

# REPUBLIC OF SOUTH AFRICA REPUBLIEK VAN SUID-AFRIKA

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**No. 31911**

## THE PRESIDENCY

No. 169

18 February 2009

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

**No. 65 of 2008: Criminal Procedure Amendment Act, 2008.**

## DIE PRESIDENSIE

No. 169

18 Februarie 2009

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

**No. 65 van 2008: Strafproseswystingswet, 2008.**

**GENERAL EXPLANATORY NOTE:**

- [ ] Words in bold type in square brackets indicate omissions from existing enactments.
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- Words underlined with a solid line indicate insertions in existing enactments.
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*(English text signed by the President.)  
(Assented to 16 February 2009.)*

**ACT**

To amend the Criminal Procedure Act, 1977, to provide for the postponement of certain criminal proceedings against an accused person in custody awaiting trial through audiovisual link; to further regulate the falling away of certain convictions as previous convictions after the expiry of a fixed period; to provide for the expungement of criminal records of certain persons in respect of whom certain sentences have been imposed after the compliance with certain requirements and the expiry of a fixed period; to provide for the expungement of certain criminal records of persons under legislation enacted before the Constitution of the Republic of South Africa, 1993, took effect; and to provide for matters connected therewith.

**P**ARLIAMENT of the Republic of South Africa enacts as follows:—

**Insertion of sections 159A, 159B, 159C and 159D in Act 51 of 1977**

1. The following sections are hereby inserted in the Criminal Procedure Act, 1977 (hereinafter referred to as the principal Act), after section 159: 5

**“Postponement of certain criminal proceedings through audiovisual link**

**159A.** (1) For purposes of this section and sections 159B, 159C and 159D, unless the context indicates otherwise—

- (a) ‘appropriate person’ means any court official or any other person at the court point and remote point who is required to be, or may be, present at the proceedings, including the presiding officer, the prosecutor, the accused person’s legal representative, any technical assistant, the clerk of the court, any witnesses, and members of the public who are entitled to be present; 10
- (b) ‘audio link’ means a live telephone link between the court point and the remote point which are both equipped with facilities which will enable audio communication between all appropriate persons at the court point and the remote point; 15
- (c) ‘audiovisual link’ means a live television link between the court point and the remote point which are both equipped with facilities which will enable all appropriate persons at the court point and the remote 20

**ALGEMENE VERDUIDELIKENDE NOTA:**

- [ ] Woorde in vet druk tussen vierkantige hake dui skrappings uit bestaande verordeningen aan.
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- Woorde met 'n volstreep daaronder dui invoegings in bestaande verordeningen aan.
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*(Engelse teks deur die President geteken.)  
(Goedgekeur op 16 Februarie 2009.)*

**WET**

**Tot wysiging van die Strafproseswet, 1977, ten einde voorsiening te maak vir die uitstel, deur middel van audiovisuele skakel, van sekere strafregtelike verrigtinge teen 'n verhoorafwagende beskuldigde persoon in aanhouding; om die verval van sekere skuldigbevindings as vorige veroordelings na die verloop van 'n vasgestelde tydperk verder te reël; om voorsiening te maak vir die skrapping van kriminele rekords van sekere persone op wie sekere vonnisse opgelê is, na voldoening aan sekere vereistes en die verloop van 'n vasgestelde tydperk; om voorsiening te maak vir die skrapping van sekere kriminele rekords van persone kragtens wetgewing wat verorden is voor die Grondwet van die Republiek van Suid-Afrika, 1993, in werking getree het; en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.**

**D**IE Parlement van die Republiek van Suid-Afrika bepaal soos volg:—

**Invoeging van artikels 159A, 159B, 159C en 159D in Wet 51 van 1977**

1. Die volgende artikels word hierby in die Strafproseswet, 1977 (hierna die Hoofwet genoem), na artikel 159, ingevoeg: 5

**"Uitstel van sekere strafregtelike verrigtinge deur middel van audiovisuele skakel**

**159A.** (1) Vir doeleinades van hierdie artikel en artikels 159B, 159C en 159D, tensy uit die samehang anders blyk, beteken—

- (a) **'gehoorskakel'** 'n lewendige telefoonskakel tussen die hofpunt en die verwyderde punt wat beide toegerus is met fasilitete wat gehoorkommunikasie tussen alle geskikte persone by die hofpunt en die verwyderde punt moontlik maak;
- (b) **'geskikte persoon'** 'n hofbeampte of enige ander persoon by die hofpunt en verwyderde punt wat by die verrigting teenwoordig moet of mag wees, met inbegrip van die voorsittende beampte, die aanklaer, die beskuldigde persoon se regsvteenwoordiger, 'n tegniese assistent, die klerk van die hof, enige getuies, en lede van die publiek wat daarop geregtig is om teenwoordig te wees;
- (c) **'hofpunt'** die hofsaal of ander plek waar die hof wat jurisdiksie het, sit;

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<p>point to follow the proceedings and see and hear all the appropriate persons;</p> <p>(d) ‘court point’ means the courtroom or other place where the court having jurisdiction is sitting;</p> <p>(e) ‘correctional facility’ means a correctional facility as defined in the Correctional Services Act, 1998 (Act No. 111 of 1998), but does not include a police cell or lock-up; and</p> <p>(f) ‘remote point’ means the room or place at the designated correctional facility where the accused person appearing through audiovisual link is located.</p> <p>(2) An accused person—</p> <p>(a) who is over the age of 18 years;</p> <p>(b) who is in custody in a correctional facility in respect of an offence;</p> <p>(c) who has already appeared before a court;</p> <p>(d) whose case has been postponed and who is in custody pending his or her trial; and</p> <p>(e) who is required to appear or to be brought before a court in any subsequent proceedings (whether before, during or after the trial or conviction and sentence) for the purpose of—</p> <p style="margin-left: 2em;">(i) a further postponement of the case; or</p> <p style="margin-left: 2em;">(ii) consideration of release on bail in terms of section 60, 63, 63A, 307, 308A or 321, where the granting of bail is not opposed by the prosecutor or where the granting of bail does not require the leading of evidence,</p>	5 10 15 20 25 30 35
<p>is not required to appear or to be brought physically before the court but may, subject to the provisions of this section, sections 159B, 159C and 159D, appear before court by audiovisual link and is deemed to be physically before court, unless the court directs, in the interests of justice, that he or she appears or be brought physically before it.</p> <p>(3) Any proceedings in terms of subsection (2) shall be regarded as having been held in the presence of the accused person if, during the proceedings, that person—</p> <p>(a) is held in custody in a correctional facility; and</p> <p>(b) is able to follow the court proceedings and the court is able to see and hear the accused person by means of audiovisual link.</p> <p>(4) <u>The remote point shall be regarded as being a part of the court.</u></p>	25 30 35

### Requirements for audiovisual appearance by accused person

<p><b>159B.</b> (1) An accused person appearing before a court by audiovisual link must do so from a place at which the requirements referred to in subsections (2) and (3) and section 159C are complied with.</p> <p>(2) The Minister may, subject to the provisions of this section, designate any correctional facility which has been suitably equipped as a place where proceedings in terms of section 159A can be held.</p> <p>(3) Both the court point and the remote point in the correctional facility designated in terms of subsection (2) must be equipped with facilities that, in accordance with any requirements prescribed by regulations and any directions of the court referred to in section 159C, allow—</p> <p>(a) private communication to take place between the accused person and any legal practitioner representing that person in the proceedings at the court point; and</p> <p>(b) documents to be transmitted between both points by the persons referred to in paragraph (a)—</p> <p style="margin-left: 2em;">(i) at any time during the proceedings;</p> <p style="margin-left: 2em;">(ii) during any adjournment of the hearing in the proceedings referred to in paragraph (a); or</p> <p style="margin-left: 2em;">(iii) at any time on the day of a hearing, shortly before or after the hearing.</p>	40 45 50 55
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(d) ‘ <b>korrektiewe fasiliteit</b> ’ ’n korrektiewe fasiliteit soos in die Wet op Korrektiewe Dienste, 1998 (Wet No. 111 van 1998), omskryf, maar nie ’n polisiesel of opsluitplek nie;	5
(e) ‘ <b>audiovisuele skakel</b> ’ ’n lewendige televisie-skakel tussen die hofpunt en die verwyderde punt wat beide toegerus is met fasilitete wat alle geskikte persone by die hofpunt en die verwyderde punt in staat sal stel om die verrigtinge te volg en alle geskikte persone te sien en te hoor;	5
(f) ‘ <b>verwyderde punt</b> ’ die vertrek of plek by die aangewese korrektiewe fasiliteit waar die beskuldigde persoon is wat deur middel van die audiovisuele skakel verskyn.	10
(2) Van ’n beskuldigde persoon—	
(a) wat bo die ouerdom van 18 jaar is;	15
(b) wat in ’n korrektiewe fasiliteit ten opsigte van ’n misdryf in aanhouding is;	15
(c) wat reeds voor ’n hof verskyn het;	
(d) wie se saak uitgestel is en wat in aanhouding is hangende sy of haar verhoor; en	
(e) wat voor ’n hof moet verskyn of gebring moet word in enige verdere verrigtinge (hetso voor, tydens of na die verhoor of skuldigbevinding en vonnis) vir doeleindes van—	20
(i) ’n verdere uitstel van die saak; of	
(ii) oorweging van vrylating op borgtog ingevolge artikel 60, 63, 63A, 307, 308A of 321, waar die toestaan van borgtog nie deur die aanklaer teengetaan word nie of waar die toestaan van borgtog nie die lei van getuienis vereis nie,	25
word nie verwag om te verskyn of om fisies voor die hof gebring te word nie maar kan, behoudens die bepalings van hierdie artikel, artikels 159B, 159C en 159D, voor die hof verskyn deur middel van audiovisuele skakel, en word geag fisies voor die hof te wees, tensy die hof, in die belang van geregtigheid, gelas dat hy of sy verskyn of fisies voor die hof gebring word.	30
(3) Enige verrigtinge ingevalle subartikel (2) word geag in die tecnoordigheid van die beskuldigde persoon gehou te gewees het indien, tydens die verrigtinge, daardie persoon—	
(a) in ’n korrektiewe fasiliteit aangehou word; en	35
(b) in staat is om die hofverrigtinge te volg en die hof in staat is om die beskuldigde persoon deur middel van audiovisuele skakel te sien en te hoor.	
(4) Die verwyderde punt word geag deel van die hof te wees.	
<b>Vereistes vir audiovisuele verskyning deur beskuldigde persoon</b>	40
<b>159B.</b> (1) ’n Beskuldigde persoon wat deur middel van audiovisuele skakel voor ’n hof verskyn, moet aldus verskyn by ’n plek wat aan die vereistes bedoel in subartikels (2) en (3) en artikel 159C voldoen.	
(2) Die Minister kan, behoudens die bepalings van hierdie artikel, enige korrektiewe fasiliteit aanwys wat gepas toegerus is as ’n plek waar verrigtinge ingevalle artikel 159A gehou kan word.	45
(3) Beide die hofpunt en die verwyderde punt in die korrektiewe fasiliteit wat ingevalle subartikel (2) aangewys is, moet toegerus wees met fasilitete wat, ooreenkomsdig enige vereistes voorgeskryf deur regulasies en enige opdragte van die hof bedoel in artikel 159C, toelaat dat—	50
(a) privaat kommunikasie tussen die beskuldigde persoon en ’n regsvtereenwoordiger wat daardie persoon in die verrigtinge by die hofpunt verteenwoordig, kan plaasvind; en	
(b) dokumente tussen beide punte deur die persone bedoel in paragraaf (a) versend kan word—	
(i) te eniger tyd tydens die verrigtinge;	
(ii) tydens ’n verdaging van die verhoor in die verrigtinge bedoel in paragraaf (a); of	
(iii) te eniger tyd op die dag van ’n verhoor, kort voor of na die verhoor.	60

(4) The court must, at every appearance of an accused person in terms of section 159A, inquire into the physical and mental well-being of the accused person and for that purpose may, where necessary, direct that the facilities referred to in section 159C be used in such a manner which will enable the presiding officer to satisfy himself or herself as to the accused person's well-being as that presiding officer would be able to do if the accused person were physically before the court.

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### Technical requirements for use of audiovisual link

**159C.** (1) For the purposes of proceedings in terms of section 159A, both the court point and the remote point must be equipped with facilities that enable all appropriate persons—

- (a) at the court point to see and hear a person appearing before the court or making a submission or any other appropriate person at the remote point and to follow the proceedings; and
- (b) at the remote point to see and hear all appropriate persons at the court point and to follow the proceedings.

(2) (a) In the event of—

- (i) an interruption of an audiovisual link;
- (ii) an audiovisual link being of a poor quality which, in the opinion of the court, is not in the interests of justice to continue the proceedings by way of audiovisual link; or
- (iii) any of the facilities referred to in subsection (1) malfunctioning,

the court must, subject to paragraph (b), direct that the matter stand down and cause the accused person to be brought physically before the court on the day in question.

(b) If it is not reasonably practicable to bring the accused person to court on the day, as provided for in paragraph (a), the court must, prior to the expiry of the existing court order for the accused person's detention, postpone the proceedings in the absence of the accused person, to the next court day.

(3) The Minister may make any regulations necessary to give effect to the technical requirements referred to in subsection (1).

(4) A court may, in order to ensure a fair trial, give any directions in any case as it may deem necessary, which may not be inconsistent with any provision of this Act or any regulation made thereunder.

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### Protection of communication between accused person and legal representative

**159D.** Without limiting any other protection applying to it, a communication by audio link or audiovisual link, or a document transmitted between an accused person and his or her legal representative as provided for in section 159B(3), is confidential and inadmissible in any proceedings as if the communication took place or the document was produced while they were in the presence of each other.”.

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**Substitution of section 271A of Act 51 of 1977, as inserted by section 12 of Act 5 of 1991 and amended by section 6 of Act 4 of 1992**

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2. The following section is hereby substituted for section 271A of the principal Act:

**“Certain convictions fall away as previous convictions after expiration of 10 years**

**271A.** Where a court has convicted a person of—

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(4) Die hof moet, by elke verskyning van 'n beskuldigde persoon ingevolge artikel 159A, ondersoek instel na die fisiese en geestelike welstand van die beskuldigde persoon en kan vir daardie doel, waar nodig, gelas dat die fasilitete bedoel in artikel 159C op so 'n wyse aangewend word wat die voorsittende beampete in staat stel om homself of haarsel te oortuig met betrekking tot die beskuldigde persoon se welstand soos daardie voorsittende beampete sou kon doen indien die beskuldigde persoon fisies voor die hof was.

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### Tegniese vereistes vir gebruik van audiovisuele skakel

**159C.** (1) Vir doeleindes van verrigtinge ingevolge artikel 159A moet beide die hofpunt en die verwyderde punt toegerus wees met fasilitete wat alle gesikte persone—

- (a) by die hofpunt in staat stel om 'n persoon wat voor die hof verskyn of 'n voorlegging doen of enige ander gesikte persoon by die verwyderde punt te sien en te hoor en om die verrigtinge te volg; en
- (b) by die verwyderde punt in staat stel om alle gesikte persone by die hofpunt te sien en te hoor en die verrigtinge te volg.

(2) (a) In die geval van—

- (i) 'n onderbreking van 'n audiovisuele skakel;
- (ii) 'n audiovisuele skakel wat van 'n swak gehalte is wat, na die mening van die hof, nie in die belang van geregtigheid is om die verrigtinge by wyse van audiovisuele skakel voort te sit nie; of
- (iii) wanfunkzionering van enige van die fasilitete bedoel in subartikel (1),

moet die hof, behoudens paragraaf (b), gelas dat die aangeleentheid afstaan en die beskuldigde persoon op die betrokke dag fisies voor die hof gebring word.

(b) As dit nie redelikerwys moontlik is om die beskuldigde persoon op die dag na die hof, soos in paragraaf (a) bedoel, te bring nie, moet die hof, voor die verstryking van die bestaande hofbevel vir die beskuldigde persoon se aanhouding, die verrigtinge in die beskuldigde persoon se afwesigheid na die volgende hofdag uitstel.

(3) Die Minister kan enige regulasie uitvaardig wat nodig is om gevolg te gee aan die tegniese vereistes bedoel in subartikel (1).

(4) Ten einde 'n regverdigte verhoor te verseker, kan 'n hof in enige saak enige opdragte gee as wat die hof nodig ag, wat nie onbestaanbaar mag wees met enige bepaling van hierdie Wet of enige regulasie daarkragtens gemaak nie.

### Beskerming van kommunikasie tussen beskuldigde persoon en regsverteenvwoordiger

**159D.** Sonder oom enige ander beskerming wat van toepassing is, te beperk, is enige kommunikasie deur middel van 'n gehoorskakel of audiovisuele skakel, of 'n dokument wat tussen 'n beskuldigde persoon en sy of haarregsverteenvwoordiger versend is soos in artikel 159B(3) bepaal, vertroulik en ontoelaatbaar in enige verrigtinge asof die kommunikasie plaasgevind het of die dokument voorgelê is terwyl hulle in mekaar se teenwoordigheid was.”.

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### Vervanging van artikel 271A van Wet 51 van 1977, soos ingevoeg deur artikel 12 van Wet 5 van 1991 en gewysig deur artikel 6 van Wet 4 van 1992

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2. Artikel 271A van die Hoofwet word hierby deur die volgende artikel vervang:

**“Sekere skuldigbevindings verval as vorige veroordelings na verloop van 10 jaar**

**271A.** Waar 'n hof iemand skuldig bevind het aan—

- (a) [an] any offence [for] in respect of which [the punishment] a sentence [may be a period] of imprisonment for a period exceeding six months without the option of a fine, may be imposed [and] but—
- (i) has postponed the passing of sentence in terms of section 297(1)(a) and has discharged that person in terms of section 297(2) without passing sentence or has not called upon him or her to appear before the court in terms of section 297(3); or
  - (ii) has discharged that person with a caution or reprimand in terms of section 297(1)(c); or
- (b) any [other] offence [than that for] in respect of which [the punishment] a sentence [may be a period] of imprisonment for a period not exceeding six months without the option of a fine, may be imposed,
- that conviction shall fall away as a previous conviction if a period of 10 years has elapsed after the date of conviction of the said offence, unless during that period [such] the person has been convicted of an offence [for] in respect of which [the punishment] a sentence [may a period] of imprisonment for a period exceeding six months without the option of a fine, may be imposed.”.

### Insertion of sections 271B, 271C, 271D and 271E in Act 51 of 1977

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3. The following sections are hereby inserted in the principal Act, after section 271A:

#### “Expungement of certain criminal records

- 271B.** (1) (a) Where a court has imposed any of the following sentences on a person convicted of an offence, the criminal record of that person, containing the conviction and sentence in question, must, subject to paragraph (b) and subsection (2) and section 271D, on the person’s written application, be expunged after a period of 10 years has elapsed after the date of conviction for that offence, unless during that period the person in question has been convicted of an offence and has been sentenced to a period of imprisonment without the option of a fine:
- (i) A sentence postponing the passing of sentence in terms of section 297(1)(a) where that person was discharged in terms of section 297(2), without the passing of sentence, or where that person was not called upon to appear before the court in terms of section 297(3);
  - (ii) a sentence discharging that person with a caution or reprimand in terms of section 297(1)(c);
  - (iii) a sentence in the form of a fine only, not exceeding R20 000;
  - (iv) a sentence of corporal punishment before corporal punishment was declared to be unconstitutional as a sentencing option;
  - (v) any sentence of imprisonment with the option of a fine, not exceeding R20 000;
  - (vi) any sentence of imprisonment which was suspended wholly;
  - (vii) a sentence of correctional supervision, referred to in section 276(1)(h) or (i); or
  - (viii) a sentence of periodical imprisonment, referred to in section 276(1)(c).
- (b) A person—
- (i) who has been convicted of a sexual offence against a child or a person who is mentally disabled and whose name has been included in the National Register for Sex Offenders, as provided for in section 50 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007); or
  - (ii) whose name has been included in the National Child Protection Register as a result of a conviction for an offence, as provided for in section 120(1)(b) of the Children’s Act, 2005 (Act No. 38 of 2005), does not qualify to have the criminal record in question expunged in terms of this section, unless his or her name has been removed from the National Register of Sex Offenders, as provided for in section 51 of the Criminal

<p>(a) [<b>n</b>] <u>enige</u> misdryf [<b>waarvoor</b>] <u>ten opsigte</u> waarvan 'n vonnis van gevengenisstraf vir 'n langer tydperk as ses maande sonder die keuse van 'n boete opgelê kan word, [<b>en</b>] <u>maar</u>—</p> <ul style="list-style-type: none"> <li>(i) die oplegging van vonnis ingevolge artikel 297(1)(a) uitgestel het en daardie persoon ingevolge artikel 297(2) ontslaan het sonder om vonnis op te lê of hom <u>of haar</u> nie ingevolge artikel 297(3) opgeroep het om voor die hof te verskyn nie; of</li> <li>(ii) daardie persoon ingevolge artikel 297(1)(c) met 'n waarskuwing of berisping ontslaan het; of</li> </ul> <p>(b) enige [<b>ander</b>] misdryf [<b>as dié waarvoor</b>] <u>ten opsigte</u> waarvan 'n vonnis van gevengenisstraf vir 'n [<b>langer</b>] tydperk [<b>as</b>] wat ses maande <u>nie oorskry</u> nie sonder die keuse van 'n boete opgelê kan word,</p> <p>veral daardie skuldigbevinding as 'n vorige veroordeling indien 'n tydperk van 10 jaar verloop het na die datum van skuldigbevinding aan die betrokke misdryf, tensy gedurende daardie tydperk [<b>so 'n</b>] <u>die</u> persoon aan 'n misdryf [<b>waarvoor</b>] <u>ten opsigte</u> waarvan 'n vonnis van gevengenisstraf vir 'n langer tydperk as ses maande sonder die keuse van 'n boete opgelê kan word, skuldig bevind is.”.</p>	5 10 15 15
<b>Invoeging van artikels 271B, 271C, 271D en 271E in Wet 51 van 1977</b>	20
<p><b>3.</b> Die volgende artikels word hierby in die Hoofwet na artikel 271A ingevoeg:</p> <p style="text-align: center;"><b>“Skrappling van sekere kriminale rekords</b></p> <p><b>271B.</b> (1) (a) Waar 'n hof enige van die volgende vonnisse aan 'n persoon wat aan 'n misdryf skuldig bevind is, opgelê het, moet die kriminale rekord van daardie persoon, wat die betrokke skuldigbevinding en vonnis bevat, behoudens paragraaf (b) en subartikel (2) en artikel 271D, op die persoon se skriftelike aansoek, geskrap word nadat 'n tydperk van 10 jaar verloop het na die datum van skuldigbevinding aan daardie misdryf, tensy die betrokke persoon gedurende daardie tydperk aan 'n misdryf skuldig bevind is en tot 'n tydperk van gevengenisstraf sonder die keuse van 'n boete gevonnis is:</p> <ul style="list-style-type: none"> <li>(i) 'n Vonnis wat die oplegging van vonnis ingevolge artikel 297(1)(a) uitstel waar daardie betrokke persoon ingevolge artikel 297(2) ontslaan is sonder dat vonnis opgelê is, of waar die betrokke persoon nie ingevolge artikel 297(3) opgeroep is om voor die hof te verskyn nie;</li> <li>(ii) 'n vonnis wat daardie persoon ingevolge artikel 297(1)(c) met 'n waarskuwing of berisping ontslaan;</li> <li>(iii) 'n vonnis in die vorm van slegs 'n boete, wat nie R20 000 oorskry nie;</li> <li>(iv) 'n vonnis van lyfstraf voordat lyfstraf as vonnisopsie ongrondwetlik verklaar is;</li> <li>(v) 'n vonnis van gevengenisstraf met die keuse van 'n boete, wat nie R20 000 oorskry nie;</li> <li>(vi) 'n vonnis van gevengenisstraf wat in die geheel opgeskort is;</li> <li>(vii) 'n vonnis van korrekttiewe toesig bedoel in artikel 276(1)(h) of (i); of</li> <li>(viii) 'n vonnis van periodieke gevengenisstraf bedoel in artikel 276(1)(c).</li> </ul> <p>(b) 'n Persoon—</p> <ul style="list-style-type: none"> <li>(i) wat aan 'n seksuele misdryf teen 'n kind of 'n persoon wat verstandelik gestremd is, skuldig bevind is en wie se naam in die Nasionale Register vir Seks-oortreders opgeneem is, soos bepaal in artikel 50 van die Wysigingswet op die Strafreg (Seksuele Misdrywe en Verwante Aangeleenthede), 2007 (Wet No. 32 van 2007); of</li> <li>(ii) wie se naam in die Nasionale Kinderbeskermingsregister opgeneem is as gevolg van 'n skuldigbevinding aan 'n oortreding soos bepaal in artikel 120(1)(b) van die 'Children's Act, 2005' (Wet No. 38 van 2005).</li> </ul> <p>kwalifiseer nie om die betrokke kriminale rekord ingevolge hierdie artikel te laat skrap nie, tensy sy of haar naam van die Nasionale Register vir Seks-oortreders verwyder is, soos in artikel 51 van die Wysigingswet op die</p>	25 30 35 40 45 50 55

Law (Sexual Offences and Related Matters) Amendment Act, 2007, or section 128 of the Children's Act, 2005, as the case may be.

(2) The Director-General: Justice and Constitutional Development must, on receipt of the written application of a person referred to in subsection (1), issue a certificate of expungement, directing that the criminal record of that person be expunged, if the Director-General is satisfied that the person applying for expungement complies with the criteria set out in subsection (1).

(3) The Director-General: Justice and Constitutional Development must submit every certificate of expungement that has been issued as provided for in subsection (2) to the head of the Criminal Record Centre of the South African Police Service, to be dealt with in accordance with section 271D.

**Expungement of certain criminal records under legislation enacted before the Constitution of the Republic of South Africa, 1993, took effect**

**271C.** (1) Where a court has convicted a person of any of the following offences, the criminal record, containing the conviction and sentence in question, of that person in respect of that offence must be expunged automatically by the Criminal Record Centre of the South African Police Service, as provided for in section 271D:

- (a) A contravention of section 1 of the Black Land Act, 1913 (Act No. 27 of 1913);
- (b) a contravention of section 12 of the Development Trust and Land Act, 1936 (Act No. 18 of 1936);
- (c) a contravention of section 5(1), read with section 5(2), or section 6, read with section 6(2), of the Blacks (Urban Areas) Consolidation Act, 1945 (Act No. 25 of 1945);
- (d) a contravention of section 8(1), read with section 8(3), of the Coloured Persons Settlement Act, 1946 (Act No. 7 of 1946);
- (e) a contravention of section 2 or 4 of the Prohibition of Mixed Marriages Act, 1949 (Act No. 55 of 1949);
- (f) a contravention of section 11 of the Internal Security Act, 1950 (Act No. 44 of 1950);
- (g) a contravention of section 10(6) and (7), 11(4), 14, 15, 16, 20(1), 28(7), 29(1) or 30 of the Black Building Workers Act, 1951 (Act No. 27 of 1951);
- (h) a contravention of section 15 of the Blacks (Abolition of Passes and Co-ordination of Documents) Act, 1952 (Act No. 67 of 1952);
- (i) a contravention of section 2 of the Criminal Law Amendment Act, 1953 (Act No. 8 of 1953);
- (j) a contravention of section 2(2) of the Reservation of Separate Amenities Act, 1953 (Act No. 49 of 1953);
- (k) a contravention of section 16 of the Sexual Offences Act, 1957 (Act No. 23 of 1957);
- (l) a contravention of section 46 of the Group Areas Act, 1966 (Act No. 36 of 1966);
- (m) a contravention of section 2 or 3 of the Terrorism Act, 1967 (Act No. 83 of 1967); or
- (n) a contravention of section 2 read with section 4(1), of the Prohibition of Foreign Financing of Political Parties Act, 1968 (Act No. 51 of 1968).

(2) (a) Where a court has convicted a person of contravening any provision of—

- (i) an Act of Parliament or subordinate legislation made thereunder;
- (ii) an ordinance of a provincial council;
- (iii) a municipal by-law;
- (iv) a proclamation;
- (v) a decree; or
- (vi) any other enactment having the force of law,

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Strafreg (Seksuele Misdrywe en Verwante Aangeleenthede), 2007, of artikel 128 van die 'Children's Act, 2005', bepaal, na gelang van die geval.

(2) Die Direkteur-generaal: Justisie en Staatkundige Ontwikkeling moet, by ontvangs van die skriftelike aansoek van 'n persoon in subartikel (1) bedoel, 'n sertificaat van skrapping uitrek, wat gelas dat die kriminele rekord van daardie betrokke persoon geskrap word, indien die Direkteur-generaal oortuig is dat die persoon wat vir sodanige skrapping aansoek doen aan die vereistes soos in subartikel (1) uiteengesit, voldoen.

(3) Die Direkteur-generaal: Justisie en Staatkundige Ontwikkeling moet elke sertificaat van skrapping wat uitgereik is soos bepaal in subartikel (2) aan die hoof van die Kriminele Rekordsentrum van die Suid-Afrikaanse Polisiediens voorlê, om ooreenkomsdig artikel 271D mee gehandel te word.

**Skrapping van sekere kriminele rekords kragtens wetgewing verorden voor die Grondwet van die Republiek van Suid-Afrika, 1993, in werking getree het**

**271C.** (1) Waar 'n hof 'n persoon aan enige van die volgende misdrywe skuldig bevind het, moet die kriminele rekord, wat die betrokke skuldigbevinding en vonnis bevat, van daardie persoon ten opsigte van daardie misdryf outomatis deur die Kriminele Rekordsentrum van die Suid-Afrikaanse Polisiediens geskrap word, soos in artikel 271D bepaal:

(a) 'n Oortreding van artikel 1 van die Swart Grond Wet, 1913 (Wet No. 27 van 1913);

(b) 'n oortreding van artikel 12 van die Ontwikkelingstrust en Grond Wet, 1936 (Wet No. 18 van 1936);

(c) 'n oortreding van artikel 5(1), gelees met artikel 5(2), of artikel 6, gelees met artikel 6(2), van die Swartes (Stadsgebiede) Konsolidasiewet, 1945 (Wet No. 25 van 1945);

(d) 'n oortreding van artikel 8(1), gelees met artikel 8(3), van die Wet op Kleurlingnedersettings, 1946 (Wet No. 7 van 1946);

(e) 'n oortreding van artikel 2 of 4 van die Wet op Verbod van Gemengde Huwelike, 1949 (Wet No. 55 van 1949);

(f) 'n oortreding van artikel 11 van die Wet op Binnelandse Veiligheid, 1950 (Wet No. 44 of 1950);

(g) 'n oortreding van artikel 10(6) en (7), 11(4), 14, 15, 16, 20(1), 28(7), 29(1) of 30 van die Swart Bouwerkers Wet, 1951 (Wet No. 27 van 1951);

(h) 'n oortreding van artikel 15 van die Swartes (Afskaffing van Passe en Koördinering van Dokumente) Wet, 1952 (Wet No. 67 van 1952);

(i) 'n oortreding van artikel 2 van die Strafregwysigingswet, 1953 (Wet No. 8 van 1953);

(j) 'n oortreding van artikel 2(2) van die Wet op Aanwysing van Aparte Geriewe, 1953 (Wet No. 49 van 1953);

(k) 'n oortreding van artikel 16 van die Wet op Seksuele Misdrywe, 1957 (Wet No. 23 van 1957);

(l) 'n oortreding van artikel 46 van die Groepsgebiedewet, 1966 (Wet No. 36 van 1966);

(m) 'n oortreding van artikel 2 of 3 van die Wet op Terrorisme, 1967 (Wet No. 83 van 1967); of

(n) 'n oortreding van artikel 2, gelees met artikel 4(1), van die Wet op die Verbod van Buitelandse Finansiering van Politieke Partye, 1968 (Wet No. 51 van 1968).

(2)(a) Waar 'n hof 'n persoon skuldig bevind het aan 'n oortreding van enige bepaling van—

(i) 'n Wet van die Parlement of ondergeskikte wetgewing daarkragtens gemaak;

(ii) 'n ordonnansie van 'n provinsiale raad;

(iii) 'n munisipale ordonnansie;

(iv) 'n proklamasie;

(v) 'n dekreet; of

(vi) enige ander verordening wat regskrag het,

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other than those provisions referred to in subsection (1), which were enacted in the former Republic of South Africa, the former Republic of Transkei, Bophuthatswana, Ciskei or Venda, or in any former self-governing territory, as provided for in the Self-governing Territories Constitution Act, 1971(Act No. 21 of 1971), before the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), took effect, which created offences that were based on race or which created offences, which would not have been considered to be offences in an open and democratic society, based on human dignity, equality and freedom, under the constitutional dispensation after 27 April 1994, the criminal record, containing the conviction and sentence in question, of that person must, on the person's written application, subject to subsection (3) and section 271D, be expunged.

(b) Where the criminal record of a person referred to in subsection (1) has not been expunged automatically as provided for in that subsection, the criminal record of that person must, on his or her written application, subject to subsection (3) and section 271D, be expunged.

(3) The Director-General: Justice and Constitutional Development must, on receipt of the written application of a person referred to in subsection (2)(a) or (b), issue a certificate of expungement, directing that the criminal record of the person be expunged, if the Director-General is satisfied that the person applying for expungement complies with the criteria set out in subsection (1) or subsection (2)(a), as the case may be.

(4) The Director-General: Justice and Constitutional Development must submit every certificate of expungement that has been issued as provided for in subsection (3) or (5)(b) to the head of the Criminal Record Centre of the South African Police Service, to be dealt with in accordance with section 271D.

(5) (a) In the case of a dispute or any uncertainty as to whether an offence is an offence as referred to in subsection (1) or (2)(a) or not, the matter must be referred to the Minister for a decision.

(b) If the Minister decides that the offence is an offence as referred to in subsection (1) or (2)(a), he or she must issue a certificate of expungement, directing that the criminal record of the person be expunged.

#### **Expungement of certain criminal records by Criminal Record Centre** 35

**271D.** (1) The head of the Criminal Record Centre of the South African Police Service or a senior person or persons at the rank of Director or above, employed at the Centre, who has or have been authorised, in writing, by the head of the Centre to do so, must expunge the criminal record of a person if—

- (i) he or she is furnished with a certificate of expungement by the Director-General: Justice and Constitutional Development as provided for in section 271B(2) or section 271C(3) or by the Minister as provided for in section 271C(5); or
- (ii) that person qualifies for the automatic expungement of his or her criminal record as provided for in section 271C(1).

(2) The head of the Criminal Record Centre of the South African Police Service must, on the written request of a person who—

- (a) has applied to have his or her criminal record expunged in terms of section 271B or section 271C(2); or
- (b) qualifies to have his or her criminal record expunged automatically in terms of section 271C(1),

in writing, confirm that the criminal record in question has been expunged.

(3) Any person who—

- (a) without the authority of a certificate of expungement as provided for in section 271B, 271C or this section; and
- (b) intentionally or in a grossly negligent manner, expunges the criminal record of any person or confirms that a criminal record has been expunged as provided for in subsection (2), is guilty of an

anders as daardie bepalings in subartikel (1) bedoel, wat verorden is in die voormalige Republiek van Suid-Afrika, die voormalige Republiek van Transkei, Bophuthatswana, Ciskei of Venda, of in enige voormalige selfregerende gebied, soos bepaal in die Grondwet van die Selfregerende Gebiede, 1971 (Wet No. 21 van 1971), voor die Grondwet van die Republiek van Suid-Afrika, 1993 (Wet No. 200 van 1993), in werking getree het, wat misdrywe geskep het wat op ras geskoei is of wat misdrywe geskep het wat nie in 'n oop en demokratiese samelewing, wat op menswaardigheid, gelykheid en vryheid kragtens die grondwetlike bedeling na 27 April 1994, geskoei is, as misdrywe beskou sou word nie, moet die betrokke kriminele rekord, wat die betrokke skuldigbevinding en vonnis van daardie persoon bevat, op die persoon se skriftelike aansoek, behoudens subartikel (3) en artikel 271D, geskrap word.

(b) Waar die kriminele rekord van 'n persoon in subartikel (1) bedoel nie outomatis geskrap word nie soos in daardie subartikel bepaal, moet die kriminele rekord van daardie persoon, op sy of haar skriftelike aansoek, behoudens subartikel (3) en artikel 271D, geskrap word.

(3) Die Direkteur-generaal: Justisie en Staatkundige Ontwikkeling moet, by ontvangs van die skriftelike aansoek van 'n persoon in subartikel (2)(a) of (b) bedoel, 'n sertifikaat van skrapping uitrek, wat gelas dat die kriminele rekord van die persoon geskrap word, indien die Direkteur-generaal oortuig is dat die persoon wat vir skrapping aansoek doen aan die vereistes in subartikel (1) of subartikel (2)(a) uiteengesit, na gelang van die geval, voldoen.

(4) Die Direkteur-generaal: Justisie en Staatkundige Ontwikkeling moet elke sertifikaat van skrapping wat uitgereik is soos in subartikel (3) of (5)(b) bepaal, aan die hoof van die Kriminele Rekordsentrum van die Suid-Afrikaanse Polisiediens voorlê, om ooreenkomsdig artikel 271D mee gehandel te word.

(5)(a) In die geval van 'n disput of enige onsekerheid of 'n misdryf 'n misdryf is soos in subartikel (1) of (2)(a) bedoel al dan nie, moet die aangeleentheid vir 'n besluit na die Minister verwys word.

(b) Indien die Minister besluit dat die misdryf 'n misdryf is soos in subartikel (1) of (2)(a) bedoel, moet hy of sy 'n sertifikaat van skrapping uitrek, wat gelas dat die kriminele rekord van die persoon geskrap word.

### **Skrapping van sekere rekords deur Kriminele Rekordsentrum**

**271D. (1) (a)** Die hoof van die Kriminele Rekordsentrum van die Suid-Afrikaanse Polisiediens of 'n senior persoon of persone met die rang van Direkteur of hoër, wat by die Sentrum in diens is, en wat skriftelik deur die hoof van die Sentrum daartoe gemagtig is om dit te doen, moet die kriminele rekord van 'n persoon skrap indien—

(i) hy of sy van 'n sertifikaat van skrapping deur die Direkteur-generaal: Justisie en Staatkundige Ontwikkeling, soos in artikel 271B(2) of artikel 271C(3) bepaal of deur die Minister soos in artikel 271C(5) bepaal, voorsien is; of

(ii) daardie persoon vir die outomatiese skrapping van sy of haar kriminele rekord kwalificeer soos in artikel 271C(1) bepaal.

(2) Die hoof van die Kriminele Rekordsentrum van die Suid-Afrikaanse Polisiediens moet, op die skriftelike versoek van 'n persoon wat—

(a) ingevolge artikel 271B of artikel 271C(2) aansoek gedoen het dat sy of haar kriminele rekord geskrap word; of

(b) kwalificeer om sy of haar kriminele rekord outomatis ingevolge artikel 271C(1) te laat skrap,

skriftelik bevestig dat die betrokke kriminele rekord geskrap is.

(3) Iemand wat—

(a) sonder die magtiging van 'n sertifikaat van skrapping soos in artikel 271B, 271C of hierdie artikel bepaal; en

(b) opsetlik of op 'n grof nalatige wyse,

die kriminele rekord van 'n persoon skrap of bevestig dat 'n kriminele rekord geskrap is soos in subartikel (2) bepaal, is skuldig aan 'n misdryf en

offence and is liable on conviction to a fine or to imprisonment for a period |  
not exceeding 10 years or to both a fine and that imprisonment.

### Regulations

**271E. The Minister—**

(a) must make regulations regarding—

- (i) the form on which a person's written application for the expungement of his or her criminal record must be made, as provided for in section 271B(1)(a) and section 271C(2)(a) and (b);
- (ii) the certificate of expungement to be issued by the Director-General: Justice and Constitutional Development or the Minister, as provided for in section 271B(2) and section 271C(3) and (5)(b); and
- (iii) the manner in which the Director-General must submit certificates of expungement that have been issued, to the head of the Criminal Record Centre of the South African Police Service, as provided for in section 271B(3) and section 271C(4); and

(b) may make regulations regarding any other matter which is necessary or expedient in order to achieve the objects of sections 271B, 271C and 271D.".

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### Short title and commencement

4. (1) This Act is called the Criminal Procedure Amendment Act, 2008, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

(2) Different dates may be fixed in respect of different areas in the Republic.

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by skuldigbevinding strafbaar met 'n boete of gevangenisstraf vir 'n tydperk van hoogstens 10 jaar, of met beide 'n boete en daardie gevangenisstraf.

### Regulasies

#### **271E. Die Minister—**

- |  |                     |
|--|---------------------|
| <p>(a) moet regulasies uitvaardig ten opsigte van—</p> <ul style="list-style-type: none"> <li>(i) die vorm waarop 'n persoon se skriftelike aansoek vir die skrapping van sy of haar kriminele rekord gemaak moet word, soos in artikel 271B(1)(a) en 271C(2)(a) en (b) bepaal;</li> <li>(ii) die sertifikaat van skrapping wat deur die Direkteur-generaal: Justisie en Staatkundige Ontwikkeling of die Minister uitgereik staan te word, soos in artikel 271B(2) en artikel 271C(3) en (5)(b) bepaal; en</li> <li>(iii) die wyse waarop die Direkteur-generaal sertifikate van skrapping wat uitgereik is aan die hoof van die Kriminele Rekordsentrum van die Suid-Afrikaanse Polisiediens moet voorlê, soos in artikel 271B(3) en artikel 271C(4) bepaal; en</li> </ul> <p>(b) kan regulasies uitvaardig ten opsigte van enige ander aangeleentheid wat nodig of dienstig is om gevolg te gee aan die oogmerke van artikels 271B, 271C en 271D.”.</p> | 5<br>10<br>15<br>20 |
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### Kort titel en inwerkingtreding

**4.** (1) Hierdie Wet heet die Strafproseswysigingswet, 2008, en tree in werking op 'n datum wat die President by proklamasie in die *Staatskoerant* bepaal.

(2) Verskillende datums kan vir verskillende gebiede in die Republiek vasgestel word.