

# GOVERNMENT GAZETTE

## OF THE

# REPUBLIC OF NAMIBIA

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No. 4554

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## Government Notice

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### OFFICE OF THE PRIME MINISTER

No. 191

2010

#### PROMULGATION OF ACT OF PARLIAMENT

The following Act which has been passed by the Parliament and signed by the President in terms of the Namibian Constitution is hereby published in terms of Article 56 of that Constitution.

No. 13 of 2010: Criminal Procedure Amendment Act, 2010.

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Act No. 13, 2010 **CRIMINAL PROCEDURE AMENDMENT ACT, 2010****EXPLANATORY NOTE:**

\_\_\_\_\_ Words underlined with a solid line indicate insertions in existing provisions.

[            ] Words in bold type in square brackets indicate omissions from existing provisions.

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## ACT

To **amend the Criminal Procedure Act, 1977, so as to increase the maximum fines that may be imposed for certain offences; to increase the admission of guilt fine that may be paid in terms of a written notice or a summons; to make provision for the payment of admission of guilt fines after appearing in court; to further regulate the release of an accused on warning; to increase the fine that may be imposed on an accused after a conviction pursuant to a plea of guilty only; to further provide for the protection of witnesses; and to provide for incidental matters.**

*(Signed by the President on 12 August 2010)*

**BE IT ENACTED** by the Parliament of the Republic of Namibia as follows:

**Amendment of section 55 of Act No. 51 of 1977, as amended by section 4 of Act No. 31 of 1985**

1. Section 55 of the Criminal Procedure Act, 1977 (hereinafter referred to as the principal Act), is amended -

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

“(2) The court may, if satisfied from the return of service referred to in paragraph (b) of section 54(2) that the summons was served on the accused in terms of paragraph (a) of that section and that the accused has failed to appear at the place and on the date and at the time specified in the summons, or if satisfied that the accused has failed to remain in attendance at the proceedings in question, issue a warrant for **[his]** the arrest of the accused and, when **[he]** the accused is brought before the court, in a summary manner enquire into his or her failure so to appear or so to remain in attendance and, unless the accused satisfies the court that there is a reasonable possibility that his or her failure was not due to [any] fault on his or her part, convict [him] the accused of the offence referred to in subsection (1) and sentence him or her to a fine not exceeding **[one hundred rand]** N\$2 000 or to imprisonment for a period not exceeding **[three]** six months: Provided that where a warrant is issued for the arrest of an accused who has failed to appear in answer to the summons, the person executing the warrant -

(a) may, where it appears to **[him]** that person that the accused received the summons in question and that the accused will appear in court in accordance with a warning under section 72; or

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- (b) shall, where it appears to **[him]** that person that the accused did not receive the summons in question or that the accused has paid an admission of guilt fine in terms of section 57 or that there are other grounds on which it appears that the failure of the accused to appear on the summons was not due to any fault on the part of the accused, for which purpose **[he]** that person may require the accused to furnish an affidavit or affirmation,

release the accused on warning under section 72 in respect of the offence of failing to appear in answer to the summons, whereupon the provisions of that section shall *mutatis mutandis* apply with reference to the said offence.”; and

- (b) by the substitution for paragraph (a) of subsection (3) of the following paragraph:

“(a) If, in any case in which a warrant of arrest is issued, it was permissible for the accused in terms of section 57 to admit his or her guilt in respect of the summons on which he or she failed to appear and to pay a fine in respect thereof without appearing in court, and the accused is arrested under such warrant in the area of jurisdiction of a magistrate’s court other than the magistrate’s court which issued the warrant of arrest, such other magistrate’s court may, notwithstanding any provision of this Act or any other law to the contrary, and if satisfied that the accused has, since the date on which he or she failed to appear on the summons in question, admitted his or her guilt in respect of that summons and has paid a fine in respect thereof without appearing in court, in a summary manner enquire into his or her failure to appear on such summons and, unless the accused satisfies the court that there is a reasonable possibility that his or her failure was not due to **[any]** fault on his or her part, convict **[him]** the accused of the offence referred to in subsection (1) and sentence him or her to a fine not exceeding **[R100 rand]** N\$2 000 or to imprisonment for a period not exceeding **[three]** six months.”.

**Amendment of section 56 of Act No. 51 of 1977, as amended by section 5 of Act No. 31 of 1985**

2. Section 56 of the principal Act is amended by the substitution for subsection (1) of the following subsection:

“(1) If an accused is alleged to have committed an offence and a peace officer on reasonable grounds believes that a magistrate’s court, on convicting such accused of that offence, will not impose a sentence of imprisonment only or of a fine exceeding [R300] N\$6 000, such peace officer may, whether or not the accused is in custody, hand to the accused a written notice which shall -

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- (a) specify the name, the residential address and the occupation or status of the accused;
- (b) call upon the accused to appear at a place and on a date and at a time specified in the written notice to answer a charge of having committed the offence in question;
- (c) contain an endorsement in terms of section 57 that the accused may admit his or her guilt in respect of the offence in question and that **[he]** the accused may pay a stipulated fine in respect thereof without appearing in court; and
- (d) contain a certificate under the hand of the peace officer that he or she has handed the original of such written notice to the accused and that he or she has explained to the accused the import thereof.”.

**Amendment of section 57 of Act No. 51 of 1977, as amended by section 6 of Act No. 31 of 1985**

- 3. Section 57 of the principal Act is amended
  - (a) by the substitution for paragraph (a) of subsection (1) of the following paragraph:
    - “(a) a summons is issued against an accused under section 54 (in this section referred to as the summons) and the public prosecutor **[or the clerk of the court]** concerned on reasonable grounds believes that a magistrate’s court convicting the accused of the offence in question, will not impose a sentence of imprisonment only or of a fine exceeding [R300] N\$6 000, and such public prosecutor **[or clerk of the court]** endorses the summons to the effect that the accused may admit his or her guilt in respect of the offence in question and that he or she may pay a fine stipulated on the summons in respect of such offence without appearing in court; or”; and
  - (b) by the substitution for paragraph (b) of subsection (5) of the following paragraph:
    - “(b) An admission of guilt fine determined under paragraph (a) shall not exceed the maximum of the fine prescribed in respect of the offence in question or the amount of **[R300] N\$6 000**, whichever is the lesser.”.

**Insertion of section 57A in Act No. 51 of 1977**

- 4. The following section is inserted in the principal Act after section 57:

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**“Admission of guilt and payment of fine after appearing in court**

**57A** (1) If an accused who is alleged to have committed an offence has appeared in court and is -

- (a) in custody awaiting trial on that charge and not on another more serious charge;
- (b) released on bail under section 59 or 60; or
- (c) released on warning under section 72,

the public prosecutor may, before the accused has entered a plea and if he or she on reasonable grounds believes that a magistrate’s court, on convicting such accused of that offence, will not impose a sentence of imprisonment only or of a fine exceeding N\$6 000, hand to the accused a written notice, or cause such notice to be delivered to the accused by a peace officer, containing an endorsement in terms of section 57 that the accused may admit his or her guilt in respect of the offence in question and that he or she may pay a stipulated fine in respect thereof without appearing in court again: Provided that the provisions of this subsection shall not apply to an accused who is in custody as contemplated in paragraph (a) and in respect of whom an application for bail has been refused or bail proceedings are pending.

(2) A written notice referred to in subsection (1) shall contain -

- (a) the case number;
- (b) a certificate under the hand of the prosecutor or peace officer affirming that he or she handed or delivered the original of such notice to the accused and that he or she explained to the accused the import thereof, and
- (c) the particulars and instructions contemplated in paragraphs (a) and (b) of section 56(1).

(3) The public prosecutor shall endorse the charge sheet to the effect that written notice under this section has been issued, and that prosecutor or, if the written notice was delivered to the accused concerned by a peace officer, that peace officer shall immediately forward a duplicate original of the written notice to the clerk of the court that has jurisdiction.

(4) The provisions of sections 55, 56(2) and (4) and 57(2) to (7), inclusive, shall apply *mutatis mutandis* to the relevant written notice handed or delivered to an accused under subsection (1) as if, in respect of section 57, such notice were the written notice contemplated in that section and as if the fine stipulated in such written notice were also the admission of guilt fine contemplated in that section.”.

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**CRIMINAL PROCEDURE AMENDMENT ACT, 2010****Amendment of section 72 of Ad No. 51 of 1977, as amended by section 5 of Act No. 5 of 1991**

5. Section 72 of the principal Act is amended -
- (a) by the substitution for paragraphs (a) and (b) of subsection (1) of the following paragraphs, respectively:
- “(a) release the accused from custody and warn **[him]** the accused to appear before a specified court at a specified time on a specified date in connection with such offence or, as the case may be, to remain in attendance at the proceedings relating to the offence in question, and if so released by a court that court may at the time of the release or at any time thereafter impose any condition referred to in section 62 in connection with the release;
- (b) in the case of an accused under the age of eighteen years who is released under paragraph (a), place the accused in the care of the person in whose custody he or she is, and warn such person to bring the accused or cause the accused to be brought before a specified court at a specified time on a specified date and to have the accused remain in attendance at the proceedings relating to the offence in question and, if a condition has been imposed in terms of paragraph (a) to ensure that the accused complies with that condition.”;
- (b) by the substitution for subsection (2) of the following subsection:
- “(2) (a) An accused who is released under subsection (1)(a) and who fails to appear or, as the case may be, to remain in attendance at the proceedings in accordance with a warning under that **[paragraph]** subsection, or who fails to comply with a condition imposed under subsection (1)(a), shall be guilty of an offence and liable to the punishment prescribed under subsection (4).
- (b) Any person in whose custody an accused is placed under subsection (1)(b) and who fails in terms of a warning under that subsection to bring the accused or cause the accused to be brought before court or to have the accused remain in attendance at the proceeding, or who fails to ensure that the accused complies with a condition imposed under subsection (1)(a), shall be guilty of an offence and liable to the punishment prescribed under subsection (4).”;
- (c) by the substitution for paragraph (b) of subsection (3) of the following paragraph:
- “(b) A court which releases an accused under subsection (1) shall, at the time of releasing the accused, record or cause the relevant proceedings to be recorded in full, and where such court is a magistrate’s court or a regional court, any document purporting

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to be an extract from the record of proceedings of that court and purporting to be certified as correct by the clerk of the court and which sets out the warning relating to the court before which, the time at which and the date on which the accused is to appear or the conditions on which the accused was released, shall, on its mere production in any court in which the relevant charge is pending, be *prima facie* proof of such warning.”; and

- (d) by the substitution for subsection (4) of the following subsection:

“(4) The court may, if satisfied that an accused referred to in subsection (2)(a) or a person referred to in subsection (2)(b) was duly warned in terms of paragraph (a) or, as the case may be, paragraph (b) of subsection (1), and that such accused or such person has failed to comply with such warning or to comply with a condition imposed, issue a warrant for **[his]** the arrest of such accused or such person, and may, when he or she is brought before the court, in a summary manner enquire into his or her failure to comply with the warning or condition and, unless such accused or such person satisfies the court that there is a reasonable possibility that his or her failure was not due to fault on his or her part, sentence him or her to a fine not exceeding **[one hundred rand]** N\$4 000 or to imprisonment for a period not exceeding **[three]** 12 months”.

**Amendment of section 74 of Act No. 51 of 1977**

6. Section 74 of the principal Act is amended by the substitution for subsection (7) of the following subsection:

“(7) The court, if satisfied from evidence placed before it that a parent or guardian has been warned to attend the proceedings in question and that such parent or guardian has failed to attend such proceedings, or that a parent or guardian has failed to remain in attendance at such proceedings, may issue a warrant for the arrest of such parent or guardian and, when he or she is brought before the court, in a summary manner enquire into his or her failure to attend or to remain in attendance, and, unless such parent or guardian satisfies the court that there is a reasonable possibility that his or her failure was not due to fault on his or her part, sentence him or her to a fine not exceeding **[one hundred rand]** N\$4 000 or to imprisonment for a period not exceeding **[three]** 12 months”.

**Amendment of section 112 of Act No. 51 of 1977, as amended by section 9 of Act No. 31 of 1985**

7. Section 112 of the principal Act is amended by the substitution for paragraphs (a) and (b) of subsection (1) of the following paragraphs, respectively:


“(a) the presiding judge, regional magistrate or magistrate may, if he or she is of the opinion that the offence does not merit punishment of imprisonment or any other form of detention without the option of a fine or of a fine exceeding N\$6 000, convict the accused in respect of

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the offence to which he or she has pleaded guilty on his or her plea of guilty only and -

- (i) impose any competent sentence, other than imprisonment or any other form of detention without the option of a fine or a fine exceeding N\$6 000; or
  - (ii) deal with the accused otherwise in accordance with law;
- (b) the presiding judge, regional magistrate or magistrate shall, if he or she is of the opinion that the offence merits punishment of imprisonment or any other form of detention without the option of a fine or of a fine exceeding N\$6 000, or if requested thereto by the prosecutor, question the accused with reference to the alleged facts of the case in order to ascertain whether the accused admits the allegations in the charge to which he or she has pleaded guilty, and may, if satisfied that the accused is guilty of the offence to which he or she has pleaded guilty, convict the accused on his or her plea of guilty of that offence and impose any competent sentence.”.

**Amendment of section 170 of Act No. 51 of 1977, as amended by section 15 of Act No. 31 of 1935** 

8. Section 170 of the principal Act is amended by the substitution for subsection (2) of the following subsection:

“(2) The court may, if satisfied that an accused referred to in subsection (1) has failed to appear at the place and on the date and at the time to which the proceedings in question were adjourned or has failed to remain in attendance at such proceedings as so adjourned, issue a warrant for **[his]** the arrest of that accused and, when he or she is brought before the court, in a summary manner enquire into his or her failure so to appear or so to remain in attendance and, unless the accused satisfies the court that there is a reasonable possibility that his or her failure was not due to fault on his or her part, convict **[him]** the accused of the offence referred to in subsection (1) and sentence him or her to a fine not exceeding **[R100] N\$4 000** or to imprisonment for a period not exceeding **[three] 12** months.”.

**Substitution of section 185 of Act No. 51 of 1977**

9. The following section is substituted for section 185 of the principal Act:

**“Protection of witness**

- 185.** (1) (a) When a person is in the opinion of the Prosecutor-General likely to give evidence on behalf of the State at criminal proceedings in any court, and the Prosecutor-General, from information placed before him or her by any person -
- (i) is of the opinion that the personal safety of the person who is likely to give such evidence is in danger or that



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he or she may be prevented from giving evidence or that he or she may be intimidated; or

- (ii) considers it to be in the interests of the person who is likely to give such evidence or of the administration of justice that that person be placed under protection,

the Prosecutor-General may by way of affidavit place such information before a judge in chambers and apply to that judge for an order that the person who is likely to give such evidence be placed under protection pending the proceedings in question.

- (b) The Prosecutor-General may, in any case in which he or she is of the opinion that the object of obtaining an order under paragraph (a) may be defeated if the person concerned is not placed under protection without delay, direct that that person be placed under protection immediately, but such a direction shall not endure for longer than 72 hours unless the Prosecutor-General within that time by way of affidavit places before a judge in chambers the information on which he or she ordered the placement under protection of the person concerned and such further information as might become available to the Prosecutor-General, and applies to that judge for an order that that person be placed under protection pending the proceedings in question.

- (c) The Prosecutor-General shall, as soon as he or she applies to a judge under paragraph (b) for an order for the placement under protection of the person concerned, in writing inform the person in charge of the place where the person concerned is being protected, that he or she has so applied for an order, and shall, where the judge under subsection (2)(a) refuses to issue an order for the placement under protection of the person concerned, immediately inform the person so in charge of the refusal, whereupon the person so in charge shall without delay discontinue the protection of the person concerned.

- (2) (a) The judge hearing an application under subsection (1) may, if it appears to the judge from the information placed before him or her by the Prosecutor-General -

- (i) that there is a danger that the personal safety of the person concerned may be threatened or that he or she may be prevented from giving evidence or that he or she may be intimidated; or
- (ii) that it would be in the interests of the person concerned or of the administration of justice that that person be placed under protection,

issue an order for the placement under protection of that person.

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- (b) Where a judge refuses an application under paragraph (a) and further information becomes available to the Prosecutor-General concerning the person in respect of whom the application was refused, the Prosecutor-General may again apply under subsection (1)(a) for the placement under protection of that person.

(3) A person in respect of whom an order is issued under subsection (2)(a), shall be taken to the place mentioned in the order and, in accordance with regulations which the Minister is hereby authorized to make, be protected there or at any other place determined by a judge from time to time, or, where the person concerned is placed under protection in terms of a direction by the Prosecutor-General under subsection (1)(b), that person shall, pending the decision of the judge under subsection (2)(a), be taken to a place determined by the Prosecutor-General and protected there in accordance with those regulations.

(4) A person placed under protection in terms of an order under subsection (2)(a) shall be protected for the period terminating on the day on which the criminal proceedings in question are concluded, unless -

- (a) the Prosecutor-General directs that the protection of that person be discontinued earlier; or
- (b) such proceedings have not commenced within six months of the date of the placement under protection of that person, in which event the protection of that person shall be discontinued after the expiration of that period.

(5) No person, other than a person employed in the Public Service acting in the performance of his or her official duties and the legal practitioner of a person placed under protection in terms of an order under subsection (2)(a), shall have access to the person so placed under protection, except with the consent of and subject to the conditions determined by the Prosecutor-General or a person employed in the Public Service delegated by the Prosecutor-General.

(6) For the purposes of section 191, a person placed under protection in terms of an order under subsection (2)(a) shall be deemed to have attended the criminal proceedings in question as a witness for the State during the whole of the period of his or her placement under protection.

(7) No information relating to the proceedings under subsection (1) or (2) shall be published or be made public in any manner whatever.

(8) To the extent that this section authorizes the deprivation of the personal liberty of a person who is likely to give evidence at criminal proceedings such deprivation is authorized only on the grounds of the procedures established under this section pursuant to Article 7 of the Namibian Constitution.”.

**Act No. 13, 2010      CRIMINAL PROCEDURE AMENDMENT ACT, 2010****Substitution of section 338 of Act No. 51 of 1977**

**10.**     The following section is substituted for section 338 of the principal Act:

**“Production of document by accused at criminal proceedings**

**338.**     Where any law requires any person to produce any document at any criminal proceedings at which such person is an accused, and such person fails to produce such document at such proceedings, such person shall be guilty of an offence, and the court may in a summary manner enquire into his or her failure to produce the document and, unless such person satisfies the court that there is a reasonable possibility that his or her failure was not due to [**any**] fault on his or her part, sentence him or her to any punishment provided for in such law, or, if no punishment is so provided, to a fine not exceeding [**one hundred rand**] N\$2 000 or to imprisonment for a period not exceeding [**three**] six months.”.

**Amendment of Schedule 2 to Act No. 51 of 1977, as amended by section 24 of Act No. 31 of 1985 and section 7 of Act No. 5 of 1991**

**11.**     Schedule 2 to the principal Act is amended by the substitution for the heading of Part III of the following heading:

“PART III  
(Sections 59, 72, 184, [**185,**] 189)”

**Short title**

**12.**     This Act is called the Criminal Procedure Amendment Act, 2010.

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