

REPUBLIC OF SOUTH AFRICA

CRIMINAL PROCEDURE AMENDMENT BILL

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

(MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT)

[B 26B—2012]

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GENERAL EXPLANATORY NOTE:

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

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

BILL

To amend the Criminal Procedure Act, 1977, so as to further regulate applications for condonation, leave to appeal and further evidence; and to provide for matters connected therewith.

Parliament of the Republic of South Africa enacts as follows:—

Amendment of section 316 of Act 51 of 1977, as substituted by section 5 of Act 42 of 2003 and amended by section 16 of Act 66 of 2008 and section 99 of Act 75 of 2008

1. Section 316 of the Criminal Procedure Act, 1977, is hereby amended— 5

(a) by the substitution in subsection (10) for paragraph (c) of the following paragraph:

“*(c)* the record of the proceedings in the High Court in respect of which the application was refused, if

(i) the accused was not legally represented at the trial; or 10

(ii) the accused is not legally represented for the purposes of the petition; or

(iii) the prospective appeal is not against sentence only; or

(iv) the judges considering the petition, in the interest of justice, request the record or only a portion of the record.”; and 15

(b) by the deletion in subsection (12) of the word “or” at the end of paragraph (a), the insertion in that subsection of the word “or” at the end of paragraph (b) and the addition to that subsection of the following paragraph:

“*(c)* call for a copy of the record or portion of the record of the proceedings if it was not submitted in terms of subsection (10)(c).” 20

Short title and commencement

2. This Act is called the Criminal Procedure Amendment Act, 2012, and is deemed to have come into operation on 10 September 2010.

**MEMORANDUM ON THE OBJECTS OF THE CRIMINAL
PROCEDURE AMENDMENT BILL, 2012**

1. PURPOSE OF BILL

The purpose of the Criminal Procedure Amendment Bill, 2012 (“the Bill”), is to amend section 316 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977) (hereinafter referred to as “the Criminal Procedure Act”), so as to further regulate applications for condonation, leave to appeal and further evidence and to provide for matters connected therewith.

2. OBJECTS OF BILL

2.1 Section 316 of the Criminal Procedure Act regulates applications for condonation, leave to appeal and further evidence in criminal proceedings. Clause 1 is aimed at amending subsections (10) and (12) of section 316, which deals with the petition procedures where applications for condonation, leave to appeal or further evidence are refused by a High Court. In terms of section 316(8) of the Criminal Procedure Act, the accused may in such circumstances, by petition, apply to the President of the Supreme Court of Appeal to grant one or more of the applications in question. In terms of section 316(10)(c) of the Criminal Procedure Act, the record of these proceedings in the High Court must be placed before the petition judges, when considering the petition.

2.2 It has been reported that section 316(10)(c) of the Criminal Procedure Act causes the following difficulties:

- (a) The delay caused by having to wait for the record of proceedings results in grave injustice to the appellant, who has to wait for an inordinately long time for the matter to be decided.
- (b) The delay may also result in the appellant being detained in prison, or released on bail, without justification for longer than necessary.
- (c) The costs involved in obtaining the record may be completely without justification. A record in a criminal appeal would usually be between 3-8 volumes, with the average being 5 volumes. On a calculation of approximately R3 000 per volume, the overall cost per record amounts to approximately R15 000. The cost of compiling records over a 6-month period would amount to R1,15 million, and R2,25 million per year. In general, only a small percentage of petitions are successful.

2.3 It has also been pointed out that—

- (a) in cases where the appeal is against sentence only it is not necessary to place the entire record at the disposal of the petition judges; and
- (b) the current situation in which the petition cannot be disposed of without the record of proceedings being placed before the petition judges, causes substantial delays in the finalisation of petitions even though it is clear from the judgement and the reasons provided by the High Court that the matter may be disposed of without the record of the proceedings.

2.4 Clause 1 of the Bill therefore seeks to amend—

- (a) section 316(10) of the Criminal Procedure Act, in order to make it unnecessary in petition procedures before the Supreme Court of Appeal to place the entire record of proceedings in the High Court in respect of which the application was refused, by limiting this requirement to where—
 - (i) the accused was not legally represented at the trial; or
 - (ii) the accused is not legally represented for purposes of the petition; or
 - (iii) the prospective appeal is not against sentence only; or
 - (iv) the judges considering the petition, in the interest of justice, request the record or a portion of the record.
- (b) section 316(12) of the Criminal Procedure Act, in order to give the judges considering the petition a discretion to call for the submission of the record of the proceedings if it was not submitted in terms of section 316(10)(c).

2.5 The amendment will be effective from 10 September 2010.

3. FINANCIAL IMPLICATIONS

No additional financial implications are foreseen in the implementation of the Act.

4. DEPARTMENTS AND PARTIES CONSULTED

The Bill was drafted in consultation with the President of the Supreme Court of Appeal and judges of that court.

5. PARLIAMENTARY PROCEDURE

5.1 The Department of Justice and Constitutional Development and the State Law Advisers are of the opinion that the Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.

5.2 The State Law Advisers are of the opinion that it is not necessary to refer the Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.