

**REPUBLIC OF SOUTH AFRICA**

**28 February 2020**

**CRIMINAL MATTERS AMENDMENT BILL**

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*(As introduced in the National Assembly (proposed section 75); explanatory summary of Bill published in Government Gazette No. .... of ..... 2020) (The English text is the official text of the Bill)*

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**(MINISTER OF JUSTICE AND CORRECTIONAL SERVICES)**

**[B —2020]**

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**GENERAL EXPLANATORY NOTE:**

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

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

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**BILL****To amend —**

- \* **the Criminal Procedure Act, 1977, so as to further regulate—**
  - **the granting of bail; and**
  - **placement of persons on parole,****in respect of offences that have been committed against vulnerable persons; and**
- \* **the Criminal Law Amendment Act, 1997, so as to further regulate sentences in respect of offences that have been committed against vulnerable persons,**
- \* **and to provide for matters connected therewith.**

**PARLIAMENT** of the Republic of South Africa enacts as follows:—

**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**

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

“(1) (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):

(iii) referred to in section 17(1)(a) of the Domestic Violence Act, 1998 or section 18(1)(a) of the Protection from Harassment Act, 2011 (Act No. 17 of 2011) or any other law that provides for similar orders, that was issued by a court to protect the person against whom the offence in question was allegedly committed, from the accused,

may, before his or her first appearance in a lower court, be released on bail in respect of such offence by any police official of or above the rank of non-commissioned officer, in consultation with the police official charged with the investigation, if the accused deposits at the police station the sum of money determined by such police official.”.

### **Substitution of section 59A of Act 51 of 1977, as inserted by section 3 of Act 85 of 1997**

2. The following section is hereby substituted for section 59A of the Criminal Procedure Act, 1977:

**"[Attorney-general] Director of Public Prosecutions may authorise release on bail**

**59A. (1) [An attorney-general] A Director of Public Prosecutions having jurisdiction, or a prosecutor authorised thereto in writing by the [attorney-general] Director of Public Prosecutions concerned, may, in respect of the offences referred to in Schedule 7 and in consultation with the police official charged with the investigation, authorise the release of an accused on bail; Provided that a person accused of any offence contemplated in section 59(1)(a)(ii) or (iii) may not be released on bail in accordance with the provisions of this section.**

(2) For the purposes of exercising the functions contemplated in subsections (1) and (3) **[an attorney-general]** the National Director of Public Prosecutions may, after consultation with the Minister, issue directives.

(3) The effect of bail granted in terms of this section is that the person who is in custody shall be released from custody—

- (a) upon payment of, or the furnishing of a guarantee to pay, the sum of money determined for his or her bail at his or her place of detention contemplated in section 50(1)(a);
- (b) subject to reasonable conditions imposed by the **[attorney-general]** Director of Public Prosecutions or prosecutor concerned; or
- (c) the payment of such sum of money or the furnishing of such guarantee to pay and the imposition of such conditions.

(4) An accused released in terms of subsection (3) shall appear on the first court day at the court and at the time determined by the **[attorney-general]** Director of Public Prosecutions or prosecutor concerned and the release shall endure until he or she so appears before the court on the first court day.

(5) The court before which a person appears in terms of subsection (4)—

- (a) may extend the bail on the same conditions or amend such conditions or add further conditions as contemplated in section 62; or
- (b) shall, if the court does not deem it appropriate to exercise the powers contemplated in paragraph (a), consider the bail application and, in considering such application, the court has the jurisdiction relating to the powers, functions and duties in respect of bail proceedings in terms of section 60.

(6) The provisions of section 64 with regard to the recording of bail proceedings by a court apply, with the necessary changes, in respect of bail granted in terms of this section.

(7) For all purposes of this Act, but subject to the provisions of this section, bail granted in terms of this section shall be regarded as bail granted by a court in terms of section 60."

**Amendment of section 60 of Act 51 of 1977, as substituted by section 9 of Act 62 of 2000, section 3 of Act 75 of 1995, section 4 of Act 85 of 1997, section 5 of Act 34 of 1998, and amended by section 2 of Act 56 of 1979, section 2 of Act 64 of 1982, section 9 of Act 62 of 2000, and inserted by section 4 of Act 55 of 2003, section 9 of Act 66 of 2008, and inserted by section 4 of Act 85 of 1997**

3. Section 60 of the Criminal Procedure Act, 1977 is hereby amended —
- (a) by the substitution for subsection (2) of the following subsection:
- “(2) In bail proceedings the court—
- (a) may postpone any such proceedings as contemplated in section 50(6);
- (b) may, in respect of matters that are not in dispute between the accused and the prosecutor, acquire in an informal manner the information that is needed for its decision or order regarding bail;
- (c) may, in respect of matters that are in dispute between the accused and the prosecutor, require of the prosecutor or the accused, as the case may be, that evidence be adduced;
- (d) shall, where the prosecutor does not oppose bail in respect of matters referred to in subsection (11)(a) **[and]**, (b) and (c), require of the prosecutor to place on record the reasons for not opposing the bail application.”;
- (b) by the substitution for subsection (2A) of the following subsection:
- “(2A) The court must, before reaching a decision on the bail application, take into consideration—
- (a) any pre-trial services report regarding the desirability of releasing an accused on bail, if such a report is available; and
- (b) the view of any person against whom the offence in question was allegedly committed, regarding his or her safety.”;
- (c) by the substitution for subsection (4) of the following subsection:
- “(4) The interests of justice do not permit the release from detention of an accused where one or more of the following grounds are established:
- (a) Where there is the likelihood that the accused, if he or she were released

on bail, will endanger the safety of the public, any person against whom the offence in question was allegedly committed, or any other particular person or will commit a Schedule 1 offence; or

- (b) where there is the likelihood that the accused, if he or she were released on bail, will attempt to evade his or her trial; or
- (c) where there is the likelihood that the accused, if he or she were released on bail, will attempt to influence or intimidate witnesses or to conceal or destroy evidence; or
- (d) where there is the likelihood that the accused, if he or she were released on bail, will undermine or jeopardise the objectives or the proper functioning of the criminal justice system, including the bail system; or
- (e) where in exceptional circumstances there is the likelihood that the release of the accused will disturb the public order or undermine the public peace or security.”;

(d) by the substitution for subsection (5) of the following subsection:

"(5) In considering whether the ground in subsection (4)(a) has been established, the court may, where applicable, take into account the following factors, namely—

- (a) the degree of violence towards others implicit in the charge against the accused;
- (b) any threat of violence which the accused may have made to any person against whom the offence in question was allegedly committed or any other person;
- (c) any resentment the accused is alleged to harbour against any person against whom the offence in question was allegedly committed or any other person;
- (d) any disposition to violence on the part of the accused, as is evident from his or her past conduct;
- (e) any disposition of the accused to commit—
  - (i) offences referred to in Schedule 1;
  - (ii) an offence against any person in a domestic relationship, as defined in section 1 of the Domestic Violence Act, 1998; or

(iii) an offence referred to in section 17(1)(a) of the Domestic Violence Act, 1998, or section 18(1)(a) of the Protection from Harassment Act, 2011, or any other law that provides for similar orders, that was issued by a court to protect the person against whom the offence in question was allegedly committed, from the accused,

as is evident from his or her past conduct;

(f) the prevalence of a particular type of offence;

(g) any evidence that the accused previously committed an offence—

(i) referred to in Schedule 1;

(ii) against any person in a domestic relationship, as defined in section 1 of the Domestic Violence Act, 1998; or

(iii) referred to in section 17(1)(a) of the Domestic Violence Act, 1998, or section 18(1)(a) of the Protection from Harassment Act, 2011, or in terms of any other law that provides for similar orders, that was issued by a court to protect the person against whom the offence in question was allegedly committed, from the accused,

while released on bail; or

(h) any other factor which in the opinion of the court should be taken into account.”;

(e) by the substitution for subsection (10) of the following subsection:

“(10) Notwithstanding the fact that the prosecution does not oppose the granting of bail, the court has the duty, contemplated in subsection (9), to weigh up the personal interests of the accused against the interests of justice: Provided that the interests of justice should be interpreted to include, but not be limited to, the safety of any person against whom the offence in question has allegedly been committed.”;

(f) by the substitution for subsection (11) of the following subsection:

“(11) Notwithstanding any provision of this Act, where an accused is charged with an offence **[referred to]** —

(a) referred to in Schedule 6, the court shall order that the accused be detained in custody until he or she is dealt with in accordance with the law, unless the accused, having been given a reasonable opportunity to do so, adduces

evidence which satisfies the court that exceptional circumstances exist which in the interests of justice permit his or her release;

(b) referred to in Schedule 5, but not in Schedule 6, the court shall order that the accused be detained in custody until he or she is dealt with in accordance with the law, unless the accused, having been given a reasonable opportunity to do so, adduces evidence which satisfies the court that the interests of justice permit his or her release; or

(c) contemplated in section 59(1)(a)(ii) or (iii), the court shall order that the accused be detained in custody until he or she is dealt with in accordance with the law, unless the accused, having been given a reasonable opportunity to do so, adduces evidence which satisfies the court that the interests of justice permit his or her release.";

(g) by the substitution for subsection (11A) of the following subsection:

"(11A) (a) If the **[attorney-general]** Director of Public Prosecutions having jurisdiction intends charging any person with an offence referred to in Schedule 5 or 6 the **[attorney-general]** Director of Public Prosecutions may, irrespective of what charge is noted on the charge sheet, at any time before such person pleads to the charge, issue a written confirmation to the effect that he or she intends to charge the accused with an offence referred to in Schedule 5 or 6.

(b) The written confirmation shall be handed in at the court in question by the prosecutor as soon as possible after the issuing thereof and forms part of the record of that court.

(c) Whenever the question arises in a bail application or during bail proceedings whether any person is charged or is to be charged with an offence referred to in Schedule 5 or 6, a written confirmation issued by **[an attorney-general]** a Director of Public Prosecutions under paragraph (a) shall, upon its mere production at such application or proceedings, be *prima facie* proof of the charge to be brought against that person.";

(h) by the substitution for paragraph (a) of subsection (11B) of the following subsection:

"(a) In bail proceedings the accused, or his or her legal adviser, is

compelled to inform the court whether—

- (i) the accused has previously been convicted of any offence; **[and]**
- (ii) there are any charges pending against him or her and whether he or she has been released on bail in respect of those charges[.]; and
- (iii) an interim protection or final protection order as contemplated in sections 5 or 6 of the Domestic Violence Act, 1998, or sections 3 or 9 of the Protection from Harassment Act, 2011, or any similar order in terms of any other law, was issued against him or her, and whether such an order is still of force."

(i) by the substitution for subsection (12) of the following subsection:

"(12) (a) The court may make the release of an accused on bail subject to conditions which, in the court's opinion, are in the interests of justice: Provided that the interests of justice should be interpreted to include, but not be limited to, the safety of any person against whom the offence in question has allegedly been committed.

(b) If the court is satisfied that the interests of justice permit the release of an accused on bail as provided for in subsection (1), in respect of an offence that was allegedly committed by the accused against any person in a domestic relationship, as defined in section 1 of the Domestic Violence Act, 1998, with the accused, and a protection order as contemplated in the Domestic Violence Act, has not been issued against the accused, the court must after holding an enquiry, issue an interim protection order referred to in section 5 of the Domestic Violence Act, where after the provisions of that Act shall apply."

**Substitution of section 68 of Act 51 of 1977, as substituted by section 10 of Act 75 of 1995 and section 6 of Act 85 of 1997**

4. The following section is hereby substituted for section 68 of the Criminal Procedure Act, 1977:

**"Cancellation of bail**

**68.** (1) Any court before which a charge is pending in respect of which bail has been granted may, whether the accused has been released or not, upon information on oath that—

- (a) the accused is about to evade justice or is about to abscond in order to evade justice;
  - (b) the accused has interfered or threatened or attempted to interfere with witnesses;
  - (c) the accused has defeated or attempted to defeat the ends of justice;
  - (cA) the accused contravened any prohibition, condition, obligation or order imposed in terms of section 7 of the Domestic Violence Act, 1998, or section 10(1) and (2) of the Protection from Harassment Act, 2011, or any similar order in terms of any other law, that was issued by a court to protect the person against whom the offence in question was allegedly committed, from the accused;
  - (d) the accused poses a threat to the safety of the public, any person against whom the offence in question was allegedly committed, or of **[a]** any other particular person;
  - (e) the accused has not disclosed or has not correctly disclosed all his or her previous convictions in the bail proceedings or where his or her true list of previous convictions has come to light after his or her release on bail;
  - (eA) the accused has not disclosed that an interim protection or final protection order as contemplated in sections 5 or 6 of the Domestic Violence Act, 1998, or sections 3 or 9 of the Protection from Harassment Act, 2011, respectively, or any similar order in terms of any other law, that was issued by a court to protect the person against whom the offence in question was allegedly committed, from the accused or that an order is still of force;
  - (f) further evidence has since become available or factors have arisen, including the fact that the accused has furnished false information in the bail proceedings, which might have affected the decision to grant bail; or
  - (g) it is in the interests of justice to do so,
- issue a warrant for the arrest of the accused and make such order as it may deem proper, including an order that the bail be cancelled and that the accused be

committed to prison until the conclusion of the relevant criminal proceedings.

(2) Any magistrate may, in circumstances in which it is not practicable to obtain a warrant of arrest under subsection (1), upon the application of any peace officer and upon a written statement on oath by such officer that—

- (a) he or she has reason to believe that—
- (i) an accused who has been released on bail is about to evade justice or is about to abscond in order to evade justice;
  - (ii) the accused has interfered or threatened or attempted to interfere with witnesses;
  - (iii) the accused has defeated or attempted to defeat the ends of justice; or
  - (iv) the accused poses a threat to the safety of the public, any person against whom the offence in question was allegedly committed, or of **[a]** any other particular person;
- (b) the accused has not disclosed or has not correctly disclosed all his or her previous convictions in the bail proceedings or where his or her true list of previous convictions has come to light after his or her release on bail;
- (c) further evidence has since become available or factors have arisen, including the fact that the accused has furnished false information in the bail proceedings, which might have affected the decision to release the accused on bail; or
- (d) it is in the interests of justice to do so,
- issue a warrant for the arrest of the accused, and may, if satisfied that the ends of justice may be defeated if the accused is not placed in custody, cancel the bail and commit the accused to prison, which committal shall remain of force until the conclusion of the relevant criminal proceedings unless the court before which the proceedings are pending sooner reinstates the bail.”.

**Amendment of section 299A of Act 51 of 1977, as inserted by section 6 of Act 55 of 2003, section 48 of Act 7 of 2013, and substituted by section 68 of Act 32 of 2007 and section 48 of Act 7 of 2013**

5. Section 299A of the Criminal Procedure Act, 1977, is hereby amended by the substitution for subsection (1) of the following subsection:

- “(1) When a court sentences a person to imprisonment for—
- (a) murder or any other offence which involves the intentional killing of a person;
  - (b) rape or compelled rape as contemplated in sections 3 or 4 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, respectively;
  - (c) robbery where the wielding of a fire-arm or any other dangerous weapon or the infliction of grievous bodily harm or the robbery of a motor vehicle is involved;
  - (d) sexual assault, compelled sexual assault or compelled self-sexual assault as contemplated in section 5, 6 or 7 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, respectively;
  - (e) kidnapping;
  - (f) any conspiracy, incitement or attempt to commit any offence contemplated in paragraphs (a) to ~~[(e)] (eA)~~; ~~[or]~~
  - (g) offences as provided for in sections 4, 5 and 7 and involvement in these offences as provided for in section 10 of the Prevention and Combating of Trafficking in Persons Act, 2013~~[,];~~ ~~or~~
  - (h) a period exceeding 10 years for any offence which that person committed against any person in a domestic relationship, as defined in section 1 of the Domestic Violence Act, 1998, with that person,

it shall inform—

- (i) the complainant; or
- (ii) in the case of murder or any other offence contemplated in paragraph (a), any immediate relative of the deceased,

if he or she is present that he or she has a right, subject to the directives issued by the Commissioner of Correctional Services under subsection (4), to make representations when placement of the prisoner on parole, on day parole or

under correctional supervision is considered or to attend any relevant meeting of the parole board.”.

**Amendment of Schedule 1 to Act 51 of 1977, as amended by section 17 of Act 26 of 1987, section 8 of Act 122 of 1998, section 68 of Act 32 of 2007, section 48 of Act 7 of 2013, section 11 of Act 13 of 2013**

6. Schedule 1 to the Criminal Procedure Act, 1977, is hereby amended by the substitution for the offence “Assault, when a dangerous wound is inflicted” of the following offence:

“Assault—

(a) when a dangerous wound is inflicted; or

(b) where a person is threatened—

(i) with grievous bodily harm; or

(ii) with a fire-arm or dangerous weapon as defined in section 1 of the Dangerous Weapons Act, 2013 (Act No. 15 of 2013).”.

**Amendment of Part II of Schedule 2 to Act 51 of 1977, as substituted by section 68 of Act 32 of 2007, section 48 of Act 7 of 2013, and as amended by section 11 of Act 13 of 2013**

7. Part II of Schedule 2 to the Criminal Procedure Act, 1977, is hereby amended by the substitution for the offence “Assault, when a dangerous wound is inflicted” of the following offence:

“Assault—

(a) when a dangerous wound is inflicted; or

(b) where a person is threatened—

(i) with grievous bodily harm; or

- (ii) with a fire-arm or dangerous weapon as defined in section 1 of the Dangerous Weapons Act, 2013 (Act No. 15 of 2013).”.

**Amendment of Schedule 7 to the Criminal Procedure Act, 1977, as added by section 10 of Act 85 of 1997 and amended by section 10 of Act 34 of 1998, section 16 of Act 62 of 2000 and substituted by section 68 of Act 32 of 2007**

8. Schedule 7 to the Criminal Procedure Act, 1977, is hereby amended by the substitution for the offence of “Assault, involving the infliction of grievous bodily harm” of the following offence:

“Assault—

- (a) when a dangerous wound is inflicted; or
- (b) where a person is threatened—
  - (i) with grievous bodily harm; or
  - (ii) with a fire-arm or dangerous weapon as defined in section 1 of the Dangerous Weapons Act, 2013 (Act No. 15 of 2013).”.

**Amendment of Schedule 8 to Act 51 of 1977, as added by section 5 of Act 37 of 2013**

9. Schedule 8 to the Criminal Procedure Act, 1977, is hereby amended by the substitution for the offence of “Assault, when a dangerous wound is inflicted” of the following offence:

“Assault—

- (a) when a dangerous wound is inflicted; or
- (b) where a person is threatened—
  - (i) with grievous bodily harm; or
  - (ii) with a fire-arm or dangerous weapon as defined in section 1 of the Dangerous Weapons Act, 2013 (Act No. 15 of 2013).”.

**Amendment of Schedule 2 to Act 105 of 1997, as amended section 22 of Act 66 of 2008, section 36 of Act 12 of 2004, section 48 of Act 7 of 2013, section 7 of Act 18 of 2015, section 27 of Act 33 of 2004, section 6 of Act 18 of 2015, and substituted by section 37 of Act 62 of 2000, section 48 of Act 7 of 2013, , section 68 of Act 32 of 2007, section 5 of Act 38 of 2007, and inserted by section 25 of Act 8 of 2017 , section 5 of Act 38 of 2007, and section 8 of Ac 18 of 2015**

**10.** The following Parts of Schedule 2 to the Criminal Law Amendment Act, 1997, are hereby amended:

(a) Part I is hereby amended by—

(i) the substitution for the offence "Murder" of the following offence:

"Murder, when—

(a) it was planned or premeditated;

(b) the victim was—

(i) a law enforcement officer performing his or her functions as such, whether on duty or not; **[or]**

(ii) a person who has given or was likely to give material evidence with reference to any offence referred to in Schedule 1 to the Criminal Procedure Act, 1977 (Act 51 of 1977), at criminal proceedings in any court; or

(iii) a person under the age of 16 years;

(c) the death of the victim was caused by the accused in committing or attempting to commit or after having committed or attempted to commit one of the following offences:

(i) rape or compelled rape as contemplated in section 3 or 4 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, respectively; or

(ii) robbery with aggravating circumstances as defined in section 1 of the Criminal Procedure Act, 1977 (Act 51 of 1977);

- (d) the offence was committed by a person, group of persons or syndicate acting in the execution or furtherance of a common purpose or conspiracy;
  - (e) the victim was killed in order to unlawfully remove any body part of the victim, or as a result of such unlawful removal of a body part of the victim; **[or]**
  - (f) the death of the victim resulted from, or is directly related to, any offence contemplated in section 1(a) to (e) of the Witchcraft Suppression Act, 1957 (Act 3 of 1957)[.]; or
  - (g) the death of the victim resulted from physical abuse or sexual abuse as contemplated in paragraphs (a) and (b) of the definition of “domestic violence” in section 1 of the Domestic Violence Act, 1998, by the accused who is or was in a domestic relationship, as defined in section 1 of that Act, with the victim.”;
- (ii) by the substitution for paragraphs (a), (b) and (c) of the offence "Rape as contemplated in section 3 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007" of the following paragraphs:
- "(a) (i) in the circumstances—
- (aa) where the victim was raped more than once by the accused; or
  - (bb) where the accused is convicted of the offence of rape and evidence adduced at the trial of the accused proves beyond reasonable doubt that the victim was also raped by any co-perpetrator or accomplice, irrespective of whether or not the co-perpetrator or accomplice has been convicted of, or has been charged with, or is standing trial in respect of, the offence in question;
- (ii) in the circumstances where evidence adduced at the trial proves beyond reasonable doubt that the victim was raped by the accused and any number of persons, where the accused and such persons acted in the execution or

furtherance of a common purpose or conspiracy, irrespective of whether or not any other person who so acted in the execution or furtherance of a common purpose or conspiracy has been convicted of, or has been charged with, or is standing trial in respect of, the offence in question;

(iii) by the accused who—

(aa) has previously been convicted of the offence of rape or compelled rape; or

(bb) has been convicted by the trial court of two or more offences of rape or compelled rape or the offences of rape and compelled rape,

irrespective of—

(aaa) whether the rape of which the accused has so been convicted constitutes a common law or statutory offence;

(bbb) the date of the commission of any such offence of which the accused has so been convicted;

(ccc) whether the accused has been sentenced in respect of any such offence of which the accused has so been convicted;

(ddd) whether any such offence of which the accused has so been convicted was committed in respect of the same victim or any other victim;  
or

(eee) whether any such offence of which the accused has so been convicted was committed as part of the same chain of events, on a single occasion or on different occasions; or

(iv) by a person, knowing that he has the acquired immune deficiency syndrome or the human immunodeficiency virus;

(b) where the victim—

(i) is a person under the age of 16 years;

- (iA) is an older person as defined in section 1 of the Older Persons Act, 2006 (Act 13 of 2006);
  - (ii) is a **[physically disabled]** person with a disability who, due to his or her **[physical]** disability, is rendered **[particularly]** vulnerable; **[or]**
  - (iii) is a person who is mentally disabled as contemplated in section 1 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007; or
  - (iv) is or was in a domestic relationship, as defined in section 1 of the Domestic Violence Act, 1998, with the accused; or
- (c) involving the infliction of grievous bodily harm."; and
- (iii) by the substitution for paragraphs (a), (b) and (c) of the offence "Compelled rape as contemplated in section 4 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007" in Part I of the following paragraphs:
- "(a) (i) in the circumstances—
- (aa) where the victim was raped more than once by the accused;
  - (bb) where the accused is convicted of the offence of compelled rape and evidence adduced at the trial of the accused proves beyond reasonable doubt that the victim was also raped by any co-perpetrator or accomplice, irrespective of whether or not the co-perpetrator or accomplice has been convicted of, or has been charged with, or is standing trial in respect of, the offence in question;
- (ii) in the circumstances where evidence adduced at the trial proves beyond reasonable doubt that the victim was raped by the accused and any number of persons, where the accused and such persons acted in the execution or furtherance of a common purpose or conspiracy, irrespective of whether or not any other person who so acted in the

execution or furtherance of a common purpose or conspiracy has been convicted of, or has been charged with, or is standing trial in respect of the offence in question;

(iii) by the accused who—

(aa) has previously been convicted of the offence of compelled rape or rape; or

(bb) has been convicted by the trial court of two or more offences of compelled rape or rape or the offences of compelled rape and rape,

irrespective of—

(aaa) whether the rape of which the accused has so been convicted constitutes a common law or statutory offence;

(bbb) the date of the commission of any such offence of which the accused has so been convicted;

(ccc) whether the accused has been sentenced in respect of any such offence of which the accused has so been convicted;

(ddd) whether any such offence of which the accused has so been convicted was committed in respect of the same victim or any other victim; or

(eee) whether any such offence of which the accused has so been convicted was committed as part of the same chain of events, on a single occasion or on different occasions; or

(iv) by a person, knowing that he has the acquired immune deficiency syndrome or the human immunodeficiency virus;

(b) where the victim—

(i) is a person under the age of 16 years;

- (iA) is an older person as defined in section 1 of the Older Persons Act, 2006 (Act 13 of 2006);
  - (ii) is a physically disabled person who, due to his or her physical disability, is rendered particularly vulnerable; **[or]**
  - (iii) is a person who is mentally disabled as contemplated in section 1 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007; or
  - (iv) is or was in a domestic relationship, as defined in section 1 of the Domestic Violence Act, 1998, with the accused; or
- (c) involving the infliction of grievous bodily harm."

(b) Part II is hereby amended by the addition of the following offences:

"Attempted murder.

Rape or compelled rape as contemplated in section 3 or 4 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, respectively, in circumstances other than those referred to in Part I.

Sexual exploitation of a child or sexual exploitation of a person who is mentally disabled as contemplated in section 17 or 23 or using a child for child pornography or using a person who is mentally disabled for pornographic purposes, as contemplated in section 20 (1) or 26 (1) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, respectively."

(c) Part III is hereby amended by—

(i) the deletion of the offences:

"Rape or compelled rape as contemplated in section 3 or 4 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, respectively in circumstances other than those referred to in Part I. "; and

"Sexual exploitation of a child or sexual exploitation of a person who is mentally disabled as contemplated in section 17 or 23 or using a child for child pornography or using a person who is mentally disabled for pornographic purposes, as contemplated in section 20 (1) or 26 (1) of the

Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, respectively."; and

- (ii) the substitution for the offence "Assault with intent to do grievous bodily harm on a child under the age of 16 years." of the following offence:

"Assault with intent to do grievous bodily harm;

(a) on a child under the age of 16 years; or

(b) where the victim is or was in a domestic relationship with the accused, as defined in section 1 of the Domestic Violence Act, 1998."

### **Short title**

11. This Act is called the Criminal Matters Amendment Act, 2020.