TITLE 9

Chapter 9:07 PREVIOUS CHAPTER

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, 9/1999, 14/1999,6/2000, 8/2001, 22/2001, 23/2001,1/2002, 14/2002;

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), 14/1999, 25A/2002, 112/2002, 37/2004, 41A/2004.

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[Amended by Section 44 of Act 1 of 2002 with effect from the 22nd January, 2002.]

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[Repealed by Section 44 of Act 1 of 2002 with effect from the 22nd January, 2002.]

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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—

"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;

"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;

"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 ninety-one permitted to be assisted by another person, that other person;

"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;

"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];
[amended by Act 25/1998 with effect from 1st January, 2001]
(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" includes any person delegated generally or specially by the Attorney-General under this Act;
"statutory capital offence" means an offence where any enactment requires that the person convicted of such offence shall be sentenced to death;
"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 AT PUBLIC INSTANCE

A. Attorney-General

5 Criminal proceedings in name of State

Any criminal proceedings purporting to be instituted in the name of the State shall for all purposes be deemed to be instituted in the name of Zimbabwe.

6 Delegation of functions of Attorney-General

(1) The Attorney-General may, when he deems it expedient, appoint any legal practitioner entitled to practise in Zimbabwe to exercise all or any of the rights and powers or perform all or any of the functions conferred upon him by subsection (5) of section 76 of the Constitution, this Act or any other enactment, whether or not they relate to criminal proceedings.

(2) A legal practitioner appointed in terms of subsection (1) may, subject to any conditions which the Attorney-General may impose—

(a) sign any certificate, authority or other document required or authorized by an enactment referred to in that subsection; and

(b) appoint a legal practitioner entitled to practise in Zimbabwe to exercise the rights and powers or perform the functions delegated to him in terms of subsection (1) and the provisions of this subsection shall apply, mutatis mutandis, in respect of that appointment.

7 Director of Public Prosecutions

There shall be a Director of Public Prosecutions whose office shall be a public office and shall form part of the Public Service.

8 Presiding officer may appoint prosecutor in certain cases

If for any reason the person appointed in terms of section six to conduct a prosecution

or to appear at a preparatory examination is unable to act or if no person has been so appointed, the officer presiding over the court or examination shall, by writing under his hand, designate some fit and proper person for that occasion to prosecute or, as the case may be, to appear.

9 Attorney-General's power of stopping prosecutions

The Attorney-General may, at any time before conviction, stop any prosecution commenced by him or by any other person charged with the prosecution of criminal cases but, if the accused has already pleaded to any charge, he shall be entitled to a verdict of acquittal in respect of that charge.

9A 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 Attorney-General or someone acting on the express authority of the Attorney-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.

[inserted by the General Laws Amendment (No.2) Act 2002 promulgated on the 24th January, 2003 - with retrospective effect, in terms of clause 47 - from the 4th February, 2002 - Editor.]

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

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

B. Local public prosecutor

11 Functions of local public prosecutor

(1) All public prosecutors attached to a magistrates court are, as representatives of the Attorney-General and subject to his 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 shall determine whether there are good grounds for prosecution or not:

Provided that—

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

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

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 Attorney-General to prosecute

In all cases where the Attorney-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 husband, in respect of offences committed against his wife;

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

(c) the wife or children or, where there is no wife 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.

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 Attorney-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 Attorney-General that he declines to prosecute

(1) Except as is provided by subsection (2), 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 authorized by law to issue such process a certificate signed by the Attorney-General that he has seen the statements or affidavits on which the charge is based and declines to prosecute at the public instance, and in every case in which the Attorney-General declines to prosecute he shall, at the request of the party intending to prosecute, grant the certificate required.

(2) 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, subsection (1) shall not apply.

17 Recognizances to be entered into by private prosecutor

No private party, other than a public body or person described in paragraph (d) of section fourteen, shall take any proceedings under the right conferred upon him by this Part until he—

(a) has, if the prosecution is in the High Court, deposited the sum of one hundred dollars or entered into a recognizance in the sum of one hundred dollars with two sufficient sureties in the sum of fifty dollars each, to be approved by such court, as security that he will prosecute the charge against the accused to a conclusion without delay; and

(b) has in any prosecution given security in such amount and in such manner as the court may direct that he will pay the accused such costs incurred by him in respect of his defence to the charge as the court before which the case is tried may order him to pay.

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 or complaint 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 Attorney-General, or a public prosecutor on the

instructions of the Attorney-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 Attorney-General to take up and conduct prosecution at public instance

In the case of a prosecution at the instance of a private party, the Attorney-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 Attorney-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 has reasonable grounds to suspect of having committed any of the offences mentioned in the First Schedule;

(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.

[Amended by Act 22 of 2001, with effect from the 10th September, 2002.]

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 the First 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 person in case of affray

Any private person is authorized to arrest without warrant any person whom he sees engaged in an affray in order to prevent such person from continuing the affray, and to deliver him over to a police officer to be dealt with according to law.

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.

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 (3) and (4), 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:

Provided that¾

(a) if the person arrested without warrant is charged with any offence referred to in paragraph 10 or 11 of the Third Schedule and the judge or magistrate

before whom the person is brought in terms of this section is satisfied¾

(i) that the person was arrested in any of the circumstances specified in paragraph (a), (b) or (c) of subsection (1) of section twenty-five, the judge or magistrate shall order that person's further detention or issue a warrant for his further detention for a period of seven days even if, at the time when the person is brought before him, there are no prima facie grounds for the charge; or

(ii) that there are prima facie grounds for the charge, the judge or magistrate shall order that person's further detention or issue a warrant for his further detention for a period of twenty-one days;

(b) a person referred to in proviso (a) shall¾

(i) unless the charge or charges against him are earlier withdrawn, remain in detention for seven or twenty-one days, as the case may be, from the date when an order or warrant for his further detention was issued in terms of that proviso, and no court shall admit such person to bail during that period;

(ii) pending the outcome of investigations into the charge or charges against him, remain in detention after the lapse of the period referred to in subparagraph (i), unless a court admits him to bail.

[Amended by Section 44 of Act 1 of 2002 with effect from the 22nd January, 2002, and proviso amended by S.I.37 and 41A of 2004 with effect from the 13th and 20th February, 2004 respectively.]

(3) If the period referred to in subsection (2) expires—

(a) on a day which is not a court day or on any court day after four o'clock in the afternoon, the said period shall be deemed to expire at four o'clock in the afternoon of the court day next succeeding that day; or

(b) on any court day before four o'clock in the afternoon, the said period shall be deemed to expire at four o'clock in the afternoon of that court day:

Provided that this subsection shall not in any case be construed as extending the period referred to in subsection (1) beyond a period of ninety-six hours.

(4) . . . . . .

[repealed by S.I. 41A of 2004 with effect from the 20th February, 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 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 Attorney-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.

(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.

35 Telegram, radio message or entry in Police Gazette to be authority for execution of warrant

(1) A telegram from any officer of any court or from any peace officer or a message or signal transmitted over the police radio network or an entry in the Police Gazette, stating that a warrant has been issued for the arrest or further detention of any person accused of any offence, shall be sufficient authority to any peace officer for the arrest and detention or further detention, as the case may be, of that person until a sufficient time, not exceeding fourteen days, has elapsed to allow the transmission of the warrant or writ to the place where that person has been arrested or detained, unless the discharge of that person is previously ordered by a judge:

Provided that any judge may, upon cause shown, order the further detention of the accused person for a period to be stated in such order, but not exceeding twenty-eight days from the date of the arrest of such person.

(2) Nothing in subsection (1) shall be construed as derogating from the provisions of this Act or of any other enactment whereby a person so arrested may be admitted to bail.

36 Arresting wrong person

(1) Any person duly authorized to execute a warrant of arrest who thereupon arrests a person, believing in good 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 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.

[Amended by Act 22 of 2001, with effect from the 10th September, 2002.]

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 fingerprints, palmprints, footprints and photographs of any person arrested upon any charge, and the medical officer of any prison or any medical officer of the Ministry responsible for health or any peace officer may take or cause to be taken such steps, including any blood test, as he 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 a blood test shall only be made by a medical officer at the request in writing of a police officer of or above the rank of superintendent and in order to ascertain some fact which is material to the investigation of the charge upon which such person has been arrested.

(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 fingerprints, palmprints, 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 Attorney-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.

42 Resisting arrest

(1) If any person who is authorized 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—

(a) resists the attempt and cannot be arrested without the use of force; or

(b) flees when it is clear that an attempt to arrest him is being made or resists the attempt and flees;

the person attempting the arrest may, in order to effect the arrest, use such force as is reasonably justifiable in the circumstances of the case to overcome the resistance or to prevent the person concerned from escaping.

(2) Where a person whose arrest is attempted is killed as a result of the use of reasonably justifiable force in terms of subsection (1) the killing shall be lawful if the person was to have been arrested on the ground that he was committing or had committed, or was suspected on reasonable grounds of committing or having committed an offence referred to in the First Schedule.

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 Penalties for escape or aiding escape from lawful custody other than from prison

(1) Any person who having been arrested and being in lawful custody, but not having yet been lodged in any prison, escapes or attempts to escape from such custody, 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.

[Amended by Act 22 of 2001, with effect from the 10th September, 2002.]

(2) Any person rescuing or attempting to rescue from lawful custody any other person who has been arrested, but is not yet lodged in any prison, or aiding such other person to escape or in an attempt to escape from such custody, or harbouring or concealing or assisting in harbouring or concealing him, knowing him to have so escaped, 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.

[Amended by Act 22 of 2001, gazetted on the 1st February, 2002]

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.

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

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.

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, 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;

[Amended by Section 44 of Act 1 of 2002 with effect from the 22nd January, 2002.]

or

(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;

[Amended by Section 44 of Act 1 of 2002 with effect from the 22nd January, 2002.]

or

(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, 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.

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.

[Amended by Act 22 of 2001, with effect from the 10th September, 2002.]

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) 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; or

(b) there are reasonable grounds for suspecting that such goods or articles have been criminally procured;

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 until the next sitting of the magistrates court which shall inquire into the circumstances and make such order or give such direction as to it seems fit and proper.

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.

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 the provisions of subsection (4) of section forty-one shall apply, mutatis mutandis, to the searching of any woman.

58 Disposal by police officer of article after seizure

A police officer who seizes any article referred to in section forty-nine 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—

(a) may, if the article is perishable, with due regard to the interests of the persons concerned, dispose of the article in such manner as the circumstances may require; or

(b) 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; or

(c) shall, if the article is not disposed of or delivered in terms of paragraph (a) or (b), give it a distinctive identification mark and retain it in police custody or make such other arrangements with regard to the custody thereof as the circumstances may require.

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 paragraph (c) of section fifty-eight—

(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 or if the police officer concerned does not know of any person who may lawfully possess the article, be forfeited to the State.

(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.

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 paragraph (c) of section fifty-eight and the article is required at a trial or preparatory examination 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.

(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 paragraph (c) of section fifty-eight.

(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 or preparatory examination for the purposes of evidence.

(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 or if the person who is entitled thereto cannot be traced or is unknown, be forfeited to the State.

(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 which is forged or counterfeit or which cannot lawfully be possessed by any person.
(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.

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.

[Amended by Act 22 of 2001, with effect from the 10th September, 2002.]

(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.

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

PREPARATORY EXAMINATIONS

A. Securing presence of accused

65 Summons to appear at preparatory examination

If requested thereto by a public prosecutor who has been authorized by the Attorney-General to institute a preparatory examination against a person who is not in custody,

the clerk of the court to which that public prosecutor is attached shall issue a summons requiring the said person to appear before a magistrate of such court for the purpose of undergoing a preparatory examination, and shall deliver such summons to the person who is to serve it in terms of subsection (2) of section sixty-six.

66 Contents of summons

(1) A summons referred to in section sixty-five shall be directed to the accused, and shall state the nature of the offence which he is alleged to have committed and the day and time when and place where he is required to appear.

(2) Any summons shall be served, by a person authorized to serve criminal process, upon the accused person to whom it is directed, either by delivering it to him personally or, if the accused 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 any such summons may be proved by the testimony upon oath of the person effecting the service or by his affidavit or by due return of service under his hand.

67 If juvenile is summoned, his parents or guardian may be summoned also

(1) When a person under the age of eighteen years is summoned as aforesaid to undergo a preparatory examination, the person who serves the summons shall, unless otherwise directed by a magistrate, serve a copy thereof upon the parent or guardian of the person summoned if he can be found in the area of jurisdiction of the magistrate who is to hold the preparatory examination, and to the copy so served shall be attached a notice warning such parent or guardian to attend the preparatory examination on the date on which, and at the time at which, the person summoned is required to appear and to remain in attendance during the preparatory examination or, if the preparatory examination is converted into a summary trial, during the trial:

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 person who serves the summons to be tacitly emancipated.

(2) If a parent or guardian of a person under the age of eighteen years against whom a preparatory examination is held has not received a notice mentioned in subsection (1), the magistrate holding the preparatory examination may, at any time during that preparatory examination, direct any person to warn the parent or guardian orally to attend the preparatory examination and to remain in attendance as aforesaid, 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.

(3) If a parent or guardian who has been warned as aforesaid fails to attend on the date and at the time appointed, or to remain in attendance during the preparatory examination or trial on that day and on any day to which the preparatory examination or trial may be adjourned, the magistrate presiding at the preparatory examination or trial may issue a warrant for the apprehension of that parent or guardian and may also order him to pay a fine not exceeding level three or imprisonment for a period not exceeding one month or to both such fine and such imprisonment.

[Amended by Act 22 of 2001, with effect from the 10th September, 2002.]

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

(5) Any person arrested under subsection (3) may be detained in any prison and compelled to attend the preparatory examination or trial until the determination thereof.

B. Procedure on preparatory examination

68 Commencement of preparatory examination

(1) When the accused is before a magistrate having jurisdiction, whether voluntarily or upon summons, or after being apprehended with or without a warrant or while in

custody for the offence of which he is accused or any other offence, the local public prosecutor or other person charged with the prosecution of criminal cases shall, if authorized thereto by the Attorney-General, institute a preparatory examination before the magistrate, and the magistrate shall proceed in the manner hereinafter described to inquire into the matters charged against the accused.

(2) At any stage after the commencement of a preparatory examination, any person suspected of having committed or having taken part in the commission of the offence in respect of which the preparatory examination was instituted may be joined with the accused, whereupon the preparatory examination of the accused and such person shall proceed jointly:

Provided that the evidence previously taken shall be read over to such person, and such person shall, by himself or his legal practitioner, be entitled to cross-examine any witness, and in such case the prosecutor may re-examine the witness.

69 Accused must be in his sound and sober senses

(1) Before commencing a preparatory examination and at all times during the course thereof, the magistrate shall satisfy himself that the accused is in his sound and sober senses, and if the magistrate is, before commencing or any time during the course of a preparatory examination, satisfied that the accused is not in his sound and sober senses, he shall record that fact and order him to be kept in custody in such place for such period and under such conditions as to observation or otherwise 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 sound and sober senses, he shall be again brought before the magistrate who shall commence or, as the case may be, continue the preparatory examination.

70 Public excluded from preparatory examination

(1) Subject to subsection (5), no person, other than—

(a) the accused and his legal representative; and

(b) the spouse of the accused; and

(c) the parent, guardian or person in loco parentis of an accused person who, or of a person giving evidence who, is under the age of eighteen years; and

(d) an officer of the court; and

(e) any police officer concerned with the investigation of the alleged offence; and

(f) a person whose presence is necessary in connection with the proceedings; and

(g) a person authorized to be present by the magistrate holding the preparatory examination;

shall be present at a preparatory examination.

(2) Subject to this Act, the record of a preparatory examination shall be accessible only to—

(a) the accused, or the accused as respondent in an appeal in terms of subsection (1) of section eighty-eight, and his legal representative, if any; and

(b) persons who have been authorized thereto by a magistrate in terms of subsection (3).

(3) Subject to subsection (5), a magistrate may, subject to such terms and conditions as he may fix, authorize a person to have access to any record or part of a record of a preparatory examination if he is satisfied that—

(a) such person has good cause to inspect the record or part thereof; and

(b) the granting of the authority would not lead to any undesirable publication of the proceedings of the preparatory examination.

(4) Subject to subsection (5), any person who communicates to another person,

whether that other person is within or outside Zimbabwe, any information—

(a) likely to reveal the identity of any person against whom a preparatory examination is to be, is being or has been held; or

(b) relating to the proceedings of a preparatory examination;

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:

[Amended by Act 22 of 2001, with effect from the 10th September, 2002.]

Provided that this subsection shall not apply to the communication of information made in good faith for the purpose of the defence of an accused or for the purpose of opposing an appeal in terms of subsection (1) of section eighty-eight.

(5) Subject to subsections (7) and (8), on the application of the accused or, where there is more than one accused, any of the accused, the magistrate holding a preparatory examination shall order that persons other than those specified in subsection (1) may be present at the preparatory examination.

(6) Subject to subsections (7) and (8), on the application of the accused or, where there is more than one accused, all the accused, the magistrate holding the preparatory examination may, subject to such terms and conditions as he thinks fit, order that all or any of the provisions of subsections (2) and (4) shall not apply in relation to the preparatory examination.

(7) Where an order is made in terms of subsection (5) or (6), the provisions of subsections (4), (7) and (8) of section one hundred and ninety-four and of sections one hundred and ninety-six and one hundred and ninety-seven shall apply, mutatis mutandis, in relation to the preparatory examination.

(8) The magistrate shall not make an order in terms of subsection (5) or (6) if—

(a) the accused or, where there is more than one accused, any of the accused, is under the age of eighteen years; or

(b) he is satisfied—

(i) that it would not be in the interests of justice, defence, public safety, public order, public morality, the welfare of persons under the age of eighteen years or the protection of the private lives of persons concerned in the proceedings in question; or

(ii) in particular, upon the application of the prosecutor or the accused, that a witness who is about to give evidence will have reasonable cause to fear that he or any other person is likely to suffer unlawful injury to his person or property as a result of the giving of such evidence if the order is made.

71 Irregularities not to affect proceedings

No irregularity or defect in the substance or form of the summons or warrant or in the manner of arrest, and no variance between the charge contained in the summons or warrant and the charge contained in the information, or between either and the evidence adduced on the part of the prosecution at the inquiry, shall affect the validity of any criminal proceedings at or subsequent to the hearing.

72 Magistrate may remand case when accused prejudiced by variance

If it appears to the magistrate that the accused has been deceived or misled by any variance such as is mentioned in section seventy-one in any summons or warrant, he may adjourn the examination to some future day, and in the meantime may remand such person or admit him to bail as provided in this Act.

73 Subpoenaing of witnesses

(1) A public prosecutor who has been authorized by the Attorney-General to institute a preparatory examination, or an accused against whom a preparatory examination is being or is to be held, or the latter's representative, may compel the attendance of any person at such preparatory examination 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 magistrates court in which the preparatory examination is being or is to

be held.
(2) If a magistrate holding a preparatory examination 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 may direct the clerk of the magistrates court to issue, in the manner mentioned in subsection (1), a subpoena requiring such person to appear before him at a time and place 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 holding a preparatory examination 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 a preparatory examination shall obey the subpoena and remain in attendance throughout the examination, unless excused by the magistrate holding the examination.
74 Arrest and punishment for failure to obey subpoena or to remain in attendance
(1) If any person subpoenaed to attend a preparatory examination 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 in obedience to a subpoena fails to remain in attendance, the magistrate holding the preparatory examination 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 any other magistrate.
(2) When the person in question has been arrested under the said warrant, he 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, with a view to securing his presence as a witness at the preparatory examination, or such 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 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 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.
[Amended by Act 22 of 2001, with effect from the 10th September, 2002.]
(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 preparatory examination 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 preparatory examination.
75 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 a preparatory examination and who is also within five kilometres of the premises in which such examination is being held.
76 Witness refusing to be examined or to produce 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 a preparatory examination, 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 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 sooner consents to do what is required of him.

(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 to him, the magistrate may, if he sees fit, again adjourn the proceedings, and by order 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) An appeal shall lie from any order of committal in terms of subsection (1) or (2) to the High Court, which may make such order on the appeal as to it seems just.

(4) Nothing in this section shall prevent the magistrate from committing the accused for trial or otherwise disposing of the proceedings in the meantime according to any other sufficient evidence taken by him.

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

77 Procedure where trial in magistrates court has been turned into preparatory examination

Whenever a magistrates court has stopped the summary trial of an accused person under the powers conferred by the enactment governing such court, and the proceedings have thereupon become those of a preparatory examination, it shall not be necessary for the magistrate to recall any witness who has already given evidence at that trial, but the magistrate's record of the evidence so given, certified by him to be correct or, if such evidence was recorded in shorthand writing or by mechanical means, any document purporting to be a transcript of the original record of the said evidence and purporting to have been certified as correct under the hand of the person who transcribed it, shall for all purposes whatsoever have the same force and effect and shall be receivable in evidence in the same circumstances as the evidence given in the course of a preparatory examination in the manner provided in section seventy-eight:

Provided that as often as it appears to the magistrate himself or it is made to appear to him, either by the prosecutor or by the accused, that the ends of justice might be served by having a witness already examined recalled for further examination, then such witness shall be summoned and examined accordingly and the examinations so taken shall be recorded in the manner provided in this Part as to other examinations.

78 Evidence on oath at preparatory examination

(1) All preparatory examinations shall, except when an oath is by law dispensed with, be taken upon oath, or by affirmation where such is allowed by law, and every witness, before giving his evidence, shall make an oath or affirmation, as the case may be, before the magistrate by whom he is to be examined, that in the whole of his evidence he will tell the truth, the whole truth and nothing but the truth, and each witness shall be examined apart from the others.

(2) The evidence of every witness called to testify shall be recorded in the presence of the accused or, if taken in his absence in terms of section one hundred and six or one hundred and seven, shall be afterwards read over to him, and the accused shall, by himself or by his legal representative, be entitled to cross-examine the witness and in such case the prosecutor may re-examine the witness.

(3) Notwithstanding subsections (1) and (2), the prosecutor may put in and read as the evidence of any witness in a preparatory examination a document purporting to be an affidavit made by the witness:

Provided that—

(i) the prosecutor may, if the accused consents, put in an affidavit without reading it;

(ii) the prosecutor shall not, without the consent of the accused, put in an affidavit relating to any confession or statement of the accused which may be

admissible against him in terms of section two hundred and fifty-six.
(4) An affidavit put in in terms of subsection (3) shall be entered as an exhibit and shall be deemed to be evidence given at the preparatory examination.
(5) If evidence is taken down in shorthand writing or by mechanical means, any document purporting to be a transcript of the original record of the said evidence and purporting to have been certified as correct under the hand of the person who transcribed such record, shall prima facie be equivalent to such original record.
(6) The magistrate holding any preparatory examination may order that the fingerprints, palmprints, footprints and photographs of the accused be taken, and may take all such steps, including arrangements for a blood test, as such magistrate may consider necessary to ascertain whether the body of the accused bears any mark or characteristic or shows any condition or appearance or distinguishing feature or to ascertain the state of health of the accused:
Provided that, when the accused whose body it is desired to examine is a woman, the provisions of subsection (4) of section forty-one shall apply, mutatis mutandis.
(7) When it is relevant or may become relevant in the opinion of the magistrate holding a preparatory examination to ascertain whether—

(a) a fingerprint, palmprint or footprint of the accused corresponds to any other fingerprint, palmprint or footprint; or

(b) the body of the accused bears or bore any mark, characteristic or distinguishing feature or shows any condition or appearance;

evidence of the accused's fingerprints, palmprints or footprints, or of the fact that the body of the accused bears or bore any mark or distinguishing feature, condition or appearance, including the result of any blood test that may be relevant as aforesaid, shall be relevant and admissible, and such evidence shall not be rendered inadmissible by the fact that the fingerprint, palmprint or footprint was taken or the mark, characteristic, feature or appearance was discovered otherwise than in terms of this Act or against the wish or will of the accused.

79 Recognizance of witness to appear on trial

(1) Any magistrate before whom any preparatory examination is pending or proceeding may lawfully require any witness, either alone or together with one or more sufficient sureties to the satisfaction of the magistrate, to enter into a recognizance under condition that the witness shall at any time within twelve months from the date thereof, upon being served with a subpoena at some certain place within Zimbabwe to be selected by the witness, appear and give evidence at the trial of the person in respect of whom the preparatory examination was taken, and if any witness being so required to enter into any such recognizance refuses or fails so to do the magistrate may commit to and detain in a prison the witness so refusing or failing until such recognizance has been entered into as aforesaid.
(2) The magistrate may, in exercising his powers in terms of subsection (1), add to the recognizance conditions relating to one or more of the following matters which he 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.

(3) 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 it is, and whether he is an owner of such place of residence or a tenant thereof or a lodger therein.
(4) Any recognizances 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.

80 Absconding witness may be arrested

(1) When any person is bound by recognizance to give evidence or is likely to give material evidence in respect of any offence, any magistrate or any judge of the court before which the offence is triable may, upon information being made 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) Where a person is arrested under a warrant issued in terms of subsection (l), any magistrate or judge referred to in that subsection may, if satisfied that the ends of justice would otherwise be defeated, commit such person to a prison until the time at which he is required to give evidence unless in the meantime he produces sufficient sureties, but that person shall be entitled on demand to receive a copy of the information upon which the warrant for his arrest was issued.

(3) If a peace officer believes on reasonable grounds that the delay in obtaining a warrant in terms of 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 judge or magistrate of the court before which the offence is triable 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.

81 Witness refusing to enter into recognizance

Any witness who refuses to enter into any recognizance in terms of section seventy-nine or eighty may by warrant be committed by the magistrate holding the examination to a prison, there to be kept until after the trial or until the witness enters into such a recognizance as aforesaid 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.

82 Restriction on powers of committing witnesses for detention

The powers of committal of any witnesses for detention shall not be exercised by a magistrate in terms of section eighty or eighty-one unless application is made for such committal on the specific instructions of the Attorney-General.

83 Procedure at conclusion of State case

(1) Subject to subsection (1) of section eighty-seven, at the conclusion of the evidence for the prosecution the prosecutor shall put to the accused the charge or charges on which he seeks committal for trial and the magistrate 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 subsections (2), (3) and (5) and of subsection (2) of section eight-four.

(2) The accused may give evidence in answer to the charge.

(3) If the accused declines to give evidence, the prosecutor and the magistrate 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.

(4) Any evidence given or statements made in terms of subsection (2) or (3), as the case may be, shall be recorded.

(5) After the accused has given evidence or been questioned in terms of subsection (2) or (3), as the case may be, he may adduce evidence in his own defence:

Provided that the magistrate may permit the accused to adduce evidence in his

defence before he himself gives evidence or is questioned, as the case may be.
(6) After hearing the accused and any evidence adduced by him the magistrate may, of his own motion or at the request of the prosecutor or the accused, re-open the preparatory examination for the purpose of—

(a) causing a person who made an affidavit referred to in subsection (3) of section seventy-eight to be summoned to give oral evidence in the proceedings in question or causing written interrogatories to be submitted to him for reply; or

(b) receiving further evidence for the prosecution or the accused.

(7) Any interrogatories referred to in paragraph (a) of subjection (6) and any reply thereto purporting to be a reply from the person to whom the written interrogatories were submitted shall be admissible in evidence in the preparatory examination.

84 Evidence given or statements made by accused or refusal of accused to answer questions may be used as evidence against him

(1) A certified copy of the record of the evidence given or statements made in terms of subsection (2) or (3), as the case may be, of section eighty-three shall be received in evidence before any court upon its mere production by the prosecutor without further proof, unless it is shown that the evidence or statements were not in fact duly given or made, as the case may be:

Provided that, except in so far as it amounts to an admission of any allegation made by the State, any evidence given or statement made shall 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 who gives evidence or is questioned in terms of subsection (2) or (3), as the case may be, of section eighty-three refuses to answer any question, he shall be asked to give his reasons for so refusing and if he persists in his refusal—

(a) in the case of a preparatory examination, the magistrate, in determining whether there is a sufficient case to put the accused upon his trial; or

(b) in the case of a trial, 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, unless satisfied that the accused 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.

(3) For the purposes of subsection (2), 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 (2) of section eighty-three, 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 (3) of section eighty-three, 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.

85 Savings as to admissions

Nothing in this Part shall prevent any prosecutor from giving in evidence any admission or confession or other statement made or any evidence given by the accused which, under Part XIV, would be admissible against him.

86 Admission of previous convictions by accused at conclusion of preparatory examination

(1) As soon as the preparatory examination has been concluded, the prosecutor shall, if he has information or reasonable grounds for believing that the accused has previously been convicted of any offence, transmit direct to the Attorney-General particulars of the alleged previous conviction.

(2) If the Attorney-General determines to indict the accused for trial before the High Court, the Attorney-General may direct any magistrate having jurisdiction within the

area in which the accused is in custody or, if the accused is on bail, the magistrate who committed the accused for trial or sentence, to re-open the preparatory examination for the purpose of ascertaining whether the accused admits that he has been so previously convicted.
(3) The magistrate shall, in accordance with the Attorney-General's directions, re-open the preparatory examination, shall inform the accused of the particulars of the alleged previous conviction and shall call upon him to admit or deny that he was so previously convicted and if the accused admits that he was so previously convicted, his admission shall be reduced to writing and signed by him if he is willing to sign it, and shall in any case be signed also by the magistrate.
(4) No person except the magistrate, the public prosecutor, the accused, his legal representative and the necessary escort of the accused shall be present at any proceedings taken by the magistrate under subsection (3).
(5) Copies of any admission or denial made by the accused under this section shall be transmitted as soon as possible to the Attorney-General.
(6) Due care shall be taken by every officer that no information relative to any alleged previous conviction of the accused is disclosed to any person, except as provided by this section, until evidence of such previous conviction is tendered as provided in Part XVI.

87 Discharge of accused at preparatory examination

(1) If at the conclusion of the evidence for the prosecution the magistrate, upon consideration of the evidence, is of the opinion that there are no grounds to suspect that the accused committed any offence, he shall discharge the accused before any charge is put to him.
(2) If at the conclusion of the evidence for the prosecution and the accused the magistrate, upon consideration of the whole of the evidence, is of the opinion that no sufficient case is made out to put the accused upon his trial, he shall discharge the accused.
(3) Notwithstanding that the accused has been discharged in terms of subsection (1) or (2), a warrant for his arrest may, upon the availability of evidence other than that recorded at the preparatory examination, be issued on the specific instructions of the Attorney-General by a magistrate or justice and upon the arrest of the accused the preparatory examination shall be re-opened.
(4) At the preparatory examination re-opened in terms of subsection (3) the provisions of this Part shall thereafter apply as if—

(a) the accused had not been discharged; and

(b) in the case of an accused discharged in terms of subsection (2), a charge had not been put to him in terms of section eighty-three.

88 Attorney-General may appeal against discharge at preparatory examination

(1) If the Attorney-General is dissatisfied with the ruling of a magistrate discharging the accused in terms of subsection (1) or (2) of section eighty-seven and does not proceed in terms of subsection (3) of that section, he may appeal against the ruling to the High Court on any question of law or fact or mixed law and fact and the provisions of any enactment relating to the procedure for the taking by the Attorney-General of a finding of a magistrates court on appeal in terms of section 61 of the Magistrates Court Act [Chapter 7:10] shall apply, mutatis mutandis, in respect of an appeal in terms of this subsection.
(2) On an appeal in terms of subsection (1) the High Court may exercise the powers, mutatis mutandis, conferred upon it in respect of appeals in criminal cases and shall—

(a) if it is of the opinion that the magistrate ought not to have discharged the accused, authorize the Attorney-General to proceed in terms of subsection (3); or

(b) dismiss the appeal.

(3) Where the High Court has issued an authority in terms of paragraph (a) of subsection (2), the Attorney-General may, within fourteen days, direct a magistrate to issue a warrant for the arrest of the accused, if he is not in custody and, if the accused

was discharged—

(a) in terms of subsection (1) of section eighty-seven, direct the continuation of the preparatory examination; or

(b) in terms of subsection (2) of section eighty-seven, direct the magistrate to commit the accused for trial;

and thereupon the magistrate shall comply with those directions.

(4) The provisions of section seventy shall apply, mutatis mutandis, in respect of an appeal in terms of this section.

C. Committal of accused

89 Committal of accused for trial

(1) When there appears to the magistrate sufficient reason for putting on trial for any offence any accused person brought before him, the magistrate shall commit the accused for trial and, unless the accused is on bail pending trial, grant a warrant to commit the accused to a prison, there to be detained till brought to trial for the offence or till admitted to bail or liberated in due course of law.

(2) A warrant in terms of subsection (1) shall state clearly the offence with which the accused is charged.

(3) A magistrate may make an order of committal or discharge even though part of the examination has been taken by another magistrate and he has not been present during the whole time during which the examination has been taken.

90 Proceedings on admission of guilt

(1) Except when the charge is one of treason, murder or a statutory capital offence, if the accused in answer to the charge put in terms of section eighty-three states that he is guilty of the charge, then the magistrate shall further say to him the words following or words to like effect— "Do you wish the witnesses again to appear to give evidence against you at your trial? If you do not, you will now be committed for sentence instead of being committed for trial".

(2) If the accused, in answer to a question in terms of subsection (1), states that he does not wish the witnesses again to appear to give evidence against him, his statement shall be taken down in writing and shall be kept with the evidence of the witnesses and sent to the Attorney-General.

(3) Any statement in terms of subsection (2) shall be received in evidence before any court upon its mere production without further proof, unless it is shown that the statement was not in fact duly made or given.

(4) In any such case as is mentioned in subsection (2), the magistrate shall, instead of committing the accused for trial, order that he be committed for sentence before a court of competent jurisdiction as the Attorney-General may determine, and in the meantime the magistrate shall by his warrant commit him to a prison, to be there safely kept until the sitting of such competent court or until he is admitted to bail or liberated in due course of law.

91 Committal by magistrate if offence committed in province or regional division other than his own

Where any person charged with any offence has been summoned or arrested and brought before any magistrate of any province or, as the case may be, any regional division other than that in which such crime or offence is alleged to have been committed, and where that magistrate sees cause to commit such person for examination, that magistrate may issue a warrant to commit him to a prison in the province or regional division in which the offence is alleged to have been committed or to a prison in the province or regional division within which the magistrate has jurisdiction to act or to any other prison.

92 Removal of accused from prison in one area of jurisdiction to prison in another

A magistrate may issue a warrant for the removal of any accused person referred to in section ninety-one who is detained on a criminal charge under legal warrant in a prison within the area over which that magistrate has jurisdiction, to a prison in

another area for detention therein for further examination, trial or sentence, or till admitted to bail or liberated in due course of law.

93 Committal for further examination

(1) Where sufficient grounds do not appear for at once committing the accused for trial or for discharging him, and it appears to the magistrate probable that further evidence may be produced, the magistrate may issue a warrant committing the accused, for a period not exceeding fourteen days, for further examination.

(2) A committal for further examination in terms of subsection (1) may, if necessary, take place more than once upon sufficient cause appearing to the magistrate, and such cause shall be expressed in the warrant of re-commitment.

(3) Every warrant of committal for further examination shall specify the time when the accused is again to be brought before the magistrate for examination:

Provided that the magistrate may—

(a) with the consent of the accused; or

(b) if he is satisfied that any person who is able and willing to give material information relating to the offence which is the subject of the preparatory examination is dangerously ill and it appears to the magistrate that the interests of justice might be prejudiced if he were not examined without delay;

proceed with the examination before the expiration of the period mentioned in the warrant.

D. Magistrates before whom preparatory examinations may be held

94 When offence committed on boundaries of provinces or regional divisions or on journey or on railway

(1) Where an offence is committed—

(a) on the boundary or boundaries of two or more provinces or within five kilometres beyond any such boundary or boundaries; or

(b) on the boundary or boundaries of two or more regional divisions or within five kilometres beyond any such boundary or boundaries;

the preparatory examination may be held in any such province or, as the case may be, regional division.

(2) Where an offence is committed in or upon any vehicle whatever employed on any journey, the preparatory examination may be held in any province or, as the case may be, regional division through any part whereof or on or within the distance of five kilometres beyond the boundary whereof such vehicle has passed in the course of the journey during which the offence was committed.

(3) Where an offence is committed upon any railway train, the preparatory examination may be held in any province or, as the case may be, regional division in or through any part whereof such railway train has passed.

95 Provinces or regional divisions in which preparatory examinations may be held

(1) Where the accused is charged with committing any offence, the preparatory examination may be held in any province or, as the case may be, regional division within which the offence was committed or within which any act or omission or event which is an element of the offence has taken place or in which the accused was arrested or is in custody, or at any place determined by the Attorney-General and agreed to by the accused.

(2) Where the accused is charged with theft or with obtaining by any offence any property, the preparatory examination may be held in any province or, as the case may be, regional division within which any part of the property so stolen or obtained by any such offence is found in his possession.

(3) Where the accused is charged with an offence which involves the receiving of any property by him, the preparatory examination may be held in any province or, as the case may be, regional division within which he has any part of the property in his possession.

(4) Where the facts show that an accused person charged with an offence counselled or procured the commission thereof or after the commission thereof harboured or assisted the offender, the preparatory examination may be held in any province or, as the case may be, regional division within which the preparatory examination in the case of the principal offender might be held.
(5) Where the accused is charged with kidnapping, child-stealing or abduction, the preparatory examination may be held in the province or, as the case may be, regional division in which the kidnapping, child-stealing or abduction took place or in any province or, as the case may be, regional division through or in which he conveyed or concealed or detained the person kidnapped, stolen or abducted.
(6) The Attorney-General may, when he considers it expedient owing to the number of accused involved in any criminal proceedings or with a view to avoiding excessive inconvenience or the disturbance of public order, direct in writing that the preparatory examination be held at a specified place in any province or regional division at a specified time.
(7) A copy, including a telegraphic copy, of any direction given by the Attorney-General in terms of subsection (6) shall serve as a warrant for the removal of the accused from any place where he may be in custody to any prison in the province or regional division, as the case may be, in which the preparatory examination is to be held and upon service of any such copy on an accused who has been released on bail, the recognizances of the bail shall be deemed to be extended to the time and place specified in the direction:
Provided that the recognizances of persons bound thereby shall not be liable to forfeiture unless notice of such time and place has been given to them.
(8) The Attorney-General may, if he considers it expedient having regard to the convenience of the public, direct in writing that preparatory examinations in respect of offences alleged to have been committed in any specified portion of any province or regional division may be held in any other province or, as the case may be, regional division.
(9) Where the accused is charged with an offence in terms of any enactment which has extra-territorial operation and any act, omission or event which is an element of the offence took place outside Zimbabwe, the preparatory examination may be held in any province or, as the case may be, regional division, notwithstanding the fact that no act, omission or event which is an element of the offence took place in that province or regional division.
(10) In special cases not falling within subsections (1) to (9), the Attorney-General may authorize the preparatory examination to be held in any province or, as the case may be, regional division.
(11) In case of any doubt or dispute as to the province or, as the case may be, regional division in which a preparatory examination should be held or of an objection on the part of the accused to the holding of such examination in any particular province or regional division or where more than one offence is alleged to have been committed by the accused, but in different provinces or, as the case may be, regional divisions, the matter shall be referred to the Attorney-General, who may direct in which province or regional division a preparatory examination or preparatory examinations shall be held, and his direction shall be conclusive and not subject to appeal to any court

E. Special powers and duties of magistrate on preparatory examination

96 Discretionary powers of magistrate

A magistrate holding a preparatory examination may—

(a) change the place of hearing to any other place within his jurisdiction if, through the inability from illness or other cause of the accused or a witness to attend at a place where the magistrate usually sits, or if from any other reasonable cause it appears desirable to do so, and may adjourn the examination for that purpose;

(b) regulate the course of the examination in any way which may appear

to him desirable and which is not inconsistent with this Act or any other enactment;

(c) if he has jurisdiction to deal summarily with the offence which is the subject of the examination and it appears desirable to try the accused summarily, stop the examination and, with the consent of the prosecutor and the accused, place the accused on trial for that offence before himself, and the evidence taken at the examination shall be regarded as evidence at such trial:

Provided that—

(i) either the prosecutor or the accused may require any person who has given evidence at the examination to be recalled for further examination;

(ii) an affidavit referred to in subsection (3) of section seventy-eight shall not, save in terms of subsection (1) of section two hundred and fifty-five, be regarded as evidence for the purposes of this paragraph unless the accused states that he does not wish the witness who made the affidavit to be summoned to give oral evidence;

(d) if the magistrate conducting the preparatory examination is not a regional magistrate and it appears in the course of the examination that the court of a regional magistrate has jurisdiction to deal summarily with the offence which is the subject of the examination, and that it is desirable to try the accused summarily, with the consent of the prosecutor, stop the examination and grant a warrant committing the accused to a prison, there to be detained till brought to trial for the offence or till admitted to bail or liberated in due course of law, and proceedings shall then be commenced afresh before the court of the regional magistrate concerned.

97 Forfeiture of recognizance

If the accused person, when admitted to bail before the preparatory examination is concluded, does not appear at the time and place mentioned in the recognizance, the magistrate may declare the recognizance forfeited, adjourn the examination and issue a warrant for his arrest in terms of this Act.

98 Local inspections

It is the duty of the person charged with the prosecution, or of the magistrate who conducts the preparatory examination—

(a) to make or cause to be made any local inspections which the particular circumstances of the case may render necessary; and

(b) in cases of homicide or of serious injury to the person of any individual, to cause the dead body or the person injured to be examined by a registered medical practitioner, if such can be procured, and if not, then by the best qualified person or persons obtainable, and such practitioner or person, as the case may be, shall draw up and subscribe a written statement of the appearances and facts observed on such examination.

99 Labelling of exhibits

The magistrate conducting the preparatory examination shall cause—

(a) all documents and any other articles whatsoever exhibited by the witnesses in the course of the preparatory examination and likely to be used in evidence on the accused's trial to be inventoried and labelled or otherwise marked so that they may be capable of being identified at the accused's trial; and

(b) all such documents and articles to be kept in safe custody until the trial, so that they may be then produced.

100 Record of preparatory examination to be sent to Attorney-General

(1) The magistrate shall, as soon as possible after the conclusion of a preparatory examination held by him, transmit a copy of the record thereof to the Attorney-General for his consideration.

(2) If the prosecution is by a private party, the Attorney-General shall, if he declines to prosecute at the public instance, transmit any copy transmitted to him in terms of subsection (1) to that private party, together with such a certificate as is mentioned in section sixteen.

F. Consideration of preparatory examination by Attorney-General

101 Powers of Attorney-General

(1) After considering the preparatory examination transmitted to him in terms of section one hundred, the Attorney-General may, if he has not proceeded in terms of section one hundred and ten—

(a) decline to prosecute the accused and shall thereupon cause his decision to be transmitted to the magistrate, who, if the accused is in custody, shall cause him to be liberated forthwith or, if he is not in custody, shall inform him of the Attorney-General's decision; or

(b) if the magistrate has committed the accused for trial or sentence, indict the accused for trial before the High Court on a charge of any offence disclosed by the evidence taken at the preparatory examination, and shall inform the magistrate accordingly; or

(c) where the offence to be charged is an offence other than treason, murder, rape or a statutory capital offence and the preparatory examination was held by a court other than the court of a regional magistrate, remit the case to be dealt with under its ordinary jurisdiction by a court of a magistrate for the province in which the preparatory examination was held; or

(d) where the offence to be charged is an offence other than treason, murder or a statutory capital offence and the preparatory examination was held by the court of a regional magistrate, remit the case to be dealt with by the court of the regional division in which the preparatory examination was held under the jurisdiction conferred upon it by any enactment; or

(e) where the offence to be charged is an offence other than treason, murder or a statutory capital offence and the preparatory examination was held by a court other than the court of a regional magistrate, remit the case for trial afresh before the court of any regional division in which, under section ninety-four or ninety-five, a preparatory examination could have been held; or

(f) unless the offence to be charged is treason, murder or a statutory capital offence, remit the case to be dealt with by the court of a magistrate for the province in which the preparatory examination was held under any increased jurisdiction conferred upon such court by any enactment; or

(g) in any case in which a person has been committed for sentence under section ninety, remit the case to be dealt with by the magistrates court for the province in which the preparatory examination was held, either under its ordinary jurisdiction or under any increased jurisdiction conferred upon such court by any enactment; or

(h) in any case in which a person has been committed for sentence under section ninety, remit the case to be dealt with by the court of the regional division in which the preparatory examination was held or could, in terms of section ninety-four or ninety-five, have been held, under the jurisdiction conferred upon it by any enactment; or

(i) direct the magistrate to re-open the preparatory examination and take further evidence generally or in respect of any particular matter; or

(j) take such measures and give such directions for the trial of the prisoner before a competent court as he may consider expedient.

(2) The Attorney-General, in remitting any case to a magistrates court—

(a) may, if he considers it to be in the interests of justice, direct that the case shall be commenced afresh, and in that event the case shall not be tried by the magistrate who held the preparatory examination;

(b) shall state specifically whether he remits the case in terms of paragraph (c), (d), (e), (f), (g) or (h) of subsection (1) and shall, where appropriate, state specifically whether he remits the case to be dealt with under the ordinary jurisdiction of the magistrates court or under any increased jurisdiction.

(3) If an accused has been committed for sentence instead of being committed for trial or has been committed for trial instead of being committed for sentence, the

Attorney-General may, notwithstanding such irregularity, indict the accused for trial before the High Court in terms of paragraph (b) of subsection (1) or remit the case for trial in terms of paragraph (c), (d), (e) or (f) of subsection (1).

(4) In the exercise of his powers under this section the Attorney-General may, where there are two or more accused, indict one or more of the accused for trial before the High Court in terms of paragraph (b) of subsection (1) and remit the case against the other accused in terms of paragraph (c), (d), (e), (f), (g) or (h) of subsection (1).

G. General

102 How remitted cases to be dealt with

Any case remitted to a magistrates court in terms of section one hundred and one shall be tried by such court in all respects in accordance with the relevant provisions of Parts IX, X, XII, XIV, XV, XVI and XVII and also in accordance with and subject to the enactment governing such court, and any conviction or sentence imposed in respect thereof shall be subject to review or appeal as provided in such enactment.

103 Accused to be committed for trial by magistrate before trial in High Court

No person shall be tried in the High Court for any offence unless he has been previously committed for trial by a magistrate, whether or not the committal was on the direction of the Attorney-General in terms of section eighty-eight or one hundred and ten, for or in respect of the offence charged in the indictment:

Provided that—

(i) in any case in which the Attorney-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 thirteen and fourteen, direct any magistrate to take a preparatory examination against the person accused, or order any person to be committed for trial, whether any preparatory examination has been taken against such person or not;

(ii) an accused person, other than an accused person committed for trial under section one hundred and ten, 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 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 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 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 Attorney-General in terms of section two hundred and twenty-five;

(v) no irregularity or defect in—

(a) the holding of any preparatory examination; or

(b) any proceedings referred to in section one hundred and ten; or

(c) 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.

104 Persons committed for trial or sentence entitled to receive copy of record of preparatory examination

Any accused person who is committed for trial or sentence for any offence shall be entitled to demand, and to have within a reasonable time in that behalf, from the person who has lawful custody thereof, a copy of the record of the preparatory examination and the person who has the lawful custody of such record shall deliver a copy thereof to the accused or his legal representative on payment of a reasonable

sum, not exceeding seven and one-half cents for each folio of one hundred words, or the person having such lawful custody shall allow the accused's legal representative to make such copy and, subject to proper safeguard of the original, allow reasonable facilities for copying the same, or in any case where a legal practitioner is assigned to the accused in terms of the Legal Assistance and Representation Act [Chapter 9:13] or where a legal practitioner is instructed through a district administrator, shall deliver a copy thereof to the accused's legal representative free of charge:

Provided that—

(i) if such demand is not made before the day appointed for the commencement of the trial of the person on whose behalf such demand is made, such person shall not be entitled to have any such copy, unless the judge presiding at the trial is of opinion that such copy may be made and delivered without delay or inconvenience to the trial;

(ii) the judge may, if he thinks fit, postpone the trial by reason of such copy not having been previously had by the accused.

105 Person under trial may inspect copy of record of preparatory examination

Any accused person shall be entitled at the time of his trial to inspect, without fee or reward, a copy of the record of the preparatory examination.

106 Record of evidence in absence of accused

If it is proved after a preparatory examination has commenced that the accused has absconded and that there is no immediate prospect of arresting him, or if the accused conducts himself in such a manner that the examination cannot, in the opinion of the magistrate, properly proceed in the presence of the accused, the magistrate may, on the instruction of the Attorney-General, examine, in the absence of the accused, the witnesses, if any, produced on behalf of the prosecution and record their evidence.

107 Duty of magistrate to take evidence as to alleged offence in cases where actual offender not known or suspected

(1) Any magistrate may, at any time upon the request of the local public prosecutor, require the attendance of any person who is likely to give material evidence as to any supposed offence, whether or not it be known or suspected who is the person by whom the offence has been committed.

(2) Sections seventy-three to seventy-six shall apply in respect of persons required to attend and give evidence in terms of subsection (1):

Provided that the examination of such persons may be conducted in private at any place selected by the magistrate for that purpose.

108 Access to accused by friends and legal advisers

(1) The friends and legal representatives of an accused person shall have access to him, subject to the provisions of any enactment relating to the management of prisons.

(2) An accused person, while the preparatory examination is being held, shall be entitled to the assistance of his legal representative.

109 True copy of warrant of commitment to be furnished to prisoners

(1) Where an accused person is committed for trial or sentence, he shall be entitled to demand a true copy of the warrant from the officer who is the bearer thereof or in charge of the prison in which he is detained, who shall be liable to pay by way of penalty a sum not exceeding an amount equal to a fine of level four if he refuses to give such copy within twenty-four hours after it is demanded by the accused or his legal representative.

[Amended by Act 22 of 2001, with effect from the 10th September, 2002.]

(2) A penalty in terms of subsection (1) shall be recoverable by civil proceedings at the suit of the accused person.

110 Summary committal for trial of accused person

(1) If the Attorney-General considers it desirable in the interests of justice that a person should be indicted for trial before the High Court for any offence, he may cause a 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 a preparatory examination could be held in respect of the offence concerned; or

(c) where a preparatory examination has been commenced in respect of the offence concerned, the magistrate who is holding the preparatory examination;

informing the magistrate of his decision to indict the person concerned for trial before the High Court and of the offence for which he is to be tried.

(2) On receipt of a notice in terms of subsection (1), the magistrate shall cause the person concerned to be brought before him and notwithstanding any other provision of this Act, shall forthwith commit the person for trial before the High Court and grant a warrant to commit him to prison, there to be detained till brought to trial before the High Court for the offence specified in the warrant or till admitted to bail or liberated in the course of law.

(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 is to be indicted for trial; or

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

(4) Section one hundred and forty shall apply, mutatis mutandis, to a summons issued in terms of paragraph (a) of subsection (3) as if it had been issued in terms of that section.

(5) Part V shall apply mutatis mutandis to a warrant issued in terms of paragraph (b) of subsection (3) as if it had been issued in terms of subsection (1) of section thirty-three.

(6) Where an accused has been committed for trial in terms of subsection (2), there shall be served upon him 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 defence, if any, to the charge; and

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

and informing the accused of the provisions of subsection (2) of section one hundred and eleven.

(7) The Attorney-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 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 Attorney-General in terms of subsection (1) of section one hundred and sixty—

(a) send to the Attorney-General; and

(b) lodge with the registrar of the High Court;

a document containing the information referred to in paragraph (b) of subsection (6).

(9) Where the accused is not to be represented at his trial by a legal practitioner, the Attorney-General may—

(a) serve on the accused a notice directing him to appear before a specified magistrate to provide the information referred to in paragraph (b) of subsection (6); 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 and—
(a) ask the accused if he understands the facts set out in the document referred to in paragraph (a) of subsection (6) and, if necessary, explain those facts; and
(b) inform him of the provisions of subsection (2) of section one hundred and eleven; and
(c) request the accused to supply the information referred to in paragraph (b) of subsection (6);
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 in terms of subsection (7), and
(b) the document lodged with him in terms of paragraph (b) of subsection (8) 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.
(13) If—
(a) on consideration of information supplied by the accused in response to a notice referred to in paragraph (b) of subsection (6) or any other matter; or
(b) on the request of the accused;
and before the accused is called upon to plead to the charge, the Attorney-General considers it desirable in the interests of justice so to do, he may withdraw the prosecution and authorize the institution of a preparatory examination.
111 Information provided by accused or failure of accused to mention fact relevant to his defence may be used as evidence against him
(1) A document purporting to be a copy of a document referred to in subsection (8) of section one hundred and ten 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 subsection (3) of section one hundred and ninety-eight.
(2) If an accused has failed to mention any fact relevant to his defence as requested in the notice in terms of paragraph (b) of subsection (6) of section one hundred and ten, 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.
(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 paragraph (a) of subsection (6) of section one hundred and ten.
PART VIII
CONFIRMATION OF EXTRA-CURIAL STATEMENTS
112 Interpretation in Part VIII

In this Part—
"statement" includes a confession.
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) and of subsection (2) of section two hundred and fifty-six.
(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) The provisions of subsections (2), (3) and (4) of section sixty-seven and sections sixty-nine, seventy and one hundred and eight shall apply, mutatis mutandis, to proceedings in terms of this Part as if they were the proceedings of a preparatory examination.
(7) The provisions of sections seventy-three to seventy-six shall apply, mutatis mutandis, in respect of the production in evidence of the statement in terms of subsection (2).
114 Record of proceedings in terms of this Part to be evidence on production thereof
Any proceedings in terms of this Part shall be recorded and the provisions of section two hundred and sixty-four shall apply, mutatis mutandis, in relation to a certified copy of the record:
Provided that the terms of any statement produced in the proceedings in terms of subsection (2) of section one hundred and thirteen shall not be proved in terms of this section.
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.

PART IX

BAIL

116 Power to admit to bail

(1) Subject to this section, a person may be admitted to bail or have his conditions of bail altered—

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

Provided that, with the consent of the Attorney-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 is a person whose case is 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 (4) of section three hundred and fifty-one, by a judge or by any magistrate within whose area of jurisdiction he is in custody:

Provided that—

(i) the Attorney-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 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 consent of the Attorney-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) Where a person has applied to a judge for bail in respect of an offence referred to in the Third Schedule, the Minister responsible for the administration of the Public Order and Security Act [Chapter 11:17] may issue a certificate stating—

[Amended by Section 44 of Act 1 of 2002 with effect from the 22nd January, 2002.]

(a) that in his opinion it is likely that public security would be prejudiced if the applicant were admitted to bail; and

(b) the grounds on which he bases that opinion.

(3) Whenever it is practicable to do so, a copy of any certificate issued in terms of subsection (1) shall be served on the accused person concerned before the hearing of his application.

(4) Where a certificate issued in terms of subsection (2) is produced in any application to a judge for bail in respect of an offence referred to in the Third

Schedule, the judge shall refuse bail unless the applicant satisfies him that, despite the grounds stated in the certificate, he should be admitted to bail.

(5) 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 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 is in Zimbabwe except on certain conditions which the Minister shall specify in his 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.

(6) A document purporting to be a certificate issued by a Minister in terms of subsection (2) or (5) shall be admissible in any proceedings on its production by any person as prima facie evidence of its contents.

(7) Subject to subsection (4) of section 13 of the Constitution, in any case in which the judge or magistrate has power to admit the accused person to bail, he may refuse to admit such person to bail if he considers it likely that if such person were admitted to bail he would—

(a) not stand his trial or appear to undergo the preparatory examination or to receive sentence; or

(b) interfere with the evidence against him; or

(c) commit an offence;

but nothing in this subsection shall be construed as limiting in any way the power of the judge or magistrate to refuse to admit an accused person to bail for any other reason which to him seems good and sufficient.

117 Application for bail

(1) An accused person may at any time apply verbally or in writing to the judge or magistrate before whom he 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.

118 Conditions of recognizance

(1) Where a judge or magistrate has granted an application referred to in subsection (1) of section one hundred and seventeen, 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.

(2) The conditions of the recognizance shall be that the prisoner—

(a) in the case of a prisoner who is undergoing a preparatory examination and is admitted to bail before such preparatory examination is concluded, shall appear at a time and place to be specified in writing and as often as may be necessary thereafter and undergo examination or further examination until the conclusion of such preparatory examination:

Provided that the conditions of the recognizance may include all or any of the conditions specified in paragraph (b);

(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 Attorney-General may consider desirable; and

(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 Attorney-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
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.
121 Appeals against decisions regarding bail
(1) Subject to this section and to subsection (5) of section 44 of the High Court Act [Chapter 7:06], where a judge or magistrate has admitted or refused to admit a person to bail—
(a) the Attorney-General or his representative, within seven days of the decision; or
(b) the person concerned, at any time;
may appeal against the admission or refusal or the amount fixed as bail or any conditions imposed in connection therewith.
(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) A decision by a judge or magistrate to admit a person to bail shall be suspended if, immediately after the decision, the judge or magistrate is notified that the Attorney-General or his representative wishes to appeal against the decision, and the decision shall thereupon be suspended and the person shall remain in custody until—
(a) if the Attorney-General or his representative does not appeal in terms of subsection (1)—
(i) he notifies the judge or magistrate that he has decided not to pursue the appeal; or
(ii) the expiry of seven days;
whichever is the sooner; or
(b) if the Attorney-General or his representative appeals in terms of subsection (1), the appeal is determined.
(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 term 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 (2) to (6) of section one hundred and sixteen 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 to admit to bail of a person charged with any offence referred to in paragraph 10 or 11 of the Third Schedule, in which event subsections (3) to (7) shall apply to such appeal.
[substituted by S.I. 41A of 2004 with effect from the 20th February, 2004.]
(9) This section shall apply in regard to a private prosecution as if references to the Attorney-General were references to the private party instituting the prosecution.
122 . . . . . .
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:

Provided that—

(i) the Attorney-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 Attorney-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) Where a person has applied to a judge for bail in respect of an offence referred to in the Third Schedule, the Minister responsible for the administration of the Public Order and Security Act [Chapter 11:17] may issue a certificate stating—

[Amended by Section 44 of Act 1 of 2002 with effect from 22nd January, 2002.]

(a) that in his opinion it is likely that public security would be prejudiced if the applicant were admitted to bail; and

(b) the grounds on which he bases that opinion.

(3) Whenever it is practicable to do so, a copy of any certificate issued in terms of subsection (1) shall be served on the accused person concerned before the hearing of his application.

(4) Where a certificate issued in terms of subsection (2) is produced in any application to a judge for bail in respect of an offence referred to in the Third Schedule, the judge shall refuse bail unless the applicant satisfies him that, despite the grounds stated in the certificate, he should be admitted to bail.

(5) 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 applicant will not be admitted to bail while he is in Zimbabwe, the judge or magistrate hearing the matter shall not admit the applicant to bail;

(b) that the applicant will not be admitted to bail while he is in Zimbabwe except on certain conditions which the Minister shall specify in his certificate, the judge or magistrate hearing the matter shall not admit the applicant 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 applicant.
(6) A document purporting to be a certificate issued by a Minister in terms of subsection (2) or (5) shall be admissible in any proceedings on its production by any person as prima facie evidence of its contents.
(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 Attorney-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 . . . . . .

[Repealed by Act 8 of 1997 ,with effect from 1st October, 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 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 forthwith by the person arresting him of the cause of the arrest.

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 Attorney-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 Attorney-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 Protection and Adoption Act [Chapter 5:06] pending his appearance before a court or magistrate or until he is otherwise dealt with according to law.

(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 twenty dollars or, in default of payment, to imprisonment for a period not exceeding one month.

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) When the prosecution is at the public instance, the indictment shall be in the name of the Attorney-General and shall be signed by the Attorney-General or by any legal practitioner in the Attorney-General's office.

(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 sixty-seven 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.

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 imprisonment for a period not exceeding one month or to both such fine and such imprisonment.

[Amended by Act 22 of 2001, with effect from the 10th September, 2002.]

(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 sixty-seven shall apply, mutatis mutandis.

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—

[Amended by Act 22 of 2001, with effect from the 10th September, 2002.]

(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 fifty-six, 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.

(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 the provisions of subsections (2), (3) and (4) of section sixty-seven 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.

143 Charges in remitted cases

(1) When any case has been remitted by the Attorney-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.

Provided that to a count in an indictment charging murder no count charging any

offence other than an offence for which sentence of death may be imposed shall be joined.

(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.

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 bank-note 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.

[Amended by Act 22 of 2001, with effect from the 10th September, 2002.]

(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 in the Public Service 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.

(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 common law or under an 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.

(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 In indictment for murder or culpable homicide charge as to fact sufficient

It shall be sufficient in every indictment for murder to charge that the accused did wrongfully, unlawfully and maliciously kill and murder the deceased, and it shall be sufficient in every indictment for culpable homicide to charge that the accused did wrongfully and unlawfully kill the deceased.

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) forging, uttering, offering, disposing of or putting off any instrument; or

(b) theft by means of false pretences; or

(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.

(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 Attorney-General has decided to prosecute before the High Court shall be brought to trial on such date as may be determined by the Attorney-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 Attorney-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 Attorney-General, not available to stand trial shall not be included as part of the period of six months referred to in this subsection.

(3) For the purposes of this section, a person shall not be deemed to have been committed for trial in any case in which the Attorney-General has in terms of section one hundred and one ordered a further examination to be taken, until such further examination has been completed.

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 Attorney-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 Attorney-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 Attorney-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.

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.

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 indictment, 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) In determining whether or not any particulars are, or whether or not a defect in an indictment before the High Court or charge in or remittal to a magistrates court is, material to the substantial justice of the case, the court may have regard to the preparatory examination.

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 Attorney-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 Attorney-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

(f) that the court has no jurisdiction to try him for the offence; or

(g) that the prosecutor has no title to prosecute.

(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 Attorney-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

outlining the nature of his defence and the material facts on which he relies and, if he is not represented by a legal practitioner, the provisions of subsection (2) of section one hundred and eighty-nine shall be explained to him.

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) . . . . . .

(5) The provisions of subsections (6) and (7) of section seventy-eight shall apply, mutatis mutandis, at every criminal trial.

(6) . . . . . .

(7) . . . . . .

(8) . . . . . .

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 four hundred dollars or to imprisonment for a period not exceeding twelve months or to both such fine and such imprisonment.

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.
[Amended by Act 22 of 2001, with effect from the 10th September, 2002.]

197 Identity of juvenile witnesses 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.
[Amended by Act 22 of 2001, with effect from the 10th September, 2002.]

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 Attorney-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.
(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.
(5) On an appeal by the Attorney-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.

(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.

(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 ninety-eight, 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 Remittal on confession of accused

(1) In a case remitted to a magistrates court on the confession of the accused, the presiding officer, who need not be the officer who committed the accused for sentence, shall, when such person is brought before his court, inform him that the preparatory examination in the course of which he voluntarily admitted his guilt, having been transmitted to the Attorney-General, has been remitted by that officer to the court, and the provisions of section one hundred and eighty-one shall, mutatis mutandis, be observed by the court.

(2) If the accused is convicted, the magistrate shall ask the accused whether he has anything to say why sentence should not then be passed upon him for the offence of which he has been found or confessed himself guilty and if, in answer to that question, the accused desires to have any witness formerly examined recalled or any person not yet examined called as witness, or if the accused states any other ground why sentence should not then be passed upon him, the court shall consider what is

urged by the accused in support of his application for further evidence or his objection to be then sentenced and shall pass or postpone sentence as it thinks to be most in accordance with real and substantial justice.
(3) If the court in any case referred to in subsection (2) considers it proper to pass sentence at once, a note of the application or objection made by the person accused and of the reasons for the disallowance thereof shall be noted upon the record.
206 Remittal otherwise than on confession of accused
(1) In a case remitted by the Attorney-General, but not upon the confession of the accused, the accused shall when brought before the court be required to plead, and the case shall, except as otherwise provided in this section, be proceeded with in the manner provided by law in respect of criminal cases which have not been remitted.
(2) When the officer who presides at the trial of any case referred to in subsection (1) is himself the magistrate before whom such preparatory examination was taken, it shall not be necessary for him to recall any witness who formerly gave his evidence in the presence of such magistrate and of the accused, but it shall be competent and sufficient to read as evidence the evidence of such witness:
Provided that, with the consent of the accused or his legal representative, the magistrate may dispense with the reading of any such evidence.
(3) If it appears to the court that the ends of justice might be served by having a witness formerly examined in the presence of the presiding officer and of the accused summoned again for further examination, then such witness shall be summoned and examined accordingly.
(4) Except as otherwise provided in Part XIV or in any enactment, no evidence of any witness not previously examined in the presence of both the presiding magistrate and such accused person shall be read or used at the subsequent trial, but such witness, if a necessary one, shall be again summoned and be examined in like manner as if he had not been before examined in the case.
(5) In every case where the Attorney-General has remitted a case for trial under the powers conferred on him by section one hundred and one, the accused shall be entitled at the time of the trial to inspect, without fee or reward, a copy of the preparatory examination.
C. Verdicts possible on particular indictments, summonses and charges
207 On trial for commission of offence accused may be found guilty of attempt, etc.
(1) Any person charged with any offence may be found guilty of—
(a) attempting to commit; or
(b) conspiring with any other person to aid or procure the commission of or to commit; or
(c) inciting any other person to commit;
as the case may be, that or any other offence of which he might under any enactment be convicted on the charge, if such are the facts proved.
(2) Any person charged with an offence may be found guilty as an accessory after the fact in respect of that or any other offence of which he might under any enactment be convicted on the charge, if such are the facts proved, and shall on conviction, in the absence of any penalty expressly provided by any enactment, be liable to punishment at the discretion of the court convicting him:
Provided that in no case shall such punishment exceed that to which the principal offender would under any law be subject.
208 Charge of fraud
If an accused is tried upon an indictment, summons or charge alleging the commission of an offence in which an element consists of false representations as to the nature or quality of a certain article or substance, and if the accused would, by the transaction in which those representations were made, have committed some other offence if his representations had been true, the court trying him may, if it acquits him of the first-mentioned offence, convict him of having committed or attempted to

commit such other offence as if he had been charged therewith.

209 Charge of robbery

(1) If on the trial of any person on an indictment, summons or charge for robbery it appears from the evidence that the accused did not commit the crime of robbery but that he did commit—

(a) an assault with intent to rob; or

(b) an assault with intent to do grievous bodily harm; or

(c) an assault with intent to do grievous bodily harm and theft; or

(d) an assault; or

(e) an assault and theft; or

(f) theft; or

(g) an offence in terms of subsection (2) of section 12 of the Miscellaneous Offences Act [Chapter 9:15];

the accused shall not by reason thereof be entitled to be acquitted but a verdict may be given that the accused is guilty of the offence or offences, as the case may be, referred to in paragraph (a), (b), (c), (d), (e), (f) or (g).

(2) If on the trial of any person upon an indictment, summons or charge in respect of robbery the evidence, though not sufficient to substantiate the charge of robbery, is sufficient to show that the accused was guilty of receiving stolen goods knowing them to have been stolen, or that the accused acquired or received into his possession stolen goods in contravention of subsection (3) of section 12 of the Miscellaneous Offences Act [Chapter 9:15], he may be found guilty of receiving stolen goods knowing them to have been stolen or of a contravention of the said subsection (3), as the case may be, and upon any such finding the accused shall be liable to the same punishment as if convicted of the like offence on an indictment, summons or charge specially framed for the offence of receiving stolen goods knowing them to have been stolen.

210 Charge of assault with intent to murder or to do grievous bodily harm

(1) Any person charged with assault with intent to murder or attempted murder may be found guilty of assault with intent to do grievous bodily harm, or of assault, if such are the facts proved.

(2) Any person charged with assault with intent to do grievous bodily harm or with assault with any other particular intent specified in the indictment may be found guilty of assault, if such are the facts proved.

211 Charge of rape and other sexual offences and assaults

(1) Any person charged with rape may be found guilty of—

(a) assault with intent to commit rape; or

(b) indecent assault; or

(c) assault with intent to commit grievous bodily harm; or

(d) assault; or

(e) contravening section 3, 4, 8 or 15 of the Sexual Offences Act [Chapter 9:21];

if such are the facts proved.

[Amended by Act 8 of 2001,with effect from 17th August, 2001.]

(2) Any person charged with assault with intent to commit rape or with an attempt to commit rape may be found guilty of indecent assault, or of assault with intent to do grievous bodily harm, or of assault, or of any statutory offence referred to in subsection (1), save an act of extra-marital sexual intercourse , if such are the facts proved.

[Amended by Act 8 of 2001,with effect from 17th August, 2001.]

(3) Any person charged with indecent assault may be found guilty of assault or of contravening section 3, 4 or 8 of the Sexual Offences Act [Chapter 9:21] if such are the facts proved.

[Amended by Act 8 of 2001,with effect from 17th August, 2001.]

(4) Any person charged with any statutory offence referred to in subsection (1) may

be found guilty of indecent assault or of assault, if such are the facts proved.

(5) Any person charged with sodomy or assault with intent to commit sodomy may be found guilty of—

(a) indecent assault; or

(b) assault; or

(c) committing an unnatural offence; or

(d) contravening section 3, 4, 8 or 15 of the Sexual Offences Act [Chapter 9:21];

if such are the facts proved.

[Amended by Act 8 of 2001,with effect from 17th August, 2001.]

212 Charge of murder or culpable homicide or killing, attempting to kill or assaulting person

Any person charged with—

(a) murder may be found guilty of infanticide in terms of the Infanticide Act [Chapter 9:12], or of culpable homicide or of assault with intent to murder in respect of the person whom he is charged with killing; or

(b) murder or culpable homicide may be found guilty of robbery, or of assault with intent to rob, or of assault with intent to do grievous bodily harm or of assault in respect of the person whom he is charged with killing; or

(c) a crime involving killing, attempting to kill or assaulting any other person may be found guilty of pointing at that person a firearm in contravention of any enactment;

if such are the facts proved.

213 Charge of murder or culpable homicide where alleged victim is recently born child

If upon the trial of any accused upon a charge of murder or culpable homicide, it appears upon the evidence that the accused did not commit the crime of murder or culpable homicide, he may be convicted of exposing an infant or of disposing of the body of a child with intent to conceal the fact of its birth, if the evidence establishes that he committed such offence.

214 Charge of housebreaking with intent to commit specified offence, verdict of housebreaking with intent to commit another offence or unknown offence

Any person charged, either at common law or under any enactment, with breaking into any premises with intent to commit an offence specified in the indictment, summons or charge may be found guilty of housebreaking with intent to commit some other offence than that specified or some offence unknown, if an intent to commit such other offence or offence unknown is sufficiently proved.

215 Charge of housebreaking with intent to commit offence, verdict of statutory offence of being upon premises

When by any enactment the being without lawful excuse between sunset and sunrise in or upon any dwelling, premises or area is declared to be an offence, a person charged under any law with breaking into any premises with intent to commit an offence specified in the indictment, summons or charge or with intent to commit some offence unknown, may, if such breaking or if the intent to commit the specified offence or offence unknown is not proved, be found guilty of being without lawful excuse between sunset and sunrise in or upon any dwelling, premises or area, if such are the facts proved.

216 Charge of housebreaking with intent to commit offence, verdict of statutory offence of entering premises

When by any enactment the entering of premises with intent to commit an offence is declared to be an offence, a person charged at common law with breaking into any premises with intent to commit an offence specified in the indictment, summons or charge or with intent to commit some offence unknown may be found guilty of entering premises with intent to commit that offence or an offence other than that specified or an offence unknown, if the breaking into any premises is not proved, but

the entry of premises with intent to commit that offence or such other offence or an offence unknown is sufficiently proved.

217 Charge of statutory offence of entering or being upon premises

When by any enactment the breaking and entering or the entering of premises with intent to commit an offence or the being without lawful excuse between sunset and sunrise in or upon any dwelling, premises or area is declared to be an offence, a person charged with entering premises with intent to commit an offence specified in the indictment, summons or charge may be found guilty of entering premises with intent to commit an offence other than that specified or an offence unknown, if an intent to commit the specified offence is not proved, but an intent to commit such other offence or an offence unknown is sufficiently proved, or he may be found guilty of being without lawful excuse between sunset and sunrise in or upon any dwelling, premises or area, if such are the facts proved.

218 Charge of theft

Any person charged with theft may be found guilty of receiving stolen goods knowing them to have been stolen or of a contravention of subsection (2) or (3) of section 12 of the Miscellaneous Offences Act [Chapter 9:15], if such are the facts proved.

219 Charge of receiving stolen goods knowing them to have been stolen

Any person charged with receiving stolen goods knowing them to have been stolen may be found guilty of theft or of a contravention of subsection (2) or (3) of section 12 of the Miscellaneous Offences Act [Chapter 9:15], if such are the facts proved.

220 Joint charges of theft and receiving stolen property knowing it to have been stolen

(1) When charges of theft of any property and receiving the same property or any part thereof knowing it to have been stolen are joined in the same indictment, the accused may, according to the evidence, be convicted either of theft of the property or of receiving it or any part of it knowing it to be stolen.

(2) Upon an indictment, summons or charge alleging that two or more persons jointly committed an offence of which the receiving of any property is an element, if by the evidence it is established that one or more of them separately received any part or parts of the property under such circumstances as to constitute an offence, such one or more of the persons charged may be convicted of the offence or offences so established by the evidence.

(3) When an indictment, summons or charge referred to in subsection (2) alleges an offence referred to in that subsection by two or more persons, all or any of those persons may, according to the evidence, be convicted of theft of the property, or of receiving it or any part of it knowing it to have been stolen, or, according to the evidence, one or more of them may be convicted of theft of the property and the other or others of them of receiving it or any part of it knowing it to have been stolen.

221 Proceedings if property alleged to have been stolen at one time has been stolen at different times

If upon any indictment, summons or charge in respect of theft it appears that the property alleged therein to have been stolen at one time was stolen at different times, the prosecutor shall not by reason thereof be required to elect upon which taking he will proceed, and the accused shall be liable to be convicted of every such taking in like manner as if every such taking had been separately charged.

222 Proof of intent to defraud sufficient without alleging whom it was intended to defraud

On the trial of any offence in which any of the following acts have been charged against the accused, namely, that he—

(a) forged or uttered, offered, disposed of or put off any forged instrument knowing it to be forged; or

(b) obtained anything by means of false pretences; or

(c) obtained anything by means of a fraudulent trick or device or other

fraudulent means; or

(d) induced, by means of any fraudulent trick or device or other fraudulent means, the payment or delivery of any money or thing;

or that he attempted to commit or procure the commission of any such act, it shall not be necessary to prove an intent on the part of the accused to defraud any particular person, but it shall be sufficient to prove that the accused did the act charged with intent to defraud.

223 Conviction for part of crime charged

In other cases not specified elsewhere in this Part, if the commission of the offence with which the accused is charged as defined in the enactment creating the offence, or as set forth in the indictment, summons or charge, includes the commission of any other offence, the accused person may be convicted of any offence so included which is proved, although the whole offence charged is not proved.

224 When evidence shows offence of similar nature

(1) If on the trial of a person charged with an offence the evidence establishes that he is guilty of another offence of such a nature that, upon an indictment, summons or charge alleging that he committed that other offence, he might have been convicted of the offence with which he is actually charged, he may be convicted of the offence with which he is so charged.

(2) A person so tried shall not be liable to be prosecuted afterwards for the offence so established by the evidence.

PART XIII

PROCEDURE IN RESPECT OF CASES ADJOURNED UNDER SECTION 54 OF MAGISTRATES COURT ACT [CHAPTER 7:10]

225 Powers of Attorney-General

Where a magistrate has adjourned a case and submitted a report to the Attorney-General in terms of section 54 of the Magistrates Court Act [Chapter 7:10], the Attorney-General may—

(a) if the magistrate acted in terms of subsection (1) of that section, in writing—

(i) direct that the proceedings be converted into a preparatory examination; or

(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 Attorney-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 Attorney-General's decision and shall—

(a) where the Attorney-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 Attorney-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 Attorney-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 Attorney-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 Attorney-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 twenty-seven, 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.
[Amended by Act 22 of 2001, with effect from the 10th September, 2002.]
(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 non-attendance, 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, preparatory examination 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.

(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, preparatory examination 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.
(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, preparatory examination or other criminal proceedings may be adjourned for a specified time, reasonably sufficient for the execution and return of the commission.

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, or before a magistrate on a preparatory examination.

245 Court to decide questions of competency of witnesses

It shall be competent for the court in which any criminal case is depending or, in the case of a preparatory examination, the magistrate, to decide upon all questions concerning the competency and compellability of any witness to give evidence.

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) bigamy;
(b) rape;
(c) incest;
(d) abduction;
(e) contravening any provision of the Sexual Offences Act [Chapter 9:21]
[Amended by Act 8 of 2001, with effect from 17th August, 2001.]
(f) 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;
(g) the statutory offence of making a false statement in any affidavit or solemn or attested declaration, if the same is made in connection with or for the purpose of any proceedings as are mentioned in paragraph (f).
(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 or on a preparatory examination 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.

[Amended by Act 22 of 2001, with effect from the 10th September, 2002.]

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 or preparatory examination 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.

(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 at preparatory examination of witness since deceased or kept away by contrivance of accused

(1) The evidence of any witness given at a preparatory examination in the manner directed and required by section seventy-eight in the presence of any person who has been brought before such magistrate on a charge of having committed an offence, or the evidence of a witness taken in the circumstances described in section one hundred and six, shall be admissible in evidence on the trial of the person for any offence charged in an indictment by the Attorney-General on a preparatory examination at which the evidence was taken or on that person's trial before a magistrates court or on the remittal of that person's case by the Attorney-General after considering the same preparatory examination:

Provided that such evidence shall not be admissible unless—

(a) it is proved on oath to the satisfaction of the court that the witness is dead or is incapable of giving evidence, or that he is too ill to attend, or that he is kept away from the trial by the means and contrivance of the accused, and that the evidence is the same that was given at the preparatory examination without any alteration; and

(b) it appears on the record or is proved to the satisfaction of the court that the accused, by himself or by his legal representative, had a full opportunity of cross-examining the witness.

(2) The evidence of a witness given at a former criminal trial shall, under like circumstances as described in subsection (1), be admissible on any subsequent trial of the same person upon the same charge.

(3) Where the witness cannot be found after diligent search, or cannot be compelled to attend, the court may, in its discretion, allow his depositions to be read as evidence at the trial, subject to the conditions mentioned in subsection (1).

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, during a preparatory examination or after committal and whether reduced into writing or not:

Provided that—

(i) a certified copy of the record produced in terms of subsection (1) of section eighty-three 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.

(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 defence in those proceedings, being a fact which, in the circumstances existing at the time, he could reasonably have been expected to have mentioned when so questioned, charged or informed, as the case may be—

(i) in the case of a preparatory examination, the magistrate, in determining whether there is a sufficient case to put the accused upon his trial; or

(ii) in the case of a trial, 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.

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.

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 or of a magistrate holding a preparatory examination 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.

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 Proof of evidence and statements given or made at preparatory examination

Subject to the proviso to subsection (1) of section eighty-four, 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 a preparatory examination and purporting to have been taken down by the magistrate holding such preparatory examination; 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 a preparatory examination 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.

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 and before magistrates holding preparatory

examinations.

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 Attorney-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 he 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 Attorney-General or his deputy 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.

(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).

F. Evidence of accomplices

267 Accomplices as witnesses for prosecution

(1) When the prosecutor at any trial or preparatory examination informs the court or

magistrate holding the preparatory examination, as the case may be, that any person produced by him as a witness on behalf of the prosecution has, in his opinion, been an accomplice, either as principal or accessory, in the commission of the offence alleged in the charge or the subject of the preparatory examination, 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 in respect of such offence.

(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 or an offence disclosed by the preparatory examination or at a re-opening of the preparatory examination, 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.

268 Evidence of accomplice cannot be used against him

No evidence given by an accomplice on behalf of the prosecution at any trial or preparatory examination 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.

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;

[Amended by Act 22 of 2001, with effect from the 10th September, 2002.]

(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 and before magistrates holding preparatory examinations, 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 or before a magistrate holding a preparatory examination:

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.

(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 or before a magistrate on a preparatory examination unless the Minister certifies in writing that it is undesirable that such original document should be so produced.

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 or before a magistrate holding a preparatory examination and shall be of like effect as the original document.
(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 fingerprints, palmprints 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;

[Amended by Act 6/2000 with effect from the 2nd April, 2001.]

(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.
[Amended by Act 6/2000 with effect from the 2nd April, 2001.]
(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, fingerprint or palmprint, 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 preparatory examination or trial and such report so read and put in shall, subject to all just exceptions, be admissible in evidence in any court.

(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 Admissibility of report and evidence of medical practitioner

Any report read and put in at a preparatory examination in terms of subsection (1) of section two hundred and seventy-nine and any evidence given at the preparatory examination by the medical practitioner who prepared such report shall, subject to all just exceptions, be admissible in evidence in any court on its mere production by the prosecutor or the accused at the subsequent trial:

Provided that—

(i) no such report or evidence shall be admissible on production by the prosecutor unless the accused has received three days' notice of its intended production or consents to its production;

(ii) the court in which such report or evidence is adduced in evidence may cause the medical practitioner to be summoned to give oral evidence at such trial or cause written interrogatories to be submitted to him for reply and such interrogatories and any reply thereto purporting to be a reply from such medical practitioner shall, subject to all just exceptions, likewise be admissible in evidence at such trial;

(iii) at the request of the prosecutor or the accused, made not less than three days before such trial, the medical practitioner shall be summoned to give oral evidence;

(iv) nothing in this section shall affect the admissibility of the deposition of a medical practitioner in terms of section two hundred and fifty-five.

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

[amended by Act 9 of 1999 with effect from 1st August, 2000.]

(b) the Post Office Savings Bank of Zimbabwe operating under the Post Office Savings Bank Act [Chapter 24:10]; or

(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 Act [Chapter 18:02]; or

[Paragraph (d) as substituted by section 29 of Act 14 of 1999]

(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 forty-three 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 eighty-eight 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 preparatory examination or 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.

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.

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 in the Public Service or 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.

(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 or a preparatory examination 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.

(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 XVI

PREVIOUS CONVICTIONS, FINGERPRINTS, ETC.

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 18 of the Constitution, make an order in terms of the Courts and Adjudicating Authorities (Publicity Restriction Act [Chapter 7:04] excluding all persons or an class of person; from the proceedings while the person is giving evidence.

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 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 Attorney-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 Attorney-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 Attorney-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

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.

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 and has not admitted it at the preparatory examination in the manner provided in section eighty-six, 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.

(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 fingerprints, palmprints or footprints after conviction

The court which has convicted an accused person may, at the request of the prosecutor, order that the fingerprints, palmprints or footprints of that person be taken.

329 Fingerprint and other records to be prima facie evidence of previous conviction

Notwithstanding any provision of the law of evidence, any fingerprint 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 fingerprint 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 fingerprint 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 Attorney-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) If a person arraigned before the High Court upon any charge has pleaded guilty to that charge or has pleaded guilty to having committed any offence of which he might be found guilty on the indictment other than the offence with which he is charged, and the prosecutor has accepted that plea, the court may, in addition, except on a plea

of guilty to a charge of murder, consider any evidence given at the preparatory examination for the purpose of assessing its sentence.
(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.

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.

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 an offence referred to in section three hundred and thirty-seven;
(b) imprisonment for life;
(b1) imprisonment for a determinate period;
(c) extended imprisonment in terms of section three hundred and forty-

six;

(d) a fine;

(d1) community service;

(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 of death for murder

Subject to section three hundred and thirty-eight, the High Court—

(a) shall pass sentence of death upon an offender convicted by it of murder:

Provided that, if the High Court is of the opinion that there are extenuating circumstances or if the offender is a woman convicted of the murder of her newly-born child, the court may impose—

(a) a sentence of imprisonment for life; or

(b) any sentence other than the death sentence or imprisonment for life, if the court considers such a sentence appropriate in all the circumstances of the case.

(b) may pass sentence of death upon an offender convicted of treason.

338 Persons upon whom death sentence may not be passed

The High Court shall not pass sentence of death upon an offender who—

(a) is a pregnant woman; or

(b) is over the age of seventy years; or

(c) at the time of the offence, was under the age of eighteen years.

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.

[Amended by Act 6/2000 with effect from the 2nd April, 2001.]

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 Attorney-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 Attorney-General, 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 Attorney-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) Subject to paragraph (a) of section three hundred and thirty-seven, 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.

(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. 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, fingerprints, palmprints 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 Standard scale of fines

(1) In this section-

"standard scale of fines" means the standard scale of fines referred to in subsection (2), as amended or replaced from time to time.

(2) Subject to subsection (4) the Minister shall publish a statutory instrument setting forth a standard scale of fines, which shall specify—

(a) different levels of fines, each level being designated by a number; and

(b) in respect of each level of fine, the monetary amount of the fine.

[See S.I's 25A, substituted by 112/2002 gazetted on the 17th May, 2002, appearing after the last Schedule to this Act]

(3) Subject to subsection (4) the Ministry may, by statutory instrument, amend or replace the standard scale of fines, whenever the Minister considers such an amendment or replacement to be necessary as a result of a change in the purchasing-power of money or for any other reason:

Provided that—

(i) an increase in the monetary amount corresponding to any level in the standard scale of fines shall not have the effect of increasing the penalty to which any person is liable in respect of an offence committed before the increase came into effect;

(ii) a reduction in the monetary amount corresponding to any level in the standard scale of fines shall reduce the penalty to which any person is liable in respect of an offence committed before the reduction came into effect, if the penalty is imposed after that date.

(4) The Minister shall, within the next fourteen days on which Parliament, sits after he makes a statutory instrument in terms of subsection (2) or (3), lay it before Parliament and the statutory instrument shall not come into force unless approved by resolution of Parliament.

[See G.N. 541D of the Resolution passed on the 10th September, 2002, gazetted on the 25th October, 2002.

Compare the High Court Review Judgment S.v Chandafira HH 137-02 handed down on the 21st August, 2002 dealing with the delayed promulgation of the Resolution; against which an appeal has been noted by the Attorney General. - Editor.]

(5) Where any enactment provides that a person who is guilty of an offence is liable to a fine or a maximum fine by reference to a level on the standard scale, the amount of the fine or the maximum fine, as the case may be, that may be imposed shall be the monetary amount specified in respect of that level in the standard scale of fines.

(6) Where any enactment confers power to make a statutory instrument prescribing a fine or a maximum fine by reference to a level on the standard scale—

(a) the reference shall be construed as a reference to the standard scale of fines; and

(b) any fine or maximum fine so prescribed may be specified as a monetary amount or as a level on the standard scale of fines.

(7) Where any enactment prescribes the jurisdiction of any court or judicial officer

by reference to a level on the standard scale, the reference shall be construed as a reference to the standard scale of fines.
(8) Notwithstanding any other provision of this section, whenever a court imposes a sentence of a fine upon an offender, the court shall specify the monetary amount of the fine and shall not specify the fine by reference to a level on the standard scale of fines.
[New section inserted by Act 22 of 2001, with effect from the 20th May, 2002]
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 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.
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.
(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.

(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) . . . . . .

(9) . . . . . .

(10) . . . . . .

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.

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.

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 shall remain in force until the offender has rendered the number of hours' service specified in it.

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.

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 Attorney-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.

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].

[Amended by Act 23 of 2001, with effect from 18th January, 2002.]

(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];

[Amended by Act 23 of 2001, with effect from 18th January, 2002.]

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.

(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 Protection and Adoption 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 Protection and Adoption Act [Chapter 5:06]; or

(c) until he has been discharged from the effect of the order in terms of the Children's Protection and Adoption 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 Protection and Adoption 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 Protection and Adoption 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 Protection and Adoption 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 two hundred dollars for a period not exceeding one year to keep the peace and to refrain from committing any injury against the complainant.
(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.
[Amended by Act 22 of 2001, with effect from the 10th September, 2002.]
(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

[Amended by Act 22 of 2001, with effect from the 10th September, 2002.]

(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 Protection and Adoption 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 postponement 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.
[Amended by Act 22 of 2001, with effect from the 10th September, 2002.]
(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.
[Amended by Act 22 of 2001, with effect from the 10th September, 2002.]

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 Attempts, conspiracies and incitements to commit offences

(1) Any person who attempts to commit any offence against any enactment shall be guilty of an offence and shall, if no punishment is expressly provided in such enactment for such an attempt, be liable to the punishment to which a person convicted of actually committing the offence against such enactment would be liable.
(2) Any person who—

(a) conspires with any other person to aid or procure the commission of or to commit; or
(b) incites any other person to commit;

any offence, whether at common law or against any enactment, shall be guilty of an offence and liable to the punishment to which a person convicted of actually committing the offence at common law or against such enactment would be liable.
(3) Where an enactment provides for—

(a) a presumption which shall apply;
(b) a jurisdiction which may be exercised;
(c) an award or order which may be made;
(d) a power of entry, inspection, arrest, search, detention, seizure or ejectment which may be exercised;
(e) a power of taking a deposit by way of a penalty which may be exercised;

in respect of an offence or suspected offence, the enactment shall be construed as also being applicable in respect of—

(i) an attempt, conspiracy or incitement to commit or a suspected attempt, conspiracy or incitement to commit; or
(ii) being or suspected of being an accessory after the fact to;

the offence or suspected offence, as the case may be.

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 sixty-three 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 Court may require security de restituendo

A court which makes an award or order in terms of this Part may require the injured party to give security for the repayment of the compensation or the return of the property, as the case may be, in case the award or order is reversed on appeal or review.

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

Where an award or order has been made in terms of this Part by a court with jurisdiction in civil cases, any interested party may lodge a copy of the award or order with the clerk or registrar of the court, who shall record it, 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.

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 Attorney-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 any person who controls or governs that corporate body or who is a member of a body or group of persons which controls or governs that corporate body or, where there is no such body or group, who is a member of that corporate body.

(2) For the purpose of imposing upon a corporate body criminal liability for any offence under any law—

(a) any act performed, with or without a particular intent, by or on instructions or with permission, express or implied, given by a director or employee of that corporate body; and

(b) the omission, with or without a particular intent, of any act which ought to have been but was not performed by or on instructions given by a director or employee of that corporate body;

in the exercise of his powers or in the performance of his duties as such director or employee, in furthering or endeavouring to further the interests of that corporate body, shall be deemed to have been performed, and with the same intent, if any, by that corporate body or, as the case may be, to have been an omission, and with the same intent, if any, on the part of that corporate body.

(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 terms of subsection (6).

(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) When an offence has been committed, whether by the performance of any act or by the failure to perform any act, for which any corporate body is or was liable to prosecution, any person who was, at the time of the commission of the offence, a director or employee of the corporate body, shall be deemed to be guilty of the offence, unless it is proved that he did not take part in the commission of the offence, and shall be liable to prosecution therefor, either jointly with the corporate body or apart therefrom, and shall, on conviction, be personally liable to punishment therefor.

(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) When a member of an association of persons, other than a corporate body, has, in carrying on the business or affairs of that association or in furthering or endeavouring to further its interests, committed an offence, whether by the performance of an act or by the failure to perform any act, any person who was, at the time of the commission of the offence, a member of that association, shall be deemed to be guilty of the offence, unless it is proved that he did not take part in the commission of that offence: Provided that, if the business or affairs of the association are governed or controlled by a committee or other similar governing body, this subsection shall not apply to any person who was not at the time of the commission of the offence a member of that committee or other body.

(9) In any proceedings against a member of an association of persons in respect of an offence mentioned in subsection (8), any record which was made or kept by any member, employee or agent of the association 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.

(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.

386 Provisions as to offences under two or more laws

Where an act or omission constitutes an offence under two or more enactments or is an offence against an enactment and the common law, including the offence of criminal injuria, 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.

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

[Amended by Act 22 of 2001, with effect from the 10th September, 2002.]

(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 person 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.

(3) The Minister shall not make regulations in terms of this section in respect of matters for which rules of court have been made.

FIRST SCHEDULE (Sections 25, 27, 30 and 42)

SPECIFIED OFFENCES IN RELATION TO POWERS OF ARREST

1. Any offence at common law, other than bigamy, blasphemy, compounding an offence, contempt of court, criminal defamation, incest or violating a grave or dead body.

2. Any offence in terms of any enactment in respect of which a maximum punishment of a period of imprisonment exceeding six months without the option of a fine is provided.

3. A conspiracy, incitement or attempt to commit, or being an accessory after the fact to, any of the offences specified in paragraph 1 or 2.

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 habit-forming 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 116 and 123)

[Amended by Section 44 of Act 1 of 2002 with effect from the 22nd January, 2002.]

OFFENCES IN RESPECT OF WHICH POWER TO ADMIT PERSONS TO BAIL IS EXCLUDED OR QUALIFIED

1. Treason.
2. Murder.
3. Rape.
4. Robbery accompanied by the use of a firearm or lethal weapon.
5. Kidnapping.
6. Arson.
7. Theft of a motor vehicle as defined in section 2 of the Road Traffic Act [Chapter 13:11].
8. A conspiracy, incitement or attempt to commit any offence referred to in paragraph 5 or 6.
9. Any offence where the Attorney-General has notified a magistrate of his intention to indict the person concerned in terms of subsection (1) of section one hundred and one or subsection (1) of section one hundred and ten.

10. Contravening section five, six ,seven ,eight ,nine ,ten or eleven of the Public Order and Security Act [Chapter 11:17].

11. Committing a serious economic offence, that is—

(a) contravening the Prevention of Corruption Act [Chapter 9:16];

(b) contravening section 63 ("Money-laundering") of the Serious Offences (Confiscation of Profits) Act [Chapter 9:17];

(c) the sale, removal or disposal outside Zimbabwe of any controlled product in contravention of the Grain Marketing Act [Chapter 18:14];

(d) any offence under any enactment relating to the unlawful possession of , or dealing in, precious metals or precious stones;

any contravention of section 42 (“Offences relating to banknotes”) of the Reserve Bank Act [Chapter 22:15] or any offence relating to the coinage;

[Subparas (e) and (f) substituted by S.I 41A/2004 with effect from 20th February, 2004.]

(f) contravening subparagraph (i) of paragraph (a) of section 5 of the Exchange Control Act [Chapter 22:05] as read with—

(i) subsection (1) of section 10 of the Exchange Control Regulations, 1996, published in Statutory Instrument 109 of 1996, (in this subparagraph and subparagraph (g) called “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;

[Subpara (fi) substituted by S.I 41A/2004 with effect from 20th February, 2004.]

(ii) 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;

(iii) 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 semi-precious stone or pearl from Zimbabwe;

(iv) 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;

(g) 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;

(h) a conspiracy, incitement or attempt to commit any offence referred to in subparagraphs (a) to (g).

[Paragraph 11 inserted by Statutory Instrument 37/2004 with effect from 13th February,2004.]

FOURTH SCHEDULE (Sections 121 and 124)

[Repealed by Section 44 of Act 1 of 2002 with effect from the 22nd January, 2002.]

FIFTH SCHEDULE (Section 132)

OFFENCES IN CONNECTION WITH WHICH BAIL MAY NOT BE GRANTED IN TERMS OF SECTION 132 (1)

1. Treason.
2. Sedition.
3. Murder.
4. Rape.
5. Robbery.
6. Assault in which a dangerous injury is inflicted.
7. Arson.
8. Breaking or entering any premises with intent to commit an offence, either at common law or in contravention of any enactment.
9. Theft, receiving any stolen property knowing it to have been stolen,

fraud, forgery or uttering a forged document knowing it to be forged, if the amount or value involved in any such offence exceeds the equivalent of a fine of level six.
[Amended by Act 22 of 2001, with effect from the 10th September, 2002]

10. Any conspiracy, incitement or attempt to commit an offence specified in paragraphs 1 to 9.

11. Any offence referred to in paragraph 10 or 11 of the Third Schedule.

[Paragraphs 10 and 11 substituted by Statutory Instrument 41A/2004 with effect from 20th February, 2004. Paragraph 12 repealed by Statutory Instrument 41A/2004 with effect from 20th February, 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.
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. Arson.
8. Fraud.
9. Forgery or uttering a forged instrument knowing it to be forged.
10. Breaking or entering any premises, whether at common law or in contravention of any enactment, with intent to commit an offence.
11. Theft, whether at common law or in contravention of any enactment.
12. Receiving stolen property knowing it to have been stolen.
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 THE COMMISSION WHEREOF DISQUALIFIES OFFENDER FROM BEING DEALT WITH AS FIRST OFFENDER IN TERMS OF PART XVIII

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.

Statutory Instrument 112 of 2002

Criminal Procedure and Evidence (Standard Scale of Fines) Notice, 2002.

Level	Monetary Amount $
1	1 000
2	2 500
3	5 000
4	10 000
5	20 000
6	40 000
7	80 000
8	120 000
9	150 000
10	200 000
11	250 000
12	300 000
13	400 000
14	500 000

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