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No. 40946

# THE PRESIDENCY

No. 619

29 June 2017

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

Act No. 4 of 2017: Criminal Procedure Amendment Act, 2017

## **DIE PRESIDENSIE**

No. 619

29 Junie 2017

Hierby word bekend gemaak dat die President sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

Wet No. 4 van 2017: Strafproseswysigingswet, 2017

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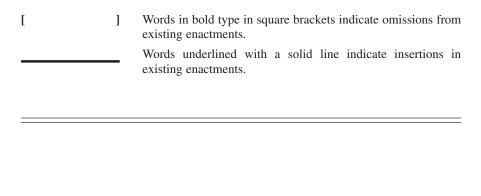


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Criminal Procedure Amendment Act, 2017

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#### **GENERAL EXPLANATORY NOTE:**



(English text signed by the President) (Assented to 27 June 2017)

# **ACT**

To amend the Criminal Procedure Act, 1977, so as to provide the courts with a wider range of options in respect of orders to be issued in cases of findings that accused persons are not capable of understanding criminal proceedings so as to make a proper defence; or that accused persons are by reason of mental illness or intellectual disability or for any other reason not criminally responsible for the offences they are charged with; to clarify the composition of the panels provided for in section 79 to conduct enquiries into the mental condition of accused persons; and to provide for matters connected therewith.

PARLIAMENT of the Republic of South Africa enacts, as follows:—

Amendment of section 77 of Act 51 of 1977, as substituted by section 10 of Act 33 of 1986, amended by section 9 of Act 51 of 1991, section 42 of Act 129 of 1993, section 3 of Act 68 of 1998, section 12 of Act 55 of 2002, substituted by section 68 of Act 32 of 2007 and amended by section 25 of Act 39 of 2014

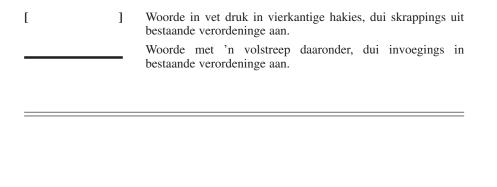
- **1.** Section 77 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977) (hereinafter referred to as the principal Act), is hereby amended—
  - (a) by the substitution for subsection (1) of the following subsection:
    - "(1) If it appears to the court at any stage of criminal proceedings that the accused is by reason of mental illness or [mental defect] intellectual disability not capable of understanding the proceedings so as to make a proper defence, the court shall direct that the matter be enquired into and be reported on in accordance with the provisions of section 79.";
  - (b) by the substitution for subsection (6) of the following subsection:
    - "(6) (a) If the court which has jurisdiction in terms of section 75 to try the case, finds that the accused is not capable of understanding the proceedings so as to make a proper defence, the court may, if it is of the opinion that it is in the interests of the accused, taking into account the nature of the accused's incapacity contemplated in subsection (1), and 20 unless it can be proved on a balance of probabilities that, on the limited

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#### ALGEMENE VERDUIDELIKENDE NOTA:



(Engelse teks deur die President geteken) (Goedgekeur op 27 Junie 2017)

# WET

Om die Strafproseswet, 1977, te wysig, ten einde die howe te voorsien met 'n wyer reeks van opsies van bevele wat uitgereik kan word in gevalle waar dit bevind word dat beskuldigde persone nie oor die vermoë beskik om die strafregtelike verrigtinge dermate te begryp om 'n verdediging na behore te kan voer nie; of dat beskuldigde persone as gevolg van geestesongesteldheid of intellektuele gebrek of om enige ander rede nie strafregtelik toerekenbaar is vir die misdrywe waarvan hulle aangekla word nie; om duidelikheid daar te stel met betrekking tot die samestelling van die panele bedoel in artikel 79 wat ondersoek instel na die geestestoestand van beskuldigde persone; en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

REPAAL die Parlement van die Republiek van Suid-Afrika, soos volg:—

Wysiging van artikel 77 van Wet 51 van 1977, soos vervang deur artikel 10 van Wet 33 van 1986, gewysig deur artikel 9 van Wet 51 van 1991, artikel 42 van Wet 129 van 1993, artikel 3 van Wet 68 van 1998, artikel 12 van Wet 55 van 2002, vervang deur artikel 68 van Wet 32 van 2007 en gewysig deur artikel 25 van Wet 39 van 2014

- **1.** Artikel 77 van die Strafproseswet, 1977 (Wet No. 51 van 1977) (hierna die Hoofwet genoem), word hierby gewysig
  - of wet genoem), word hierby gewysig—

    (a) deur die vervanging van subartikel (1) deur die volgende subartikel:
    - "(1) Indien dit in enige stadium van strafregtelike verrigtinge vir die hof blyk dat die beskuldigde vanweë geestesongesteldheid of [geestesgebrek] intellektuele gebrek nie oor die vermoë beskik om die verrigtinge dermate te begryp dat hy sy verdediging na behore kan voer nie, gelas die hof dat die aangeleentheid ooreenkomstig die bepalings 15 van artikel 79 ondersoek en oor verslag gedoen word.";
  - (b) deur die vervanging van subartikel (6) deur die volgende subartikel:
    - "(6) (a) Indien die hof wat regsbevoegdheid ingevolge artikel 75 het om die saak te verhoor, bevind dat die beskuldigde nie oor die vermoë beskik om die verrigtinge dermate te begryp dat hy of sy sy of haar 20 verdediging na behore kan voer nie, kan die hof, indien hy van oordeel is dat dit in die belang van die beskuldigde is, met inagneming van die aard van die beskuldigde se onbevoegdheid soos beoog in subartikel (1), en

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evidence available the accused committed the act in question, order that such information or evidence be placed before the court as it deems fit so as to determine whether the accused has committed the act in question and the court [shall] may direct that the accused-

- (i) in the case of a charge of murder or culpable homicide or rape or compelled rape as contemplated in [sections] section 3 or 4 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, respectively, or a charge involving serious violence or if the court considers it to be necessary in the public interest, where the court finds that the accused has committed the act in question, or 10 any other offence involving serious violence, be-
  - (aa) detained in a psychiatric hospital [or a prison];
  - (bb) temporarily detained in a correctional health facility of a prison where a bed is not immediately available in a psychiatric hospital and be transferred where a bed becomes available, if the court is of the opinion that it is necessary to do so on the grounds that the accused poses a serious danger or threat to himself or herself or to members of the public,

pending the decision of a judge in chambers in terms of section 47 of the Mental Health Care Act, 2002;

- (cc) admitted to and detained in a designated health establishment stated in the order as if he or she were an involuntary mental health care user contemplated in section 37 of the Mental Health Care Act, 2002;
- (dd) released subject to such conditions as the court considers appropriate; or
- (ee) referred to a Children's Court as contemplated in section 64 of the Child Justice Act, 2008 (Act No. 75 of 2008), and pending such referral be placed in the care of a parent, guardian or other appropriate adult or, failing that, placed in temporary safe care as defined in section 1 of the Children's Act, 2005 (Act No. 38 of 2005); or
- (ii) in the case where the court finds that the accused has committed an offence other than one contemplated in subparagraph (i) or that he or she has not committed any offence be-
  - (aa) [be] admitted to and detained in [an institution] a designated health establishment stated in the order as if he or she were an involuntary mental health care user contemplated in section 37 of the Mental Health Care Act, 2002[,];
  - (bb) released subject to such conditions as the court considers 40 appropriate;
  - (cc) released unconditionally; or
  - (dd) referred to a Children's Court as contemplated in section 64 of the Child Justice Act, 2008, and pending such referral be placed in the care of a parent, guardian or other appropriate adult or, failing that, placed in temporary safe care as defined in section 1 of the Children's Act, 2005,

and if the court so directs after the accused has pleaded to the charge, the accused shall not be entitled under section 106(4) to be acquitted or to be convicted in respect of the charge in question.

(b) If the court makes a finding in terms of paragraph (a) after the accused has been convicted of the offence charged but before sentence is passed, the court shall set the conviction aside, and if the accused has pleaded guilty it shall be deemed that he or she has pleaded not guilty.";

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tensy dit op 'n oorwig van waarskynlikheid bewys kan word dat op die beperkte getuienis beskikbaar, die beskuldigde die gewraakte handeling gepleeg het, gelas dat die inligting of getuienis voor die hof geplaas word wat hy goeddink ten einde vas te stel of die beskuldigde die gewraakte handeling gepleeg het en kan gelas dat die beskuldigde-

(i) in die geval van 'n aanklag van moord of strafbare manslag of verkragting of gedwonge verkragting soos onderskeidelik beoog in artikel 3 of 4 van die Wysigingswet op die Strafreg (Seksuele Misdrywe en Verwante Aangeleenthede), 2007, of 'n aanklag waarby ernstige geweld betrokke is of waar dit na die hof se oordeel 10 in die openbare belang nodig is, indien die hof bevind dat die beskuldigde die gewraakte handeling of enige ander misdryf waarby ernstige geweld betrokke is, gepleeg het[,]-

(aa) in 'n psigiatriese hospitaal [of 'n gevangenis] aangehou word;

(bb) tydelik in 'n korrektiewe gesondheidsfasiliteit van 'n gevangenis aangehou word waar 'n bed nie onmiddellik in 'n psigiatriese hospitaal beskikbaar is nie en oorgeplaas moet word sodra 'n bed beskikbaar word, indien die hof van oordeel is dat dit noodsaaklik is om so te doen op grond daarvan dat die beskuldigde 'n ernstige gevaar of bedreiging vir sigself of | 20 vir lede van die publiek inhou,

hangende die beslissing van 'n regter in kamers ingevolge artikel 47 van die 'Mental Health Care Act, 2002';

- (cc) opgeneem en aangehou word by 'n in die bevel vermelde aangewese gesondheidsinstelling asof hy of sy 'n 'involuntary mental health care user' soos beoog in artikel 37 van die 'Mental Health Care Act, 2002', is;
- (dd) ontslaan word onderworpe aan sulke voorwaardes wat die hof nodig ag; of
- (ee) verwys word na 'n 'Children's Court' ('Kinderhof') soos beoog by artikel 64 van die 'Child Justice Act', 2008 (Wet No. 75 van 2008), en hangende sodanige verwysing in die sorg van 'n ouer, voog of ander gepaste persoon geplaas word of, by gebrek daaraan, in 'temporary safe care' ('tydelike veilige sorg') soos omskryf in artikel 1 van die 'Children's Act', 2005 | 35 (Wet No. 38 van 2005), geplaas word; of
- (ii) in die geval waar die hof bevind dat die beskuldigde 'n ander misdryf as die een bedoel in subparagraaf (i) gepleeg het of dat hy of sy geen misdryf gepleeg het nie-
  - (aa) opgeneem en aangehou word by 'n in die bevel vermelde 40 [inrigting] aangewese gesondheidsinstelling asof hy of sy 'n 'involuntary mental health care user' beoog in artikel 37 van die 'Mental Health Care Act, 2002', is[,];
  - (bb) ontslaan word onderworpe aan sodanige voowaardes wat die hof nodig ag:
  - (cc) onvoorwaardelik ontslaan word; of
  - (dd) verwys word na 'n Kinderhof soos beoog by artikel 64 van die 'Child Justice Act', 2008, en hangende sodanige verwysing in die sorg van 'n ouer, voog of ander gepaste persoon geplaas word of, by gebrek daaraan, in tydelike veilige sorg soos omskryf in artikel 1 van die 'Children's Act', 2005, geplaas word,

en indien die hof aldus gelas nadat die beskuldigde op die aanklag gepleit het, is die beskuldigde nie kragtens artikel 106(4) geregtig om ten opsigte van die betrokke aanklag vrygespreek of skuldig 55 bevind te word nie.

(b) Indien die hof 'n bevinding ingevolge paragraaf (a) maak nadat die beskuldigde aan die ten laste gelegde misdryf skuldig bevind is maar voordat vonnis opgelê word, stel die hof die skuldigbevinding tersyde, en indien die beskuldigde skuldig gepleit het, word daar geag dat hy of sy 60 onskuldig gepleit het."; en

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(c) by the substitution for subsection (9) of the following subsection:

"(9) Where an appeal against a finding in terms of subsection (5) is allowed, the court of appeal shall set aside the conviction and sentence and [direct that the person concerned be detained] remit the case to the court which made the finding, whereupon that court must deal with the person concerned in accordance with the provisions of subsection (6).".

Amendment of section 78 of Act 51 of 1977, as substituted by section 11 of Act 33 of 1986, amended by section 9 of Act 51 of 1991, section 43 of Act 129 of 1993, substituted by section 5 of Act 68 of 1998, section 13 of Act 55 of 2002 and section 10 68 of Act 32 of 2007

2. Section 78 of the principal Act is hereby amended—

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

"Mental illness or [mental defect] intellectual disability and criminal responsibility";

(b) by the substitution for the words preceding paragraph (a) in subsection (1) of the following words:

> "(1) A person who commits an act or makes an omission which constitutes an offence and who at the time of such commission or omission suffers from a mental illness or [mental defect] intellectual 20 disability which makes him or her incapable—";

(c) by the substitution for subsection (1A) of the following subsection:

"(1A) Every person is presumed not to suffer from a mental illness or [mental defect] intellectual disability so as not to be criminally responsible in terms of section 78(1), until the contrary is proved on a 25 balance of probabilities.";

(d) by the substitution for subsection (2) of the following subsection:

"(2) If it is alleged at criminal proceedings that the accused is by reason of mental illness or [mental defect] intellectual disability or for any other reason not criminally responsible for the offence charged, or if 30 it appears to the court at criminal proceedings that the accused might for such a reason not be so responsible, the court shall in the case of an allegation or appearance of mental illness or [mental defect] intellectual disability, and may, in any other case, direct that the matter be enquired into and be reported on in accordance with the provisions of section 79."; 35

(e) by the substitution for subsection (6) of the following subsection:

"(6) If the court finds that the accused committed the act in question and that he or she at the time of such commission was by reason of mental illness or intellectual disability not criminally responsible for such act-

(a) the court shall find the accused not guilty; or

(b) if the court so finds after the accused has been convicted of the offence charged but before sentence is passed, the court shall set the conviction aside and find the accused not guilty,

by reason of mental illness or intellectual disability, as the case may be, 45 and direct-

(i) in a case where the accused is charged with murder or culpable homicide or rape or compelled rape as contemplated in [sections] section 3 or 4 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, respectively, or another charge 50 involving serious violence, or if the court considers it to be necessary in the public interest that the accused be-

(aa) detained in a psychiatric hospital [or a prison];

(bb) temporarily detained in a correctional health facility of a prison where a bed is not immediately available in a psychiatric hospital and be transferred where a bed becomes available, if the court is of the opinion that it is necessary to do

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- (c) deur die vervanging van subartikel (9) deur die volgende subartikel:
  - "(9) Waar 'n appèl teen 'n bevinding ingevolge subartikel (5) gehandhaaf word, stel die hof van appèl die skuldigbevinding en vonnis tersyde en [gelas hy dat die betrokke persoon aangehou word] verwys die saak terug na die hof wat die bevinding gemaak het, waarop daardie hof met die betrokke persoon moet handel ooreenkomstig die bepalings van subartikel (6)."

Wysiging van artikel 78 van Wet 51 van 1977, soos vervang deur artikel 11 van Wet 33 van 1986, gewysig deur artikel 9 van Wet 51 van 1991, artikel 43 van Wet 129 van 1993, vervang deur artikel 5 van Wet 68 van 1998, artikel 13 van 10 Wet 55 van 2002 en artikel 68 van Wet 32 van 2007

- 2. Artikel 78 van die Hoofwet word hierby gewysig-
  - (a) deur die vervanging van die opskrif deur die volgende opskrif:

"Geestesongesteldheid of [geestesgebrek] <u>intellektuele gebrek</u> en strafregtelike toerekenbaarheid";

(b) deur die vervanging in subartikel (1) van die woorde wat paragraaf (a) voorafgaan deur die volgende woorde:

"(1) Iemand wat 'n handeling verrig of versuim om 'n handeling te verrig wat 'n misdryf uitmaak en wat ten tyde van so 'n verrigting of versuim aan 'n geestesongesteldheid of [geestesgebrek] intellektuele 20 gebrek ly wat tot gevolg het dat hy of sy nie oor die vermoë beskik—";

(c) deur die vervanging van subartikel (1A) deur die volgende subartikel:

"(1A) 'n Persoon word vermoed nie geestesongesteld of **[geestesgebrekkig]** <u>intellektueel gebrekkig</u> te wees nie ten einde nie strafregtelik toerekenbaar te wees ingevolge artikel 78(1) nie, totdat die teendeel op 'n 25 oorwig van waarskynlikheid bewys word.";

(d) deur die vervanging van subartikel (2) deur die volgende subartikel:

"(2) Indien dit by strafregtelike verrigtinge beweer word dat die beskuldigde vanweë geestesongesteldheid of [geestesgebrek] intellektuele gebrek of enige ander rede nie vir die ten laste gelegde misdryf strafregtelik toerekenbaar is nie, of indien dit vir die hof by strafregtelike verrigtinge blyk dat die beskuldigde vanweë so 'n rede nie aldus toerekenbaar mag wees nie, gelas die hof in die geval van 'n bewering of blyke van geestesongesteldheid of [geestesgebrek] intellektuele gebrek, en kan die hof, in enige ander geval, gelas dat die aangeleentheid ooreenkomstig die bepalings van artikel 79 ondersoek en oor verslag gedoen word.";

(e) deur die vervanging van subartikel (6) deur die volgende subartikel:

"(6) Indien die hof bevind dat die beskuldigde die betrokke handeling verrig het en dat hy of sy ten tyde van so 'n verrigting vanweë geestesongesteldheid of intellektuele gebrek nie vir daardie handeling strafregtelik toerekenbaar was nie—

(a) vind die hof die beskuldigde onskuldig; of

(b) indien die hof aldus bevind nadat die beskuldigde aan die ten laste gelegde misdryf skuldig bevind is maar voordat vonnis opgelê 45 word, stel die hof die skuldigbevinding tersyde en vind hy die beskuldigde onskuldig,

vanweë geestesongesteldheid of intellektuele gebrek, na gelang van die geval, en gelas hy—

- (i) in die geval waar die beskuldigde aangekla word van moord of strafbare manslag of verkragting of gedwonge verkragting soos onderskeidelik beoog in artikel 3 of 4 van die Wysigingswet op die Strafreg (Seksuele Misdrywe en Verwante Aangeleenthede), 2007, of 'n ander aanklag waarby ernstige geweld betrokke is, of indien dit na die hof se oordeel in die openbare belang nodig is dat die beskuldigde—
  - (aa) in 'n psigiatriese hospitaal [of 'n gevangenis] aangehou word;
  - (bb) tydelik in 'n korrektiewe gesondheidsfasiliteit van 'n gevangenis aangehou word waar 'n bed nie onmiddellik in 'n psigiatriese hospitaal beskikbaar is nie en oorgeplaas moet word sodra 'n bed beskikbaar word, indien die hof van oordeel

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so on the grounds that the accused poses a serious danger or threat to himself or herself or to members of the public, pending the decision of a judge in chambers in terms of section 47 of the Mental Health Care Act, 2002;

- [(bb)](cc) admitted to and detained in [an institution] a designated health establishment stated in the order and treated as if he or she were an involuntary mental [care health] health care user contemplated in section 37 of the Mental Health Care Act, 2002:
- (cc) ...; 10
- (dd) released subject to such conditions as the court considers appropriate; [or]
- (ee) released unconditionally; or
- (ff) referred to a Children's Court as contemplated in section 64 of the Child Justice Act, 2008, and pending such referral be placed in the care of a parent, guardian or other appropriate adult or, failing that, placed in temporary safe care as defined in section 1 of the Children's Act, 2005; or
- (ii) in any other case than a case contemplated in subparagraph (i), that the accused  $\underline{be}$  20
  - (aa) [be] admitted to and detained in [an institution] a designated health establishment stated in the order and treated as if he or she were an involuntary mental health care user contemplated in section 37 of the Mental Health Care Act, 2002;
  - $(bb) \ldots;$  25
  - (cc) [be] released subject to such conditions as the court considers appropriate; [or]
  - (dd) [be] released unconditionally; or
  - (ee) referred to a Children's Court as contemplated in section 64 of the Child Justice Act, 2008, and pending such referral be placed in the care of a parent, guardian or other appropriate adult or, failing that, placed in temporary safe care as defined in section 1 of the Children's Act, 2005."; and
- (f) by the substitution for subsection (7) of the following subsection:
  - "(7) If the court finds that the accused at the time of the commission of the act in question was criminally responsible for the act but that his capacity to appreciate the wrongfulness of the act or to act in accordance with an appreciation of the wrongfulness of the act was diminished by reason of mental illness or [mental defect] intellectual disability, the court may take the fact of such diminished responsibility into account when sentencing the accused."

Amendment of section 79 of Act 51 of 1977, as amended by section 4 of Act 4 of 1992, substituted by section 17 of Act 116 of 1993, amended by section 44 of Act 129 of 1993, section 28 of Act 105 of 1997, substituted by section 6 of Act 68 of 1998, section 8 of Act 42 of 2001, section 68 of Act 32 of 2007 and section 10 of Act 66 of 45 2008

- 3. Section 79 of the principal Act is hereby amended—
  - (a) by the substitution for subsection (1) of the following subsection:
    - "(1) Where a court issues a direction under section 77(1) or 78(2), the relevant enquiry shall be conducted and be reported on—
    - (a) where the accused is charged with an offence other than one referred to in paragraph (b), by the [medical superintendent of a psychiatric hospital designated by the court, or by a psychiatrist appointed by the medical superintendent at the request of the court] head of the designated health establishment designated by 55

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is dat dit noodsaaklik is om so te doen op grond daarvan dat die beskuldigde 'n ernstige gevaar of bedreiging vir sigself of vir lede van die publiek inhou,

hangende die beslissing van 'n regter in kamers ingevolge artikel 47 van die 'Mental Health Care Act, 2002':

[(bb)](cc) opgeneem en aangehou word by 'n in die bevel vermelde [inrigting] aangewese gesondheidsinstelling en behandel word asof hy of sy 'n 'involuntary mental health care user' beoog in artikel 37 van die 'Mental Health Care Act, 2002', is;

 $(cc)\ldots;$ 

- (dd) ontslaan word onderworpe aan sodanige voorwaardes wat die hof nodig ag; [of]
- (ee) onvoorwaardelik ontslaan word; of
- (ff) verwys word na 'n Kinderhof soos beoog by artikel 64 van die 15 'Child Justice Act', 2008, en hangende sodanige verwysing in die sorg van 'n ouer, voog of ander gepaste persoon geplaas word of, by gebrek daaraan, in tydelike veilige sorg soos omskryf in artikel 1 van die 'Children's Act', 2005, geplaas word; of

(ii) in enige ander geval as 'n geval beoog in subparagraaf (i), dat die beskuldige-

(aa) opgeneem en aangehou word by 'n in die bevel vermelde [inrigting] aangewese gesondheidsinstelling en behandel word asof hy of sy 'n 'involuntary mental health care user' beoog in artikel 37 van die 'Mental Health Care Act, 2002', is;

(bb) ...;

- (cc) ontslaan word onderworpe aan sulke voorwaardes as wat die hof nodig ag; [of]
- (dd) onvoorwaardelik ontslaan word; of

(ee) verwys word na 'n Kinderhof soos beoog by artikel 64 van die 'Child Justice Act', 2008, en hangende sodanige verwysing in die sorg van 'n ouer, voog of ander gepaste persoon geplaas word of, by gebrek daarvan, in tydelike veilige sorg soos omskryf in artikel 1 van die 'Children's Act', 2005, geplaas | 35 word."; en

(f) deur die vervanging van subartikel (7) deur die volgende subartikel:

"(7) Indien die hof bevind dat die beskuldigde ten tyde van die verrigting van die betrokke handeling vir die handeling strafregtelik toerekenbaar was maar dat sy vermoë om die ongeoorloofdheid van die 40 handeling te besef of om ooreenkomstig 'n besef van die ongeoorloofdheid van sy handeling op te tree, vanweë geestesongesteldheid of [geestesgebrek] intellektuele gebrek verminder was, kan die hof die feit van so 'n verminderde toerekenbaarheid in aanmerking neem wanneer die beskuldigde gevonnis word.".

Wysiging van artikel 79 van Wet 51 van 1977, soos gewysig deur artikel 4 van Wet 4 van 1992, vervang deur artikel 17 van Wet 116 van 1993, gewysig deur artikel 44 van Wet 129 van 1993, artikel 28 van Wet 105 van 1997, vervang deur artikel 6 van Wet 68 van 1998, artikel 8 van Wet 42 van 2001, artikel 68 van Wet 32 van 2007 en artikel 10 van Wet 66 van 2008

- 3. Artikel 79 van die Hoofwet word hierby gewysig-
  - (a) deur die vervanging van subartikel (1) deur die volgende subartikel:
    - "(1) Waar 'n hof 'n lasgewing ingevolge artikel 77(1) of 78(2) uitreik, word die betrokke ondersoek ingestel en oor verslag gedoen-
    - (a) waar die beskuldigde aangekla word weens 'n ander misdryf as 'n 55 misdryf vermeld in paragraaf (b), deur die [geneeskundige superintendent van 'n psigiatriese hospitaal deur die hof aangewys, of deur 'n psigiater deur die geneeskundige superintendent op versoek van die hof aangestel] hoof van die deur die

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- the court, or by another psychiatrist delegated by the head concerned; or
- (b) where the accused is charged with murder or culpable homicide or rape or compelled rape as provided for in [sections] section 3 or 4 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, respectively, or another charge involving serious violence, or if the court considers it to be necessary in the public interest, or where the court in any particular case so directs—
  - (i) by the [medical superintendent of a psychiatric hospital designated by the court or by a psychiatrist appointed by the medical superintendent at the request of the court] head of the designated health establishment, or by another psychiatrist delegated by the head concerned;
  - (ii) by a psychiatrist appointed by the court [and who is not in the full-time service of the State unless the court directs 15 otherwise, upon application of the prosecutor, in accordance with directives issued under subsection (13) by the National Director of Public Prosecutions];
  - (iii) by a psychiatrist appointed [for] by the court, upon application and on good cause shown by the accused [by the court] for such appointment; and
  - (iv) by a clinical psychologist where the court so directs.";
- (b) by the substitution for the words preceding paragraph (a) in subsection (1A) of the following words:
  - "(1A) The prosecutor undertaking the prosecution of the accused or 25 any other prosecutor attached to the same court shall provide the persons who, in terms of subsection (1), have to conduct the enquiry and report on the accused's mental condition or mental capacity with a report in which the following are stated, namely—";
- (c) by the substitution for paragraph (d) of subsection (4) of the following 30 paragraph:
  - "(d) if the enquiry is in terms of section 78(2), include a finding as to the extent to which the capacity of the accused to appreciate the wrongfulness of the act in question or to act in accordance with an appreciation of the wrongfulness of that act was, at the time of the commission thereof, affected by mental illness or [mental defect] intellectual disability or by any other cause."; and
- (d) by the deletion of subsection 13.

### **Short title**

**4.** This Act is called the Criminal Procedure Amendment Act, 2017.

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- hof aangewese gesondheidsinstelling, of deur 'n ander psigiater wat deur die betrokke hoof gedelegeer is; of
- (b) waar die beskuldigde aangekla word van moord of strafbare manslag of verkragting of gedwonge verkragting soos onderskeidelik beoog in artikel 3 of 4 van die Wysigingswet op die Strafreg (Seksuele Misdrywe en Verwante Aangeleenthede), 2007, of van 'n ander aanklag waarby ernstige geweld betrokke is, of waar dit na die hof se oordeel in die openbare belang nodig is, of waar die hof in 'n spesifieke geval so gelas-
  - (i) deur die [geneeskundige superintendent van 'n psigiatriese 10 hospitaal deur die hof aangewys, of deur 'n psigiater deur die geneeskundige superintendent aangewys op versoek van die hof] hoof van 'n deur die hof aangewese gesondheidsinstelling, of deur 'n ander psigiater wat deur die betrokke hoof gedelegeer is;
  - (ii) deur 'n psigiater [aangewys] deur die hof [en wat nie in voltydse diens van die Staat is nie tensy die hof anders gelas, op aansoek van die aanklaer, in ooreenstemming met voorskrifte wat ingevolge subartikel (13) deur die Nasionale Direkteur van Openbare Vervolgings uitgereik 20 is] aangestel;
  - (iii) deur 'n psigiater [vir die beskuldigde] deur die hof aangestel op aansoek van en op grondige redes vir sodanige aanstelling deur die beskuldigde aangevoer; en
  - (iv) deur 'n kliniese sielkundige waar die hof so gelas.";
- (b) deur die vervanging in subartikel (1A) van die woorde wat paragraaf (a) voorafgaan deur die volgende woorde:
  - '(1A) Die aanklaer wat die vervolging van die beskuldigde waarneem of 'n ander aanklaer wat aan dieselfde hof verbonde is, moet die persone wat ingevolge subartikel (1) ondersoek moet instel en verslag moet doen 30 oor die beskuldigde se geestestoestand of geestesvermoëns, voorsien van 'n verslag waarin die volgende vermeld word, naamlik—";
- (c) deur die vervanging in subartikel (4) van paragraaf (d) deur die volgende paragraaf:
  - "(d) indien die ondersoek ingevolge artikel 78(2) is, 'n bevinding bevat van die mate waarin die vermoë van die beskuldigde om die ongeoorloofdheid van die betrokke handeling te besef of om ooreenkomstig 'n besef van die ongeoorloofdheid van daardie handeling op te tree, ten tyde van die verrigting daarvan deur geestesongesteldheid of [geestesgebrek] intellektuele gebrek of 40 enige ander oorsaak aangetas was."; en
- (d) deur die skrapping van subartikel 13.

## **Kort titel**

**4.** Hierdie Wet heet die Strafproseswysigingswet, 2017.