

REPUBLIC OF SOUTH AFRICA

CRIMINAL AND RELATED MATTERS AMENDMENT BILL

*(As agreed to by the Portfolio Committee on Justice and Correctional Services
(National Assembly))
(The English text is the official text of the Bill)*

(MINISTER OF JUSTICE AND CORRECTIONAL SERVICES)

[B 17B—2020]

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“Evidence through intermediaries in proceedings other than criminal proceedings

<p>51A. (1) A court may, on application by any party to proceedings in terms of Part II of this Act before the court, or of its own accord and subject to subsection (4), appoint a competent person as an intermediary in order to enable a witness—</p>	5
<p>(a) under the biological or mental age of 18 years;</p> <p>(b) who suffers from a physical, psychological, mental or emotional condition; or</p> <p>(c) who is an older person as defined in section 1 of the Older Persons Act, 2006 (Act No. 13 of 2006),</p>	10
<p>to give his or her evidence through that intermediary, if it appears to that court that the proceedings would expose such a witness to undue psychological, mental or emotional stress, trauma or suffering if he or she testifies at such proceedings.</p>	15
<p>(2) (a) No examination, cross-examination or re-examination of any witness in respect of whom a court has appointed an intermediary, except examination by the court, may take place in any manner other than through that intermediary.</p>	
<p>(b) The intermediary may, unless the court directs otherwise, convey the general purport of any question to the relevant witness.</p>	20
<p>(3) If a court appoints an intermediary in terms of subsection (1), the court may direct that the relevant witness gives his or her evidence at any place—</p>	
<p>(a) which is informally arranged to set that witness at ease;</p>	25
<p>(b) which is so situated that any person whose presence may upset that witness, is outside the sight and hearing of that witness; and</p>	
<p>(c) which enables the court and any person whose presence is necessary at the relevant proceedings to see and hear, either directly or through the medium of any electronic or other devices, the intermediary, as well as the witness, during his or her testimony.</p>	30
<p>(4) (a) The Minister may, by notice in the <i>Gazette</i>, determine the persons or the category or class of persons who are competent to be appointed as intermediaries.</p>	
<p>(b) An intermediary appearing at proceedings in terms of this section who is not in the full-time employment of the State must be paid such traveling and subsistence and other allowances in respect of the services rendered by him or her as prescribed by the rules made by the Rules Board for Courts of Law under the Rules Board for Courts of Law Act, 1985.</p>	35
<p>(5) (a) A court must provide reasons for refusing any application for the appointment of an intermediary, immediately upon refusal, which reasons must be entered into the record of the proceedings.</p>	
<p>(b) A court may, on application by a party affected by the refusal contemplated in paragraph (a), and if it is satisfied that there is a material change in respect of any fact or circumstance that influenced that refusal, review its decision.</p>	45
<p>(6) An intermediary referred to in subsection (1) may be summoned to appear in court on a specified date and at a specified place and time to act as an intermediary.</p>	50
<p>(7) If, at the commencement of or at any stage before the completion of the proceedings concerned, an intermediary appointed by the court, is absent for any reason, becomes unable, in the opinion of the court, to act as an intermediary or dies, the court may, in the interests of justice and after due consideration of the arguments put forward by the parties—</p>	55
<p>(a) postpone the proceedings in order to obtain the intermediary’s presence;</p>	
<p>(b) summons the intermediary to appear before the court to advance reasons for being absent;</p>	
<p>(c) direct that the appointment of the intermediary be revoked and appoint another intermediary; or</p>	60

(d) direct that the appointment of the intermediary be revoked and that the proceedings continue in the absence of an intermediary.

(8) The court must immediately give reasons for any direction or order referred to in subsection (7)(c) or (d), which reasons must be entered into the record of the proceedings.

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Oath and competency of intermediaries

51B. (1) Subject to subsection (3), any person who is competent to be appointed as an intermediary in terms of section 51A(4)(a) must, before commencing with his or her functions in terms of section 51A, take an oath or make an affirmation subscribed by him or her, in the form set out below, before the magistrate presiding over the proceedings:

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‘I,, do hereby swear/truly affirm that, whenever I may be called upon to perform the functions of an intermediary, I shall truly and correctly, to the best of my knowledge and ability—

(a) perform my functions as an intermediary; and

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(b) convey, properly and accurately, all questions put to witnesses and, where necessary, convey the general purport of any question to the witness, unless directed otherwise by the court’.

(2) (a) Subject to subsection (3), before a person is appointed to perform the functions of an intermediary in a magistrate’s court for any district or for any regional division, the magistrate presiding over the proceedings must enquire into the competence of the person to be appointed as an intermediary.

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(b) The enquiry contemplated in paragraph (a) must include, but is not limited to, the person’s—

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(i) fitness as a person to be an intermediary;

(ii) experience, which has a bearing on the role and functions of an intermediary;

(iii) qualifications;

(iv) knowledge, which has a bearing on the role and functions of an intermediary;

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(v) language and communication proficiency; and

(vi) ability to interact with a witness under the biological or mental age of 18 years or a witness who suffers from a physical, psychological, mental or emotional condition, or a witness who is an older person as defined in section 1 of the Older Persons Act, 2006.

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(3) (a) The head of a court may, at his or her discretion and after holding an enquiry contemplated in subsection (2), issue a certificate in the form prescribed by the Minister by notice in the *Gazette*, to a person whom he or she has found to be competent to appear as an intermediary in a magistrate’s court for a district or for a regional division.

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(b) Before the head of a court issues a certificate referred to in paragraph (a), he or she must cause the person who has been found competent to be appointed as an intermediary, to take the oath or make the affirmation referred to in subsection (1) and must endorse the certificate with a statement of the fact that it was taken or made before him or her and of the date on which it was so taken or made and append his or her signature thereto.

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(c) A certificate contemplated in paragraph (a) may be accepted as proof of the—

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(i) competency of a person to be appointed as an intermediary; and

(ii) fact that the person has taken the oath or made the affirmation contemplated in subsection (1),

for purposes of this section, in any subsequent proceedings in terms of this Act, before a magistrate’s court for a district or for a regional division and it is not necessary for the magistrate presiding over the proceedings in question to administer the oath or affirmation or to hold an enquiry into the competence of the person to be appointed as an intermediary.

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(d) Paragraph (c) must not be construed as prohibiting a magistrate from holding an enquiry, at any stage of proceedings, regarding the competence of a person to act as an intermediary.

(e) For the purposes of this section, “**head of a court**” means the most senior judicial officer of that court.

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Evidence through audiovisual link in proceedings other than criminal proceedings

51C. (1) A court may, on application by any party to proceedings in terms of Part II of this Act before that court or of its own accord, order that a witness, irrespective of whether the witness is in or outside the Republic, if the witness consents thereto, may give evidence by means of audiovisual link.

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(2) A court may make an order contemplated in subsection (1) only if—

(a) it appears to the court that to do so would—

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(i) (aa) prevent unreasonable delay;

(bb) save costs;

(cc) be convenient; or

(dd) prevent the likelihood that any person might be prejudiced or harmed if he or she testifies or is present at such proceedings; and

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(ii) otherwise be in the interests of justice;

(b) facilities thereof are readily available or obtainable at the court; and

(c) the audiovisual link that is used by the witness or at the court enables—

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(i) persons at the courtroom to see, hear and interact with the witness giving evidence; and

(ii) the witness who gives evidence to see, hear and interact with the persons at the courtroom.

(3) The court may make the giving of evidence in terms of subsection (1) subject to such conditions as it may deem necessary in the interests of justice.

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(4) The court must provide reasons for—

(a) allowing or refusing an application by any of the parties; or

(b) its order and any objection raised by the parties against the order, as contemplated in subsection (1).

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(5) For purposes of this Act, a witness who gives evidence by means of audiovisual link is regarded as a witness who was subpoenaed to give evidence in the court in question.

(6) For purposes of this section “**audiovisual link**” means facilities that enable both audio and visual communications between a witness and persons at a courtroom in real-time as they take place.”.

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Amendment of section 59 of Act 51 of 1977, as substituted by section 3 of Act 26 of 1987, section 1 of Act 126 of 1992 and section 2 of Act 75 of 1995

2. Section 59 of the Criminal Procedure Act, 1977, is hereby amended by the substitution in subsection (1) for paragraph (a) of the following paragraph:

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“(a) An accused who is in custody in respect of any offence, other than an offence—

(i) referred to in Part II or Part III of Schedule 2;

(ii) against a person in a domestic relationship, as defined in section 1 of the Domestic Violence Act, 1998 (Act No. 116 of 1998); or

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(iii) referred to in—

(aa) section 17(1)(a) of the Domestic Violence Act, 1998;

(bb) section 18(1)(a) of the Protection from Harassment Act, 2011 (Act No. 17 of 2011); or

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(cc) any law that criminalises a contravention of any prohibition, condition, obligation or order, which was issued by a court to protect the person against whom the offence in question was allegedly committed, from the accused.