

*Church Square Association of Advocates*  
*Church Square Bar*

*Kerkplein Vereniging van Advokate*  
*Kerkplein Balie*

5 July 2017

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## NOTICE

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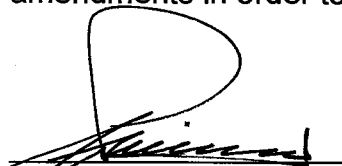
**PLEASE TAKE NOTE THAT:**

**PROCLAMATION NO. 619 OF 2017 PROMULGATED IN GOVERNMENT GAZETTE NO. 40946, DATED 29 JUNE 2017 - THE CRIMINAL PROCEDURE ACT, 1977 (ACT 51 OF 1997),** hereby amends 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 of 1998, section 12 of Act 55 of 2002, substituted by section 28 of Act 32 of 2007 and amended by section 25 of Act 39 of 2014, which will commence on 29 June 2017.

Same is available on our website at [www.churchsquarebar.co.za](http://www.churchsquarebar.co.za) under legal amendments.

Should you not have internet access, same is available at our Chambers, Suite 410, Standard Bank Chambers, Pretoria, for your perusal.

**MEMBERS ARE URGED** to take note thereof and to comply with the said amendments in order to avoid embarrassment.



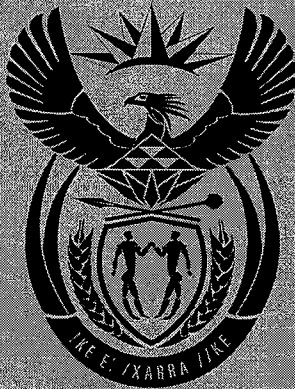
**ADV. W F PIENAAR**  
**CHAIRMAN**

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*Tel:* (012) 324 2587 | *Fax:* (012) 324 2589 | *Fax2E-mail:* 0865 815 812 / *E-mail:* info@churchsquarebar.co.za

*Adres/Address:* Standard Bank Chambers  
4th Floor, Suite 410  
238 Paul Kruger Street  
Church Square

*Webwerf/Website:* www.churchsquarebar.co.za  
*Posadres/Postal Address:* PO Box 5267  
Pretoria  
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# Government Gazette

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29 June 2017

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**

ISSN 1682-5843



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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.

(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.

**P**ARLIAMENT 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 5

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: 10
- “(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: 15
- “(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 unless it can be proved on a balance of probabilities that, on the limited 20

Strafproseswysigingswet, 2017

Wet No. 4 van 2017

**ALGEMENE VERDUIDELIKENDE NOTA:**

[ ] Woorde in vet druk in vierkantige hakies, dui skrappings uit  
bestaande verordeninge aan.

\_\_\_\_\_ Woorde met 'n volstreep daaronder, dui invoegings in  
bestaande verordeninge aan.

(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.

**B**EPAAAL 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, 5  
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—

(a) deur die vervanging van subartikel (1) deur die volgende subartikel: 10

“(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 bepalinge van artikel 79 ondersoek en oor verslag gedoen word.”; 15

(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

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 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 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.”; and

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- teny 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— 5
- (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 Strafbreg (Seksuele Misdrywe en Verwante Aangeleenthede), 2007, of 'n aanklag 10  
waarby ernstige geweld betrokke is of waar dit na die hof se oordeel 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; 15  
(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 25  
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 30  
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 45  
hof nodig ag;
- (cc) onvoorwaardelik ontslaan word; of
- (dd) verwys word na 'n Kinderhof soos beoog by artikel 64 van die 50  
'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

