



# **GOVERNMENT GAZETTE**

OF THE

# **REPUBLIC OF NAMIBIA**

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WINDHOEK — 30 May 1991

No. 215

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## Government Notice

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### OFFICE OF THE PRIME MINISTER

No. 59

1991

### PROMULGATION OF ACT OF THE NATIONAL ASSEMBLY

The following Act which has been passed by the National Assembly and signed by the President in terms of the Namibian Constitution is hereby published in terms of Article 56 of that Constitution.

No. 5 of 1991: Criminal Procedure Amendment Act, 1991.

Act No. 5, 1991

**CRIMINAL PROCEDURE AMENDMENT  
ACT, 1991**

## EXPLANATORY NOTE:

————— Words underlined with solid line indicate insertions proposed.

[            ] Words in bold type in square brackets indicate omissions proposed.

## ACT

**To amend the Criminal Procedure Act, 1977, so as to further regulate the authority of the courts, magistrates and other judicial officers in relation to bail and to effect a certain adjustment relating to bail in consequence of the Namibian Constitution; and to provide for matters incidental thereto.**

*(Signed by the President on 30 May 1991)*

BE IT ENACTED by the National Assembly of the Republic of Namibia, as follows:-

Amendment of section 59  
of Act 51 of 1977.

**1.** Section 59 of the Criminal Procedure Act, 1977 (hereinafter referred to as the principal Act), is hereby amended by the substitution for paragraph (a) of subsection (1) of the following paragraph:

“(a) An accused who is in custody in respect of any offence, other than an offence referred to in Part II, [or] Part III or Part IV of Schedule 2 [ , or in the Schedule to the Internal Security Act, 1950 (Act 44 of 1950),] may, before his or her first appearance in a lower court, be released on bail in respect of such offence by any police official of or above the rank of non-commissioned officer, if the accused deposits at a police station the sum of money determined by such police official.”.

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Amendment of section 60 of Act 51 of 1977, as amended by section 2 of Act 56 of 1979, and section 7 of Act 31 of 1985.

2. Section 60 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) Any accused who is in custody in respect of any offence may at his or her first appearance in a lower court or at any stage after such appearance, apply to such court or, if the proceedings against the accused are pending in [a superior court] the High Court, to that court, to be released on bail in respect of such offence, and any such court may [subject to the provisions of section 61] release the accused on bail in respect of such offence on condition that the accused deposits with the clerk of the court or the registrar of the court, as the case may be, or with a member of the prisons service at the prison where the accused is in custody or with any police official at the place where the accused is in custody, the sum of money determined by the court in question.”.

Substitution of section 61 of Act 51 of 1977.

3. The following section is hereby substituted for section 61 of the principal Act:

“Bail in respect of certain offences.

61. If an accused who is in custody in respect of any offence referred to in Part IV of Schedule 2 applies under section 60 to be released on bail in respect of such offence, the court may, notwithstanding that it is satisfied that it is unlikely that the accused, if released on bail, will abscond or interfere with any witness for the prosecution or with the police investigation, refuse the application for bail if in the opinion of the court, after such inquiry as it deems necessary, it is in the interest of the public or the administration of justice that the accused be retained in custody pending his or her trial.”.

Amendment of section 68 of Act 51 of 1977.

4. Section 68 of the principal Act is hereby amended by the addition of the following subsection:

“(3) The provisions of this section shall not be construed as preventing any court or magistrate, as the case may be, to cancel the bail and commit an accused to prison where the accused was released on

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bail in respect of any offence contemplated in section 61, if, notwithstanding that such accused is not about to evade justice or to abscond, it is in the opinion of such court or such magistrate, as the case may be, in the interest of the public or the administration of justice that the accused be placed in custody.”

Amendment of section 72 of Act 51 of 1977.

5. Section 72 of the principal Act is hereby amended by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“If an accused is in custody in respect of any offence and a police official or a court may in respect of such offence release the accused on bail under section 59 or 60, as the case may be, such police official or such court, as the case may be, may, in lieu of bail and if the offence is not, in the case of such police official, an offence referred to in Part II, [or] Part III or Part IV of Schedule 2 [or in the Schedule to the Internal Security Act, 1950 (Act 44 of 1950), or, in the case of such court, an offence referred to in the Schedule to the said Internal Security Act, 1950] -”.

Amendment of section 307 of Act 51 of 1977, as amended by section 22 of Act 31 of 1985.

6. Section 307 of the principal Act is hereby amended by the substitution for paragraph (b) of subsection (2) of the following paragraph:

“(b) if such person was not so released on bail [**and the attorney-general has not in terms of section 61 objected to the granting of bail to such person**], release him or her on bail on condition that he or she deposits with the clerk of the court or with a member of the prisons service at the prison where such person is in custody or with any police official at the place where such convicted person is in custody, the sum of money determined by the court in question; or”.

Amendment of Schedule 2 to Act 51 of 1977, as amended by section 24 of Act 31 of 1985.

7. Schedule 2 of the principal Act is hereby amended -

(a) by the substitution for the heading of Part III of the following heading:

**CRIMINAL PROCEDURE AMENDMENT  
ACT, 1991****“Part III**

(Sections 59, [61,] 72, 184, 185, 189)”; and

(b) by the addition of the following Part:

**“PART IV**

(Sections 59, 61, 72)

Treason.  
Sedition.  
Murder.  
Kidnapping.  
Childstealing.  
Rape.  
Robbery.  
Arson.  
Public violence.  
Bribery.

Housebreaking, whether under the common law or a statutory provision, with intent to commit an offence.

Breaking or entering any premises, whether under the common law or a statutory provision, with intent to commit an offence.

Theft, whether under the common law or a statutory provision, receiving stolen property knowing it to have been stolen, fraud, forgery or uttering a forged document knowing it to have been forged, in each case if the amount or value involved in the offence exceeds R600.

Any offence under any law relating to the illicit dealing in or possession of precious metals or precious stones in each case if the value involved in the offence exceeds R600.

Any offence under any law relating to the illicit possession, conveyance or supply of dependence-producing drugs.

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Any offence relating to the coinage.

Any offence under the Controlled Game Products Proclamation, 1980 (Proclamation AG. 42 of 1980).

Any offence under the Nature Conservation Ordinance, 1975 (Ordinance 4 of 1975).

Any offence under section 22A of the Sea Fisheries Act, 1973 (Act 58 of 1973).

Any conspiracy, incitement or attempt to commit any offence referred to in this Part."

Short title.

**8.** This Act shall be called the Criminal Procedure Amendment Act, 1991.

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