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REPUBLIC OF SOUTH AFRICA



GOVERNMENT GAZETTE

STAATSKOERANT

VAN DIE REPUBLIEK VAN SUID-AFRIKA

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STATE PRESIDENT'S OFFICE

No. 1512.

10 July 1991

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

No. 118 of 1991: Magistrates' Courts Amendment Act,
1991

KANTOOR VAN DIE STAATSPRESIDENT

No. 1512.

10 Julie 1991

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

No. 118 van 1991: Wysigingswet op Landdroshowe,
1991

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.

REPUBLIC OF SOUTH AFRICA GOVERNMENT GAZETTE **ACT**

To amend the Magistrates' Courts Act, 1944, so as to further regulate assistance by assessors at criminal proceedings; and to provide for matters connected therewith.

*(Afrikaans text signed by the State President.)
(Assented to 27 June 1991.)*

BE IT ENACTED by the State President and the Parliament of the Republic of South Africa, as follows:—

Amendment of section 93ter of Act 32 of 1944, as inserted by section 3 of Act 14 of 1954 and amended by section 2 of Act 16 of 1959 and section 10 of Act 91 of 1977

1. Section 93ter of the Magistrates' Courts Act, 1944, is hereby amended— 5
 (a) by the substitution for subsection (1) of the following subsection:
 “(1) The judicial officer presiding at any trial may, if he deems it expedient for the administration of justice—
 (a) before any evidence has been led; [with the approval of the Minister,] or
 (b) in considering a community-based punishment in respect of any person who has been convicted of any offence, 10
 summon to his assistance [any person who has or] any one or two persons who, [have] in his opinion, [experience in the administration of justice or skill in any matter which may have to be considered] may be of assistance at the trial of the case or in the determination of a proper sentence, as the case may be, to sit with him [at the trial]
 as assessor or assessors: Provided that if an accused is standing trial in the court of a regional division on a charge of murder, whether together with other charges or accused or not, the judicial officer shall at that trial be assisted by two assessors unless such an accused requests that the trial be proceeded with without assessors, whereupon the judicial officer may in his discretion summon one or two assessors to assist him.”;
 (b) by the insertion of the following subsection after subsection (1): 15
 “(2) (a) In considering whether summoning assessors under subsection (1) would be expedient for the administration of justice, the judicial officer shall take into account—
 (i) the cultural and social environment from which the accused originates;
 (ii) the educational background of the accused;
 (iii) the nature and the seriousness of the offence of which the accused stands accused or has been convicted; 20
 (iv) the availability of assessors in the area where the accused stands accused or has been convicted; 25
 (v) the nature and the seriousness of the offence of which the accused stands accused or has been convicted; 30

ALGEMENE VERDUIDELIKENDE NOTA:

[Woorde in vet druk tussen vierkantige hake dui skrapings uit bestaande verordenings aan.

10. Toksiese vir Woorde met 'n volstreep daaronder, dui invoegings in bestaande verordenings aan.

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16. Toksiese vir **17. Toksiese vir** **18. Toksiese vir** **19. Toksiese vir** **20. Toksiese vir** **21. Toksiese vir** **22. Toksiese vir** **23. Toksiese vir** **24. Toksiese vir** **25. Toksiese vir**

WET

Tot wysiging van die Wet op Landdroshowe, 1944, ten einde bystand deur assessore by strafregtelike verrigtinge verder te reël; en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

*(Afrikaanse teks deur die Staatspresident geteken.)
(Goedgekeur op 27 Junie 1991.)*

DAAR WORD BEPAAL deur die Staatspresident en die Parlement van die Republiek van Suid-Afrika, soos volg:—

Wysiging van artikel 93ter van Wet 32 van 1944, soos ingevoeg deur artikel 3 van Wet 14 van 1954 en gewysig deur artikel 2 van Wet 16 van 1959 en artikel 10 van 5 Wet 91 van 1977

1. Artikel 93ter van die Wet op Landdroshowe, 1944, word hierby gewysig—
(a) deur subartikel (1) deur die volgende subartikel te vervang:

“(1) Die regterlike amptenaar wat by 'n verhoor voorsit, kan, indien dit na sy oordeel dienstig vir dieregspleging sal wees—

10 (a) voor daar enige getuenis voorgelê is; **[met goedkeuring van die Minister,]** of

15 (b) by die oorweging van 'n gemeenskapgebaseerde straf ten opsigte van 'n persoon wat aan 'n misdryf skuldig bevind is, een of twee persone wat na sy mening **[in dieregspleging ervare is of bedrewe is in een of ander onderwerp wat]** by die verhoor **[ter oorweging geopper mag word]** van die saak of, na gelang van die geval, **by die bepaling van 'n gepaste straf behulpsaam kan wees**, aansê om hom by te staan, en om met hom as assessor of assessore **[by die verhoor]** sitting te neem: **Met dien verstande dat indien 'n**

20 beskuldigde in die hof van 'n streekafdeling op 'n aanklag van moord, hetsy tesame met ander aanklagte of beskuldigdes al dan nie, teregstaan, die regterlike amptenaar by daardie verhoor deur twee assessore bygestaan moet word, tensy so 'n beskuldigde versoek dat die verhoor sonder assessorne voortgesit word, waarop die regterlike amptenaar na goedunke een of twee assessorne kan aansê om hom by te staan.”;

25 (b) deur die volgende subartikel na subartikel (1) in te voeg:

“(2) (a) By die oorweging of die aanseggeling van assessorne kragtens subartikel (1) dienstig vir dieregspleging sal wees, neem die regterlike amptenaar—

30 (i) die kulturele en maatskaplike omgewing waaruit die beskuldigde afkomstig is;

(ii) die opvoedkundige agtergrond van die beskuldigde;

(iii) die aard en die erns van die misdryf wat die beskuldigde ten laste gelê word of waaraan hy skuldig bevind is;

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- (iv) the extent or probable extent of the punishment to which the accused will be exposed upon conviction, or is exposed, as the case may be;
- (v) any other matter or circumstance which he may deem to be indicative of the desirability of summoning an assessor or assessors,
- and he may question the accused in relation to the matters referred to in this paragraph.
- (b) For the purposes of subsection (1)(b) a community-based punishment means—
- correctional supervision as defined in section 1 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977);
 - a punishment contemplated in section 297(1)(a)(i)(cc) of the Criminal Procedure Act, 1977; or
 - a punishment contemplated in section 297(1)(b) or (4) of the Criminal Procedure Act, 1977, and where the performance of community service as referred to in the said section 297(1)(a)(i)(cc), is a condition for the suspension.”;
- (c) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words:
- “Before the trial or the imposition of punishment, as the case may be, the said judicial officer shall administer an oath to the person or persons whom he has so called to his assistance that he or they will give a true verdict or a considered opinion, as the case may be, according to the evidence upon the issues to be tried or regarding the punishment, as the case may be, and thereupon he or they shall be a member or members of the court subject to the following provisions:”; and
- (d) by the substitution in subsection (3) for paragraph (f) of the following paragraph:
- “(f) in the event of a conviction the question of the punishment to be inflicted shall, except in a case contemplated in subsection (1)(b), be deemed, for the purposes of paragraph (a), to be a question of law.”.
- Short title and commencement**
2. (1) This Act shall be called the Magistrates' Courts Amendment Act, 1991, and shall come into operation on a date to be fixed by the State President by proclamation in the *Gazette*.
- (2) Different dates may be fixed in terms of subsection (1) in respect of different districts and regional divisions as referred to in the Magistrates' Courts Act, 1944 (Act No. 32 of 1944).
- (3) The words “Magistrate” and “magistrate” in section 1 of the Magistrates' Courts Act, 1944, shall mean the same as those words used in the Magistrates' Courts Amendment Act, 1991.
- (4) The words “Court” and “court” in section 1 of the Magistrates' Courts Amendment Act, 1991, shall mean the same as those words used in the Magistrates' Courts Act, 1944.
- (5) The words “officer” and “officer” in section 1 of the Magistrates' Courts Amendment Act, 1991, shall mean the same as those words used in the Magistrates' Courts Act, 1944.
- (6) The words “trial” and “trial” in section 1 of the Magistrates' Courts Amendment Act, 1991, shall mean the same as those words used in the Magistrates' Courts Act, 1944.
- (7) The words “conviction” and “conviction” in section 1 of the Magistrates' Courts Amendment Act, 1991, shall mean the same as those words used in the Magistrates' Courts Act, 1944.
- (8) The words “punishment” and “punishment” in section 1 of the Magistrates' Courts Amendment Act, 1991, shall mean the same as those words used in the Magistrates' Courts Act, 1944.
- (9) The words “assessor” and “assessor” in section 1 of the Magistrates' Courts Amendment Act, 1991, shall mean the same as those words used in the Magistrates' Courts Act, 1944.
- (10) The words “community-based punishment” and “community-based punishment” in section 1 of the Magistrates' Courts Amendment Act, 1991, shall mean the same as those words used in the Magistrates' Courts Act, 1944.
- (11) The words “oath” and “oath” in section 1 of the Magistrates' Courts Amendment Act, 1991, shall mean the same as those words used in the Magistrates' Courts Act, 1944.
- (12) The words “true verdict” and “true verdict” in section 1 of the Magistrates' Courts Amendment Act, 1991, shall mean the same as those words used in the Magistrates' Courts Act, 1944.
- (13) The words “considered opinion” and “considered opinion” in section 1 of the Magistrates' Courts Amendment Act, 1991, shall mean the same as those words used in the Magistrates' Courts Act, 1944.
- (14) The words “evidence” and “evidence” in section 1 of the Magistrates' Courts Amendment Act, 1991, shall mean the same as those words used in the Magistrates' Courts Act, 1944.
- (15) The words “issues” and “issues” in section 1 of the Magistrates' Courts Amendment Act, 1991, shall mean the same as those words used in the Magistrates' Courts Act, 1944.
- (16) The words “subject to the following provisions” and “subject to the following provisions” in section 1 of the Magistrates' Courts Amendment Act, 1991, shall mean the same as those words used in the Magistrates' Courts Act, 1944.
- (17) The words “member” and “member” in section 1 of the Magistrates' Courts Amendment Act, 1991, shall mean the same as those words used in the Magistrates' Courts Act, 1944.
- (18) The words “members” and “members” in section 1 of the Magistrates' Courts Amendment Act, 1991, shall mean the same as those words used in the Magistrates' Courts Act, 1944.
- (19) The words “provisions” and “provisions” in section 1 of the Magistrates' Courts Amendment Act, 1991, shall mean the same as those words used in the Magistrates' Courts Act, 1944.
- (20) The words “date to be fixed” and “date to be fixed” in section 1 of the Magistrates' Courts Amendment Act, 1991, shall mean the same as those words used in the Magistrates' Courts Act, 1944.
- (21) The words “State President” and “State President” in section 1 of the Magistrates' Courts Amendment Act, 1991, shall mean the same as those words used in the Magistrates' Courts Act, 1944.
- (22) The words “proclamation” and “proclamation” in section 1 of the Magistrates' Courts Amendment Act, 1991, shall mean the same as those words used in the Magistrates' Courts Act, 1944.
- (23) The words “Gazette” and “Gazette” in section 1 of the Magistrates' Courts Amendment Act, 1991, shall mean the same as those words used in the Magistrates' Courts Act, 1944.
- (24) The words “fixed” and “fixed” in section 1 of the Magistrates' Courts Amendment Act, 1991, shall mean the same as those words used in the Magistrates' Courts Act, 1944.
- (25) The words “different dates” and “different dates” in section 1 of the Magistrates' Courts Amendment Act, 1991, shall mean the same as those words used in the Magistrates' Courts Act, 1944.
- (26) The words “districts” and “districts” in section 1 of the Magistrates' Courts Amendment Act, 1991, shall mean the same as those words used in the Magistrates' Courts Act, 1944.
- (27) The words “regional divisions” and “regional divisions” in section 1 of the Magistrates' Courts Amendment Act, 1991, shall mean the same as those words used in the Magistrates' Courts Act, 1944.
- (28) The words “same as those words used in the Magistrates' Courts Act, 1944” and “same as those words used in the Magistrates' Courts Act, 1944” in section 1 of the Magistrates' Courts Amendment Act, 1991, shall mean the same as those words used in the Magistrates' Courts Act, 1944.
- (29) The words “Magistrates' Courts Act, 1944” and “Magistrates' Courts Act, 1944” in section 1 of the Magistrates' Courts Amendment Act, 1991, shall mean the same as those words used in the Magistrates' Courts Act, 1944.
- (30) The words “Magistrates' Courts Amendment Act, 1991” and “Magistrates' Courts Amendment Act, 1991” in section 1 of the Magistrates' Courts Amendment Act, 1991, shall mean the same as those words used in the Magistrates' Courts Amendment Act, 1991.

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- (iv) die omvang of waarskynlike omvang van die straf waaraan die beskuldigde by skuldigbevinding sal blootstaan of, na gelang van die geval, blootstaan;
- (v) enige ander aangeleenthed of omstandigheid wat na sy oordeel op die wenslikheid van die aanseggings van 'n assessor of assessore mag dui,
in aanmerking en kan hy die beskuldigde met betrekking tot die aangeleenthede in hierdie paragraaf bedoel, ondervra.
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- (b) By die toepassing van subartikel (1)(b) beteken 'n gemeenskapgebaseerde straf—
- (i) korrektiewe toesig soos omskryf in artikel 1 van die Strafproseswet, 1977 (Wet No. 51 van 1977);
- (ii) 'n straf beoog in artikel 297(1)(a)(i)(cc) van die Strafproseswet, 1977; of
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- (iii) 'n straf beoog in artikel 297(1)(b) of (4) van die Strafproseswet, 1977, en waar die verrigting van gemeenskapsdiens soos bedoel in genoemde artikel 297(1)(a)(i)(cc), 'n voorwaarde vir die opskorting is.”;
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- (c) deur in subartikel (3) die woorde wat paragraaf (a) voorafgaan deur die volgende woorde te vervang:
“Die gemelde regterlike amptenaar moet, voor die verhoor of die strafoplegging, na gelang van die geval, van die persoon of persone wat hy aldus aangesê het om hom by te staan 'n eed afneem dat hy of hulle 'n ware uitspraak of 'n oorwoë mening, na gelang van die geval, sal gee, ooreenkomsdig die getuenis op die geskilpunte wat verhoor word of betreffende die straf, na gelang van die geval, en daarna is hy of hulle 'n lid of lede van die hof behoudens die volgende bepalings.”; en
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- (d) deur in subartikel (3) paragraaf (f) deur die volgende paragraaf te vervang:
“(f) in geval van skuldigbevinding word die kwessie van die straf wat opgelê moet word, behalwe in 'n geval in subartikel (1)(b) beoog, geag, vir die doeleindes van paragraaf (a), 'n regspunt te wees.”.
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35 Kort titel en inwerkingtreding

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2. (1) Hierdie Wet heet die Wysigingswet op Landdroshowe, 1991, en tree in werking op 'n datum wat die Staatspresident by proklamasie in die *Staatskoerant* bepaal.
- (2) Verskillende datums kan ingevolge subartikel (1) ten opsigte van verskil-
40 lende distrikte en streekafdelings soos bedoel in die Wet op Landdroshowe, 1944 (Wet No. 32 van 1944), bepaal word.

