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Government Notice

OFFICE OF THE PRIME MINISTER

No. 266

2003

PROMULGATION OF ACT OF PARLIAMENT

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

No. 24 of 2003: Criminal Procedure Amendment Act, 2003.

EXPLANATORY NOTE:

_____ Words underlined with a solid line indicate insertions in existing provisions.

[] Words in bold type in square brackets indicate omissions from existing provisions.

ACT

To **amend the Criminal Procedure Act, 1977, so as to provide for the making of special arrangements for vulnerable witnesses; to further regulate the admissibility of certain unsworn or unaffirmed evidence and to determine the weight to be attached to certain evidence; to make provision for the manner of cross-examination of witnesses under a certain age; to provide for the admission as evidence of certain medical records as evidence; to provide for the admission as evidence of certain statements made out of court; and to provide for matters incidental thereto.**

(Signed by the President on 21 December 2003)

BE IT ENACTED by the Parliament of the Republic of Namibia, as follows:

Insertion of section 158A of Act No. 51 of 1977

1. The following section is inserted after section 158 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), hereinafter referred to as the principal Act:

“Special arrangements for vulnerable witnesses

158A.(1) A court before whom a vulnerable witness gives evidence in criminal proceedings, may on the application of any party to such proceedings or the witness concerned, or on its own motion make an order that special arrangements be made for the giving of the evidence of that witness.

- (2) ‘Special arrangements’ means one or more of the following steps:
- (a) The relocation of the trial to another location while the evidence of the vulnerable witness is being heard;
 - (b) the rearrangement of the furniture in a court room, or the removal from or addition of certain furniture or objects to or from the court room, or a direction that certain persons sit or stand at certain locations in the court room;
 - (c) notwithstanding the provisions of section 153 the granting of permission to any person (hereinafter referred to as a ‘support person’) who is a fit person for that purpose to accompany the witness while he or she is giving evidence;
 - (d) the granting of permission to the witness to give evidence behind a screen or in another room which is connected to the court room by means of closed circuit television or a one way mirror or by any other device or method that complies with subsection (6);

- (e) the taking of any other steps that in the opinion of the court are expedient and desirable in order to facilitate the giving of evidence by the vulnerable witness concerned.
- (3) For the purposes of this section a vulnerable witness is a person -
 - (a) who is under the age of eighteen;
 - (b) against whom an offence of a sexual or indecent nature has been committed;
 - (c) against whom any offence involving violence has been committed by a close family member or a spouse or a partner in any permanent relationship;
 - (d) who as a result of some mental or physical disability, the possibility of intimidation by the accused or any other person, or for any other reason will suffer undue stress while giving evidence, or who as a result of such disability, background, possibility or other reason will be unable to give full and proper evidence.
- (4) The support person is entitled to-
 - (a) stand or sit near the witness and to give such physical comfort to the witness as may be desirable;
 - (b) interrupt the proceedings to alert the presiding officer to the fact that the witness is experiencing undue distress:

Provided that subject to subsection (5), the support person shall not be entitled to assist the witness with the answering of a question or instruct the witness in the giving of evidence.

(5) The court may give instructions to a support person prohibiting him or her from communicating with the witness or from taking certain actions, or may instruct the support person to take such actions as the court may consider necessary.

(6) When a witness gives evidence behind a screen or in another room, the accused, his or her legal representative, the prosecutor in the case and the presiding officer shall be able to hear the witness and shall also be able to observe the witness while such witness gives evidence.

(7) When a court is considering whether an order under this section should be made, it shall also consider the following matters -

- (a) the interest of the state in adducing the complete and undistorted evidence of a vulnerable witness concerned;
- (b) the interests and well-being of the witness concerned;
- (c) the availability of necessary equipment and locations;
- (d) the interests of justice in general.

Amendment of section 164 of Act No. 51 of 1977

2. Section 164 of the principal Act is amended -

(a) by the substitution for subsection (1) of the following subsection:

“(1) Any person -

(a) who, from ignorance arising from **[youth,]** defective education or other cause, is found not to understand the nature and import of the oath or the affirmation, may be admitted to give evidence in criminal proceedings without taking the oath or making the affirmation; and

(b) who is younger than 14 years shall be admitted to give evidence in criminal proceedings without taking the oath or making the affirmation:

Provided that such person shall in lieu of the oath or affirmation be admonished by the presiding judge or judicial officer to speak the truth, the whole truth and nothing but the truth.”.

(b) by the addition of the following subsections:

“(3) Notwithstanding anything to the contrary in this Act or any other law contained, the evidence of any witness required to be admonished in terms of the proviso to subsection (1) shall be received unless it appears to the presiding judge or judicial officer that such witness is incapable of giving intelligible testimony.

(4) A court shall not regard the evidence of a child as inherently unreliable and shall therefore not treat such evidence with special caution only because that witness is a child.”.

Amendment of section 166 of Act No. 51 of 1977

3. Section 166 of the principal Act is amended by the addition of the following subsections:

“(3) (a) If it appears to the court that any cross-examination contemplated in this section is being protracted unreasonably and thereby causing the proceedings to be delayed unreasonably, the court may request the cross-examiner to disclose the relevance of any line of examination and may impose reasonable limits on that cross-examination regarding the length thereof or regarding any particular line of examination.

(b) The court may order that any submission regarding the relevancy of the cross-examination be heard in the absence of the witness.

(4) Notwithstanding the provisions of subsections (1) and (2) or anything to the contrary in any other law contained but subject to subsection (5), the cross-examination of any witness under the age of thirteen years shall take place only through the presiding judge or judicial officer, who shall either restate the questions put to such witness or, in his or her discretion, simplify or rephrase such questions.

(5) The court may allow the cross-examination of a witness referred to in subsection (3) to occur through a person other than the presiding officer if-

- (a) that person has the qualifications determined by the Minister by notice in the *Gazette*; and
- (b) that person is immediately available when the witness concerned gives evidence.

(6) If the person referred to in subsection (5) is not in the full time employ of the state, the relevant provision of section 191 shall apply to that person as if he or she is giving evidence for the party for which the witness concerned gives evidence.”.

Amendment of section 212 of Act No. 51 of 1977

4. Section 212 of the principal Act is amended by the insertion of the following subsection after subsection (7):

- “(7A) (a) Any document purporting to be a medical record prepared by a medical practitioner who treated or observed a person who is a victim of an offence with which the accused in criminal proceedings is charged, is admissible at that proceeding and prima facie proof that the victim concerned suffered the injuries recorded in that document.
- (b) The Minister may in consultation with the Minister responsible for Health, make regulations requiring medical practitioners to record such information as may be prescribed in such regulations, if he or she treats a person that he or she has reason to suspect is the victim of such crimes as may be prescribed in such regulations.
 - (c) Regulations contemplated in paragraph (b) may prescribe the manner in which medical practitioners shall deal with records produced in pursuance of the duties imposed under paragraph (b) and may also impose duties upon medical practitioners to make such records available when he or she is aware of investigations or criminal proceedings for which those records may be relevant.”.

Insertion of section 216A in Act No. 51 of 1977

5. The following section is inserted in the principal Act after section 216:

“Admissibility of certain statements made by young children

216A. (1) Evidence of any statement made by a child younger than 14 years is admissible in order to prove any fact alleged in that statement if -

- (a) the child concerned is unable to give evidence relating to any matter contained in the statement concerned; and
- (b) such statement considered in the light of all the surrounding circumstances contains indications of reliability.

(2) If a child younger than 14 years gives evidence in criminal proceedings, evidence of any statement made by that child is admissible in order

to prove any fact alleged in that statement if the child concerned gives evidence to the effect that he or she made that statement.

(3) Evidence of a statement contemplated in subsection (1) or (2) may be given in the form of-

- (a) the playing in court of a video or audiotape of the making of the statement if the person to whom the statement concerned has been made, gives evidence in such criminal proceedings;
- (b) a written record of the making of that statement if the person to whom the statement has been made gives evidence in the proceedings concerned;
- (c) oral evidence relating to the making of the statement, if it is not possible to give evidence in the form contemplated in paragraph (a) or (b)."

Short title and commencement

6. This Act is called the Criminal Procedure Amendment Act, 2003.
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