*; or (*b*) an order in terms of section *three hundred and sixty-five* for the restoration of property to him.

362 Compensation for loss of or damage to property

(1) Subject to this Part, a court which has convicted a person of an offence may forthwith award compensation to any person whose right or interest in property of any description has been lost or diminished as a direct result of the offence.

(2) For the purposes of subsection (1)—

(a) if a person has been obliged as a direct result of an offence to incur expenditure in connection with any property, a court may regard the whole or any part of the expenditure as being the amount by which his right or interest in the property has been diminished, and may award him compensation accordingly;

(b) where damage is occasioned to stolen property or to property that is the subject of an attempted theft while the property is out of the owner's possession, such damage shall be deemed to have been occasioned as a direct result of the theft or attempted theft, as the case may be, of the property concerned.

363 Compensation for personal injury

Subject to this Part, a court which has convicted a person of an offence may forthwith award compensation to any person who has suffered personal injury as a direct result of the offence.

364 Compensation to innocent purchaser of property

Subject to this Part, where—

(a) a court has convicted a person of an offence involving the unlawful obtaining, possession or disposal of property of any description; and

(b) the court is satisfied that the convicted person disposed of the property for value to another person who had no knowledge that it had been unlawfully obtained or possessed or was being unlawfully disposed of, as the case may be;

the court may forthwith award compensation to that other person in an amount not exceeding the value of any consideration which he paid or gave in respect of the disposal of the property to him.

365 Restitution of unlawfully obtained property

(1) Subject to this Part, a court which has convicted a person of an offence involving the unlawful obtaining of property of any description may order the property to be restored to its owner or the person entitled to possess it.

(2) For the purposes of subsection (1), where the property referred to in that subsection consists of—

(a) money, the court may order that an equivalent amount be paid to the injured party from moneys—

(i) taken from the convicted person on his arrest or search in terms of any law; or

(ii) held in any account kept by the convicted person with a bank, building society or similar institution; or

(iii) otherwise in the possession or under the control of the convicted person;

(b) fungibles other than money, the court may order that an equivalent amount or quantity be handed over to the injured party from similar fungibles in the possession or under the control of the convicted person.

366 Cases where award or order not to be made

(1) A court shall not award compensation in terms of section *three hundred and sixty-two, three hundred and sixty-three* or *three hundred and sixty-four*—

(a) in respect of any loss or diminution of a right or personal injury where such loss, diminution or injury results from an accident arising out of the presence of a vehicle on a road, unless in the case of loss or diminution of a right it arises from damage that is treated by paragraph (*b*) of subsection (2) of section *three hundred and sixty-two* as resulting from theft;

(b) in respect of any loss or diminution of a right or personal injury—

(i) where the amount of compensation due to the injured party is not readily quantifiable; or

(ii) where the full extent of the convicted person's liability to pay the compensation is not readily ascertainable; or

(iii) unless the court is satisfied that the convicted person will suffer no prejudice as a result of the claim for compensation or restitution, as the case may be, being dealt with in terms of this Part.

(2) A court shall not order the restitution of any property in terms of section *three hundred and sixty-five* if it appears to the court that another person, who had no knowledge that the property had been unlawfully obtained, has acquired a right or interest in the property which might be prejudiced if the property were restored to its owner or to the person entitled to possess it.

367 Maximum amount of award or order

Notwithstanding any enactment limiting the civil jurisdiction of the court concerned, any court, including the court of a regional magistrate, may—

(a) award compensation in terms of section *three hundred and sixty-two*, *three hundred and sixty-three* or *three hundred and sixty-four* in any amount; or

(b) make an order in terms of section *three hundred and sixty-five* for the restitution of property, whatever the value of the property concerned.

368 Application for award or order

(1) A court shall not make an award or order in terms of this Part unless the injured party or the prosecutor acting on the instructions of the injured party applies for such an award or order.

(2) A court shall ensure, where appropriate and practicable, that any injured party is acquainted with his right to apply for an award or order in terms of this Part.

369 Evidence in connection with awards and orders

For the purpose of determining—

(a) the entitlement of an injured party to have an award or order made in his favour in terms of this Part; or

(b) the liability of a convicted person to have an award or order made against him in terms of this Part; or

(c) the amount of compensation payable in terms of this Part; a court may refer to the proceedings and evidence at the trial or receive further evidence whether documentary or verbal.

370 No payment of security *de restituendo* where court makes award against accused

Where a court makes an award or order in terms of this Part it shall not require the injured party to give security for the repayment of the compensation or the return of the property.

[Section substituted by section 4 of Act 5 of 2011]

371 Liability under awards and orders to be joint and several

Where a court makes an award or order in terms of this Part against two or more convicted persons, their liability under the award or order shall be joint and several, unless in any particular case the court orders otherwise.

372 Enforcement of awards and orders

(1) No later than thirty days after an award or order is made in terms of this Part by a court, any interested party shall, unless the accused has earlier complied with the award or order, lodge a copy of the award or order with the clerk or registrar of the court that made the award or order or, if that court has no civil jurisdiction, with the clerk of a court within the same province having civil jurisdiction or the nearest High Court registry, as the case may be:

Provided that where the award or order is not registered within the period allowed, the interested party must apply to the registering court showing good cause why the period should be extended in his or her favour.

(2) Upon lodgement of a copy of an award or order in terms of subsection (1) the clerk or registrar shall record the award or order, and thereupon the award or order shall have the same effect as a civil judgment of the court given against the person who is named in the order as being liable to pay the compensation or restore the property, as the case may be.

(3) Where an accused against whom an award or order is made in terms of this Part appeals against his or her conviction, sentence or both, such appeal shall—

(a) not be regarded as an appeal against the award or order even if the execution of the sentence is suspended conditionally upon payment of the compensation or restitution of the property required by the award or order;

(b) not suspend or affect the award or order even if such appeal is successful.

(4) Where an accused against whom an award or order is made in terms of this Part appeals against the award or order such appeal shall—

(a) be made only after the award or order is registered in terms of subsection (1) or, if no such registration is made within the period there provided, not earlier than thirty days from the date when the award or order is made; and

(b) be lodged in the court where the award or order is made or, where the award or order is registered in a different court, in that court.

[Section substituted by section 4 of Act 5 of 2011]

373 Payment of award out of moneys taken from or held on behalf of convicted person

Where—

(a) moneys have been taken from a person upon his arrest or search in terms of any law; or

(b) during the trial of a person, moneys have been produced by a witness who holds the moneys on behalf of that person; or

(c) a court is satisfied that a person against whom criminal proceedings have been instituted holds moneys in an account kept with a bank, building society or similar institution;

and, upon that person's conviction of an offence, an award of compensation is made against him in terms of this Part, the court may order that the award shall be satisfied wholly or partly out of such moneys.

374 Person granted award or order debarred from further civil remedy

A convicted person against whom an award or order has been made in terms of this Part shall not be liable at the suit of the injured party in whose favour the award or order was made to any other civil proceedings other than proceedings for the enforcement of the award or order in respect of—

(a) the loss or diminution of the right or the personal injury in respect of which the award of compensation was made; or

(b) the restitution of the property in respect of which the order was made; as the case may be.

375 Part XIX not to derogate from other laws relating to compensation or restitution

(1) This Part shall not limit the operation of any other law relating to compensation for loss or diminution of rights or for personal injury caused by offences or relating to the restitution of stolen or other property.

(2) The fact that a person failed to apply for an award or order in terms of this Part or was refused such an award or order shall not affect his right to claim any compensation or the restitution of any property in any civil proceedings.

PART XX

PARDON AND COMMUTATION

376 Saving of President's prerogative of mercy

Nothing in this Act shall affect the prerogative of mercy of the President.

377 President may commute sentence

(1) In any case in which the President exercises the prerogative of mercy conditionally in respect of an offender under sentence of death, he may, without the consent of the offender, commute the punishment to any punishment provided by law.

(2) Any such commutation shall be signified in writing to the Prosecutor-General, who shall thereupon allow the offender the benefit of the conditional pardon and make an order that he be punished in the manner directed by the President and such allowance and order shall have the effect of a valid sentence passed by the court before which the offender was convicted.

378 Exercise of prerogative of mercy in respect of offenders under sentence of imprisonment

The President may, in any case not referred to in section *three hundred and seventy-seven*, exercise the prerogative of mercy in respect of an offender under sentence of imprisonment without the consent of the offender and—

(a) where he does so by suspending the operation of the whole or any part of such sentence, he may suspend the sentence for such period and upon such conditions as could a court acting in terms of paragraph (*b*) of

subsection (2) of section *three hundred and fifty-eight*, and the provisions of that section shall thereafter apply, *mutatis mutandis*, in respect of such suspension as though the sentence had been suspended by the court which imposed the sentence upon the offender;

(b) any punishment substituted by the President shall have effect as though it were a valid sentence passed by the court before which the offender was convicted.

379 Reference of case by Minister for appeal or opinion

Where—

(a) a person convicted of an offence has exhausted all legal remedies by way of appeal or review in regard to his conviction or the sentence imposed upon him, or where such remedies are no longer available to him; and

(b) it appears to the Minister that there is further evidence which, if true, might reasonably affect the conviction or the sentence; the Minister may—

(i) refer to the Supreme Court any particular point arising in the case on which the Minister desires the Court's opinion, in which event the Supreme Court shall consider the point and furnish the Minister with its opinion thereon; or

(ii) refer the whole case to the Supreme Court, in which event the case shall be treated for all purposes as an appeal or fresh appeal, as the case may be, to the Supreme Court by the convicted person and the Supreme Court may exercise any of the powers conferred upon it by the Supreme Court Act [*Chapter 7:13*], including the power to hear further evidence or to remit the case to the court or tribunal of first instance for further hearing and the power to review the proceedings in the case.

(2) For the purposes of subsection (1), a special verdict in terms of section 28 of the Mental Health Act [*Chapter 15:06*], that a person was mentally disordered or defective at the time he did the act or made the omission alleged against him, shall be regarded as a conviction.

(3) Subject to rules of court—

(a) the Supreme Court may consider any point referred to it in terms of paragraph (i) of subsection (1) in private;

(b) the procedure to be followed by the Supreme Court in considering a point referred to it in terms of paragraph (i) of subsection (1) shall be as determined by the Chief Justice.

(4) No appeal, review or other proceedings whatsoever shall lie in respect of—

(a) a refusal or failure by the Minister to refer any case or point to the Supreme Court in terms of subsection (1) or to act on any opinion furnished in terms of paragraph (i) of that subsection; or

(b) the proceedings or deliberations of the Supreme Court on a point referred to it in terms of paragraph (ii) of subsection (1).

PART XXI

GENERAL

380 Force of process

Every warrant or summons or other process relating to any criminal matter shall be of force throughout, and may be executed anywhere within, Zimbabwe.

381 Institution of fresh proceedings when conviction set aside on appeal

When a conviction and a sentence are set aside by the Supreme Court or the High Court or a judge thereof on the ground that—

(a) the indictment on which the accused was convicted was invalid or defective in any respect; or

(b) there has been any other technical irregularity or defect in the procedure; or

(c) the proceedings of the trial court were a nullity by reason of want of jurisdiction or otherwise;

proceedings in respect of the same offence to which the conviction and sentence referred may again be instituted, either on the original charge, suitably amended where necessary, or upon any other charge, as if the accused had not previously been arraigned, tried and convicted:

Provided that no judicial officer or assessor before whom the original trial took place shall take part in such proceedings.

382 How documents to be served

(1) Unless a specific period is expressly provided, any notice or document required to be served upon an accused person shall be served by delivering it to the accused at least ten days before the day specified therein for his trial if his trial is before the High Court, or at least two days, Sundays and public holidays excluded, before

that day if his trial is before a magistrates court or, where the accused cannot be found, by leaving a copy of the notice or document with a member of his household at his dwelling or, if no person belonging to his household can be found, then by affixing such copy to the principal outer door of the said dwelling or of any place where he actually resides or was last known to reside.

(2) Where the accused has been admitted to bail, any such notice or document referred to in subsection (1) may either be served upon him personally or be left at the place specified in the recognizance as that at which any notice of trial and service of the indictment or summons may be made.

(3) The officer serving any notice referred to in subsection (1) or (2) shall forthwith deliver or transmit to the official from whom he has received the notice or document for service a return of the mode in which service was made, and such return shall be *prima facie* evidence that the service of the notice or document was made in the manner and form stated in the return.

(4) Police officers shall, subject to rules of court, be as qualified to serve any notice or document under this Act as if they had been appointed deputy sheriffs or deputy messengers or other like officers of the court.

383 Mode of proving service of process

When it is necessary to prove service of any summons, subpoena, notice or other process or the execution of any judgment or warrant under this Act, the service or execution may be proved by affidavit made before a justice having jurisdiction to take affidavits in the area wherein the affidavit is made or in any other manner in which the service or execution might have been proved if it had been effected in the area wherein the summons, subpoena, notice or other process or judgment or warrant emanated.

384 Transmission of summonses and writs by telegraph

Any summons, writ, warrant, rule, order, notice or other process, document or communication which, by any enactment or agreement of parties, is required or directed to be served or executed upon any person or left at the house or place of abode or business of any person in order that such person may be affected thereby, may be transmitted by telegraph, and a telegraphic copy served or executed upon such person or left at his house or place of abode or business shall be of the same effect as if the original had been shown to, or a copy thereof served or executed upon, such person, or left as aforesaid, as the case may be.

385 Prosecution of corporations and members of associations

(1) In this section—

"director", in relation to a corporate body, means a person who—

(a) controls or governs that corporate body, whether lawfully or otherwise; or

(b) is a member of a body or group of persons which controls or governs that corporate body, whether lawfully or otherwise; or

(c) where there is no body or group such as is referred to in paragraph (*b*), who is a member of the corporate body.

[Subsection as substituted by Act 23 of 2004]

(2) ……

[Subsection repealed by Act 23 of 2004]

(3) In any criminal proceedings against a corporate body, a director or employee of that corporate body shall be cited, as representative of that corporate body, as the offender, and thereupon the person so cited may, as such representative, be dealt with as if he were the person accused of having committed the offence in question:

Provided that—

(i) if the said person pleads guilty, the plea shall not be valid unless the corporate body authorized him to plead guilty;

(ii) if at any stage of the proceedings the said person ceases to be a director or employee of that corporate body or absconds or is unable to attend, the court or magistrate concerned may, at the request of the prosecutor, from time to time substitute for the said person, any other person who is a director or employee of the corporate body at the time of the said substitution, and thereupon the proceedings shall continue as if no substitution had taken place;

(iii) if the said person, as representing the corporate body, is committed for trial, he shall not be committed to prison but shall be released on his own recognizance to stand trial;

(iv) if the said person, as representing the corporate body, is convicted, the court convicting him shall not impose upon him in his representative capacity any punishment, whether direct or as an alternative, other than a fine, even if the relevant enactment makes no provision for the imposition of a fine in respect of the offence in question, and such fine shall be payable by the corporate body and may be recovered by attachment and sale of any property of the corporate body in terms of section *three hundred and forty-eight*;

(v) the citation of a director or employee of a corporate body to represent that corporate body in any criminal proceedings instituted against it shall not exempt that director or employee from prosecution for that offence in his personal capacity.

[Paragraph amended by Act 23 of 2004]

(4) In any criminal proceedings against a corporate body, any record which was made or kept by a director, employee or agent of the corporate body within the scope of his activities as such director, employee or agent, or any document which was at any time in the custody or under the control of any such director, employee or agent within the scope of his activities as such director, employee or agent, shall be admissible in evidence against the accused.

(5) For the purposes of subsection (4), any record made or kept by a director, employee or agent of a corporate body or any document which was at any time in his custody or control shall be presumed to have been made or kept by him or to have been in his custody or control within the scope of his activities as such director, employee or agent, unless the contrary is proved.

(6) …..

[Subsection repealed by Act 23 of 2004]

(7) In any proceedings against a director or employee of a corporate body in respect of an offence—

(a) any evidence which would be or was admissible against that corporate body in a prosecution for that offence shall be admissible against the accused;

(b) whether or not such corporate body is or was liable to prosecution for the offence, any document, memorandum, book or record which was drawn up, entered up or kept in the ordinary course of that corporate body's business or which was at any time in the custody or under the control of any director, employee or agent of the corporate body in his capacity as director, employee or agent, shall be *prima facie* evidence of its contents and admissible in evidence against the accused, unless he is able to prove that at all material times he had no knowledge of the document, memorandum, book or record in so far as its contents are relevant to the offence charged, and was in no way party to the drawing up of the document or memorandum or making of any relevant entries in such book or record. (8)

[Subsection repealed by Act 23 of 2004]

(9) In any proceedings against a member of an association of persons in respect of an offence, any record which was made or kept by any member, employee or agent of the association, including the accused, within the scope of his activities as such member, employee or agent, or any document which was at any time in the custody or under the control of any such member, employee or agent within the scope of his activities as such member, employee or agent, shall be admissible in evidence against the accused.

[Subsection as amended by Act 23 of 2004]

(10) For the purposes of subsection (9), any record made or kept by a member, employee or agent of an association or any document which was at any time in his custody or control shall be presumed to have been made or kept by him, or to have been in his custody or control, within the scope of his activities as such member, employee or agent, unless the contrary is proved.

(11) This section shall be additional to, and not in substitution for, any other enactment which provides for criminal proceedings against corporate bodies or their directors or employees or against associations of persons or their members.

385A Rights of arrested or detained persons and interested parties

(1) In this section—

"interested party", in relation to a detained person, includes—

(a) a relative, friend or employer of the detained person; and

(b) any person with a legitimate interest in the detained person's welfare; and

(c) a legal practitioner representing the detained person or engaged by a person referred to in paragraph (*a*) or (*b*) to represent the detained person;

"responsible person" means the member of a State agency primarily responsible for a detained person's detention or custody;

"State agency" includes the Police Service, the Prison Service, every branch of the Defence Forces, and any other organisation consisting wholly or mainly of persons employed by the State.

(2) A person who has been arrested or is detained, whether under this Act or any other enactment, shall be permitted without delay—

(a) to exercise his or her right to contact, at the state's expense, any one of the persons specified in section 41A(1)(*d*):

Provided that if the arrested or detained person does not succeed, without any fault on his or her part, in contacting a person of his or her first choice, the arrested or detained person shall be allowed to contact any other person specified in section 41A(1)(*d*) until he or she succeeds in contacting him or her; and

(b) to obtain and instruct, at his or her own expense, a legal practitioner of his or her own choice, and to communicate privately with that legal practitioner:

Provided that, where an arrested person must be produced before a court within forty-eight hours after his or her arrest in accordance with section 32, it shall be lawful for the police to take the arrested person to court in the absence of his or her legal practitioner if—

(i) the arrested person, without any fault on the part of the police, fails to contact, obtain or instruct a legal practitioner of his or her own choice; or

(ii) where the arrested person succeeds in contacting, obtaining or instructing a legal practitioner of his or her own choice, that legal practitioner, without any fault on the part of the police, fails to represent the arrested person within that period or at the court where he or she must appear.

(3) The responsible person shall inform any interested party, promptly on request, of the detained person's whereabouts and of the reasons for the detained person's detention or custody unless there are compelling reasons for not doing so (the proof whereof rests with the responsible person).

[Section inserted by section 44 of Act 2 of 2016]

386 Provisions as to offences under two or more laws

Where an act or omission constitutes an offence under two or more enactments the offender shall, unless the contrary intention appears, be liable to be prosecuted and punished under either enactment or, as the case may be, under the enactment or the common law, but shall not be liable to more than one punishment for the act or omission constituting the offence.

[Subsection amended by section 28 of Act 9 of 2006.]

387 Estimating age of person

If in any criminal proceedings the age of any person is a relevant fact of which no or insufficient evidence is available in those proceedings, the judge or magistrate may estimate the age of such person by his appearance or from any information, including hearsay evidence, which may be available, and the age so estimated shall be deemed to be such person's correct age unless it is subsequently proved that the said estimate was incorrect.

388 Binding over of persons to keep the peace

(1) Where a complaint on oath is made to a magistrate that any person—

(a) is conducting himself violently towards, or is threatening injury to, the person or property of another; or

(b) has used language or behaved in a manner towards another likely to provoke a breach of the peace or assault; whether in a public or private place, the magistrate—

(i) may order the person to appear before him; and

(ii) if necessary, may cause that person to be arrested and brought before him; and (iii) when that person appears before him, shall inquire into the matter.

(2) For the purposes of an inquiry in terms of subsection (1), the magistrate may—

(a) order the person concerned to be kept in custody until the expiration of a period of fourteen days or the conclusion of the inquiry, whichever is the sooner;

(b) take evidence on oath from the person concerned and the complainant and any other person.

(3) After inquiring into the matter in terms of subsection (1), the magistrate may—

(a) order the person against whom the complaint is made to enter into recognizances, with or without sureties, in an amount not exceeding the equivalent of a fine of level seven for a period not exceeding one year to keep the peace towards the complainant and refrain from doing or threatening injury to his person or property; and

[Paragraph amended by section 4 of Act 22 of 2001.]

(b) order the person against whom the complaint is made or the complainant to pay the costs of and incidental to the inquiry.

(4) Any person who, having been ordered to give recognizances in terms of paragraph (*a*) of subsection (3), refuses or fails to do so may be committed to prison for a period not exceeding one month unless such recognizances are sooner found.

(5) Upon information being made on oath that a person bound by recognizances referred to in paragraph (*a*) of subsection (3) has failed to observe the conditions of the recognizances, any magistrate—

(a) may order the person to appear before him; and

(b) if necessary, may cause that person to be arrested and brought before him; and (*c*) when that person appears before him, shall inquire into the matter.

(6) The provisions of subsection (2) shall apply, *mutatis mutandis*, in respect of an inquiry in terms of paragraph (*c*) of subsection (5).

(7) Where it appears to any magistrate, whether after an inquiry in terms of paragraph (*c*) of subsection (5) or otherwise, that any person has failed to observe the conditions of recognizances referred to in paragraph (*a*) of subsection (3), he may order the recognizances to be forfeited.

(8) An order in terms of subsection (7) shall have the effect of a civil judgment of the court.

(9) If a peace officer believes on reasonable grounds that the conditions of recognizances referred to in paragraph (*a*) of subsection (3) are not being observed by any person, he may arrest the person without warrant and shall, as soon as possible, bring him before a magistrate for the purposes of an inquiry in terms of paragraph (*c*) of subsection (5) and the provisions of this section shall thereafter apply, *mutatis mutandis*.

(10) A person arrested in terms of subsection (9) shall be informed forthwith by the person arresting him of
the cause of the arrest.

389 Regulations

(1) Subject to subsection (3), the Minister may by regulation prescribe all matters which by this Act are required or permitted to be prescribed or which, in his opinion, are necessary or convenient to be prescribed for giving effect to this Act.

(2) Regulations made in terms of subsection (1) may provide—

(a) for the persons who shall be prescribed officers for the purposes of section *three hundred and fifty-six*;

(b) for the powers and duties of employers in relation to any order made under section *three hundred and forty-nine* for deductions from the wages of offenders;

(c) in relation to the suspension or postponement of sentences, for—

(i) the appointment, powers and duties of persons, to be known as probation officers, to whom may be entrusted the care or supervision of offenders whose sentences have been suspended or in respect of whom passing of sentence has been postponed;

(ii) the circumstances in which courts may entrust offenders to the care and supervision of probation officers;

(iii) the conditions to be observed by offenders entrusted to the care and supervision of probation officers, and the variation of such conditions:

(*d*) in relation to community service as defined in section *three hundred and thirty-five A*, for

(i) the circumstances in which a court may not order an offender to render community service;

(ii) the form and content of orders requiring persons to render community service;

(iii) information to be supplied to offenders regarding any order requiring them to render community service;

(iv) the manner in which offenders shall render community service.

[Paragraph as inserted by section 19 of Act 8 of 1997.]

(*e*) in relation to the "Statement of Rights Upon Arrest" set forth in the Tenth Schedule—

(i) for the official translation of the Statement into Chewa, Chibarwe, Kalanga, Koisan, Nambya, Ndau, Ndebele, Shangani, Shona, Sotho, Tonga, Tswana, Venda and Xhosa;

(ii) for the amendment of the Tenth Schedule by adding, deleting or substituting any words therein, or for the replacement the Tenth Schedule entirely:

Provided that when the Minister wishes to make regulations for the purpose of subparagraph (i) or (ii) he or she shall lay the draft regulations before Parliament, and if neither the National Assembly nor

the Senate makes a resolution against the publication of regulations within the next seven sitting days after it is so laid before each House, the Minister shall cause it to be published in the *Gazette*;

[Paragraph inserted by section 45 of Act 2 of 2016]

(*f*) for the questioning by peace officers of persons who are suspected of having committed an offence.

[Paragraph inserted by section 45 of Act 2 of 2016]

(3) The Minister shall not make regulations in terms of this section in respect of matters for which rules of court have been made.

[Paragraph inserted by section 45 of Act 2 of 2016]

FIRST SCHEDULE (Sections 25, 27, 39 and 42)

SPECIFIED OFFENCES IN RELATION TO POWERS OF ARREST

Any offence in respect of which a punishment of a period of imprisonment exceeding six months is provided and may be imposed without the option of a fine, and any conspiracy, incitement or attempt to commit, or being a participant in, any such offence.

[Schedule substituted by section 46 of Act 2 of 2016]

SECOND SCHEDULE (Section 62)

OFFENCES IN CONNECTION WITH WHICH THINGS MAY BE SEIZED AND CONFISCATED IN TERMS OF SECTION 62

1. Any offence under any enactment relating to the unlawful possession, conveyance or supply of habitforming drugs or harmful liquids.
2. Any offence under any enactment relating to the unlawful possession of, or dealing in, precious metals or precious stones.

3. Theft, either at common law or as defined by any enactment.
4. Breaking and entering any premises with intent to commit an offence, either at common law or in contravention of any enactment.

THIRD SCHEDULE (Sections 32, 116, 117(6) and 123)

OFFENCES IN RESPECT OF WHICH POWER TO ADMIT PERSONS TO BAIL IS EXCLUDED OR QUALIFIED

PART I

1. Murder, where—

(*a*) it was planned or premeditated, or (*b*)

the victim was—

(i) a law enforcement officer or public prosecutor performing his or her functions as such, whether on duty or not, or a law enforcement officer or public prosecutor who was killed by virtue of his or her holding such a position, or

(ii) a person who has given or was likely to give material evidence with reference to any offence referred to in the First Schedule; or

(c) the death of the victim was caused by the accused in committing or attempting to commit or after having committed or having attempted to commit one of the following offences— (i) rape; or

(ii) aggravated indecent assault, or

(iii) robbery with aggravating circumstances; or

(d) the offence was committed by a person, group of persons or syndicate acting in the execution or furtherance of a common purpose or conspiracy.

2. Rape or aggravated indecent assault—

(*a*) when committed—

(i) in circumstances where the victim was raped or indecently assaulted more than once, whether by the accused or by any co-perpetrator or accomplice; or

(ii) by more than one person, where such persons acted in the execution or furtherance of a common purpose or conspiracy; or

(iii) by a person who is charged with having committed two or more offences of rape or aggravated indecent assault; or

(iv) by a person who knew that he or she had the acquired immune deficiency syndrome or the human immunodeficiency virus;

or

(*b*) where the victim—

(i) is a girl or boy under the age of 16 years; or

(ii) is a physically disabled woman who, due to her physical disability, is rendered particularly vulnerable; or

(iii) is mentally disordered or intellectually handicapped, as defined in section 2 of the Mental Health Act [*Chapter 15:12*] (No. 15 of 1996);

or

(*c*) involving the infliction, of grievous bodily harm.

3. Robbery, involving—
   (a) the use by the accused or any co-perpetrators or participants of a firearm; or
   (b) the infliction of grievous bodily harm by the accused or any co-perpetrators or participants; or (*c*) the taking of a motor vehicle as defined in section 2 of the Road Traffic Act [*Chapter 13:11*].
4. Assault or indecent assault of a child under the age of 16 years, involving the infliction of grievous bodily harm.
5. Kidnapping or unlawful detention involving the infliction of grievous bodily harm.
6. Contravening section 20, 21, 22, 23, 24, 25, 26, 27 or 29 of the Criminal Law Code.
7. Contravening section 128 of the Parks and Wild Life Act [*Chapter 20:14*].
8. An offence referred to in Part II—
   (a) where the accused person has been previously convicted of an offence referred to in that Part or this Part; or
   (b) which was allegedly committed while he or she was released on bail in respect of an offence referred to in that Part or this Part.

PART II

1. Treason.
2. Murder otherwise than in the circumstances referred to in paragraph 1 of Part I.
3. Attempted murder involving the infliction of grievous bodily harm.
4. Malicious damage to property involving arson.
5. Theft of a motor vehicle as defined in section 2 of the Road Traffic Act [*Chapter 13:11*].
6. Any offence relating to the dealing in or smuggling of ammunition, firearms, explosives or armaments, or the possession of an automatic or semi-automatic firearm, explosives or armaments
7. A conspiracy, incitement or attempt to commit any offence referred to in paragraph 4, 5 or 6.
8. Any offence where the Prosecutor-General has notified a magistrate of his intention to indict the person concerned in terms of section 66.

[Schedule substituted by section 27 of Act 9 of 2006 and amended by section 4 of Act 5 of 2011.]

FOURTH SCHEDULE

[Schedule repealed by section 44 of Act 1 of 2002.]

FIFTH SCHEDULE (Section 132)

OFFENCES IN CONNECTION WITH WHICH BAIL MAY NOT BE GRANTED IN TERMS OF SECTION 132 (1)

1. Murder.
2. Rape or aggravated indecent assault.
3. Robbery.
4. Assault in which a dangerous injury is inflicted.
5. Malicious damage to property committed in aggravating circumstances as provided in section 143 of the Criminal Law Code.

6. Unlawful entry into premises committed in aggravating circumstances as provided in section 131(2) of the Criminal Law Code.
7. Theft, making off without payment, receiving any stolen property knowing it to have been stolen, fraud or forgery, if the amount or value involved in any such offence exceeds five hundred thousand dollars.
8. Stock theft.
9. Any offence under any enactment relating to the unlawful possession of, or dealing in, precious metals or precious stones.
10. Any offence relating to the coinage or banknotes.
11. Contravening section 20, 21, 22, 23, 24, 25, 26, 27 or 29 of the Criminal Law Code.
12. Contravening—
    (i) section 89 ("Wilful damage to or interference with or theft of telecommunication lines and apparatus") of the Postal and Telecommunications Act [*Chapter 12:05*]; or
    (ii) section 39G ("Wilful damage to or, interference with or theft of infrastructural broadcasting apparatus, equipment or appliances") of the Broadcasting Services Act [*Chapter 12:06*] (No. 3 of 2001); or
    (iii) section 37 ("Offences on railway premises") or section 38("Certain offences and punishment therefor") of the Railways Act [*Chapter 13:09*]; or
    (iv) section 60A ("Offences in relation to electric current and apparatus") of the Electricity Act [*Chapter 13:19*] (Act No. 4 of 2002); or
    (v) section 111B ("Wilful damage to or, interference with or theft of water infrastructure components and farm irrigation works components") of the Water Act [*Chapter 20:22*] (Act No. 31 of 1998).

[Paragraph substituted by Act No. 1 of 2011]

13. Any conspiracy, incitement or attempt to commit an offence specified in paragraphs 1 to 12.

[Paragraph inserted by Act No. 1 of 2011]
[Schedule substituted by Act 23 of 2004]

SIXTH SCHEDULE (Section 345)

OFFENCES FOR WHICH SENTENCE OF PERIODICAL IMPRISONMENT MAY BE IMPOSED

1. An offence in terms of—
    (a) subsection (2) of section 54; or
    (b) subsection (2) of section 55; or
    (c) subsection (3) of section 76; or
    (d) subsection (6) of section 77; of the Road Traffic Act [*Chapter 13:11*].

2. Contravening subsection (1) of section 23 of the Maintenance Act [*Chapter 5:09*].

SEVENTH SCHEDULE (Section 346)

EXTENDED IMPRISONMENT OFFENCES

1. Murder.
2. Rape or aggravated indecent assault.

[Paragraph amended by Act 23 of 2004

3. Robbery.
4. Assault with intent to commit murder, rape or robbery or to do grievous bodily harm.
5. Culpable homicide involving an assault.
6. Indecent assault.
7. Malicious damage to property committed in aggravating circumstances as provided in section 143 of the Criminal Law Code.

[Paragraph as substituted by Act 23 of 2004]

8. Fraud.
9. Forgery.

10. Unlawful entry into premises committed in aggravating circumstances as provided in section 131 (2) of the Criminal Law Code
11. Theft, stock theft, making off without payment or receiving any stolen property knowing it to have been stolen.

[Paragraphs 9-11 substituted by Act 23 of 2004]

12. …..

[Paragraph repealed by Act 23 of 2004]

13. Extortion.
14. Any offence, not being an offence under the law of Zimbabwe, by whatever name called, which is substantially similar to an offence specified in paragraphs 1 to 13.
15. Any offence in terms of any enactment in respect of which the maximum punishment is imprisonment for a period of six months or more without the option of a fine.
16. Any attempt, conspiracy or incitement to commit, or being an accessory after the fact to the commission of, an offence specified in paragraphs 1 to 15.

EIGHTH SCHEDULE (Section 358)

OFFENCES IN RELATION TO WHICH POSTPONEMENT OR SUSPENSION OF SENTENCE, OR DISCHARGE WITH CAUTION OR REPRIMAND, IS NOT PERMITTED

1. Murder, other than the murder by a woman of her newly born child.
2. Any conspiracy or incitement to commit murder.
3. Any offence in respect of which any enactment imposes a minimum sentence and any conspiracy, incitement or attempt to commit any such offence.

NINTH SCHEDULE (Section 25(1)(*A*) and 32

OFFENCES INVOLVING CORRUPTION, ORGANISED CRIME OR HARM TO THE NATIONAL ECONOMY

[Schedule substituted by Act 23 of 2004]

1. Any offence referred to in Chapter IX ("Bribery and Corruption") of the Criminal Law Code.
2. Contravening section 63 ("Money-laundering") of the Serious Offences (Confiscation of Profits) Act [*Chapter 9:17*].
3. The sale, removal or disposal outside Zimbabwe of any controlled product in contravention of the Grain Marketing Act [*Chapter 18:14*].
4. Any offence under any enactment relating to the unlawful possession of, or dealing in, precious metals or precious stones.
5. Any offence referred to in Chapter VII ("Crimes Involving Dangerous Drugs") of the Criminal Law Code, other than unlawful possession or use of dangerous drugs where the dangerous drug in question is cannabis.
6. Fraud or forgery:
   (a) involving prejudice or potential prejudice to the State, except where the magnitude of the prejudice or potential prejudice is less than such amount as the Minister may prescribe by notice in a statutory instrument; or
   (b) committed by a person, group of persons, syndicate or enterprise acting in execution or furtherance of a common purpose or conspiracy; or
   (c) where the magnitude of the prejudice or potential prejudice to any person is more than such amount as the Minister may prescribe by notice in a statutory instrument.
7. Contravening section 42 ("Offences relating to banknotes") of the Reserve Bank Act [*Chapter 22:15*] or committing any offence relating to the coinage.
8. Contravening subparagraph (i) of paragraph (*a*) of subsection (1) of section 5 of the Exchange Control Act [*Chapter 22:05*] as read with:
   (a) subsection (1) of section 4 of the Exchange Control Regulations, 1996, published in Statutory Instrument 109 of 1996, (in this paragraph and paragraph 8 called "the Exchange Control Regulations"), by dealing in any foreign currency in contravention of paragraph (*a*) or (*b*) of that section

of the Regulations without the permission of an exchange control authority;

(b) subsection (1) of section 10 of the Exchange Control Regulations, by unlawfully making any payment, placing any money or accepting any payment in contravention of paragraph (*a*), (*b*), (*c*) or (*d*) of that section of the Regulations;

(c) paragraph (*a*) or (*b*) of subsection (1) of section 11 of the Exchange Control Regulations, by unlawfully making any payment outside Zimbabwe or incurring an obligation to make any payment outside Zimbabwe;

(d) paragraph (*b*) (*e*) or (*f*) of subsection (1) of section 20 of the Exchange Control Regulations, by unlawfully exporting any foreign currency, gold, silver or platinum, or any article manufactured from or containing gold, silver or platinum, or any precious or semiprecious stone or pearl from Zimbabwe;

(e) subsection (2) of section 21 of the Exchange Control Regulations, by unlawfully exporting any goods from Zimbabwe in contravention of that provision of the Regulations.

9. Contravening paragraph (*b*) of subsection (1) of section 5 of the Exchange Control Act [*Chapter* 22:05] by making any false statement or producing any false document in connection with a contravention of subsection (2) of section 21 of the Exchange Control Regulations.

10. Theft of a motor vehicle as defined in section 2 of the Road Traffic Act [*Chapter 13:11*].

11. Theft or forgery of:

(a) a document issued to a person in terms of subsection (1) or (2) of section 7 of the National Registration Act [*Chapter 10:17*], or a passport or drivers licence issued by or on behalf of the Government of Zimbabwe; or

(b) any visitors entry certificate or other certificate or permit issued to a person in terms of the Immigration Act [*Chapter 4:02*], or in terms of any enactment relating to refugees; or

(c) any passport, identity document or drivers licence issued by a foreign government; or

(d) a vehicle registration plate; or

(e) any documentation relating to the registration or insurance of a motor vehicle.

12. Stock theft involving a bovine or equine animal.

13. Contravening:

(i) section 89 ("Wilful damage to or interference with or theft of telecommunication lines and apparatus") of the Postal and Telecommunications Act [*Chapter 12:05*]; or

(ii) section 39G ("Wilful damage to or, interference with or theft of infrastructural broadcasting apparatus, equipment or appliances") of the Broadcasting Services Act [*Chapter 12:06*] (No. 3 of 2001); or

(iii) section 37 ("Offences on railway premises") or section 38 ("Certain offences and punishment therefor") of the Railways Act [*Chapter 13:09*].

(iv) section 60A ("Offences in relation to electric current and apparatus") of the Electricity Act [*Chapter 13:19*] (Act No. 4 of 2002); or

(v) section 111B ("Wilful damage to or, interference with or theft of water infrastructure components and farm irrigation works components") of the Water Act [*Chapter 20:22*] (Act No. 31 of 1998).

[Paragraph substituted by Act 1 of 2011]

14. A conspiracy, incitement or attempt to commit any offence referred to in paragraphs 1 to 13.

[Paragraph inserted by Act 3 of 2009]

[Schedule substituted by Act 23 of 2004]

TENTH SCHEDULE (Section 41A(4))

STATEMENT OF RIGHTS UPON ARREST

(Full name of accused) you are under arrest for (the alleged offence in full); you have the right to remain silent and anything you say may be used against you in a court of law, [however, if you want to say anything that may clear you of the alleged offence, then you may say it.]*

You have the right to make one telephone call to a relative, friend, employer, legal practitioner or any other person of your choice.

**The inclusion of the bracketted words is optional*

[Schedule inserted by section 47 of Act 2 of 2016]

ELEVENTH SCHEDULE (Section 58 (3) (a))

NOTICE OF DESTRUCTION OR DISPOSAL OF SEIZED ARTICLE(*S*)

[Schedule inserted by section 47 of Act 2 of 2016]

I, …… (*name and rank of police officer*), hereby notify you in terms of section 58(3) of the Criminal Procedure and Evidence Act [*Chapter 9:07*]

……..
(name of owner or holder of receipt given in respect of the seized article(*s*)) that the following article(*s*):

……

……

……

(*description of/article(s)*) is perishable/has become a hazard to human health or safety (*tick either or both, as applicable*).

Accordingly, the said article(s) will be destroyed on a date and at a time and place to be notified to you no earlier than fourteen (14) days from the date of service of this notice.

You are entitled, no later than fourteen (14) days from the date indicated below, to object to the proposed destruction or disposal by detaching the coupon below and delivering it within that time to the address indicated below.
Your rights on objection will be explained to you on delivery of the coupon.

Signature of Notifying Police Officer ……..

Address where objection may be lodged

…….

…….

…….

Date of signature …….

……

(Complete and Detach this portion if you wish to object)

I, …….

of……

(name *and address of owner or holder of receipt given in respect of the seized article(s)*), having received a notice from …….. (*name and rank of notifying police officer*), object to the destruction of the article(s) seized from me.

Signature of objector …….

Address where any further notices/correspondence by the police may be lodged, if different from the address of the objector:

……

……....

……...

Contact number(s) (cell phone, landline and/or email)……

Date of signature ……

Official use only: received by …….. (*name and rank of receiving police officer*) on ……. (date of receipt).