

THE CRIMINAL PROCEDURE AND EVIDENCE ACT [CHAPTER 9:07]
SHOWING AMENDMENTS MADE BY ACT 14/2004

The following document sets out the following provisions of the Act, as amended as at the 8th October, 2004, i.e. up to and including the amendments made by Act 14/2004, which was gazetted and came into force on that date:

sections 25, 32, 34

the whole of Part IX (BAIL)

the Schedules to the Act

Amendments are indicated in annotations to the provisions concerned.

25 Arrest without warrant by peace officer or other officer

(1) Any peace officer and any other officer empowered by law to execute criminal warrants is hereby authorized, subject to the general or specific directions of a superior officer or person placed in authority over him, to arrest without warrant—

- (a) any person who commits any offence in his presence;
- (b) any person whom he or she has reasonable grounds to suspect of having committed any of the offences mentioned in the First Schedule or the Ninth Schedule:

Provided that if, in the case of an offence mentioned in the Ninth Schedule, the peace officer or other officer concerned has reason to believe that the offence is sufficiently serious to justify the issue by the Attorney-General of a certificate referred to in subsection (3b) of section *thirty-two*, the officer concerned shall not effect an arrest in terms of this paragraph□

- (i) unless he or she is a police officer who is of or above the rank of assistant inspector, or is given leave by such an officer to effect the arrest; and
- (ii) where the alleged offence is disclosed by an anonymous complainant, unless the officer concerned immediately (and in any case no later than the end of the day on which the complaint is received) records in writing the particulars, time and date of such complaint and the manner in which it was made;

[Paragraph (b) substituted by s. 2 of Act 14/2004.]

- (c) any person whom he finds attempting to commit an offence, or clearly manifesting an intention so to do.

(2) Any peace officer may, without any order or warrant, arrest—

- (a) any person having in his possession any implement of housebreaking and not being able to account satisfactorily for such possession;
- (b) any person in whose possession anything is found which it is reasonably suspected is stolen property or property dishonestly obtained, and who is reasonably suspected of having committed an offence with respect to such thing;
- (c) any person who obstructs a police officer or other peace officer while in the execution of his duty or who has escaped or attempts to escape from lawful custody;
- (d) any person reasonably suspected of being a deserter from the Defence Forces of Zimbabwe;

- (e) any person who has been concerned in, or against whom a reasonable complaint has been made or credible information has been received, or a reasonable suspicion exists of his having been concerned in, any act committed at any place outside Zimbabwe, which if committed in Zimbabwe would have been punishable as an offence, and for which he is, in terms of any enactment relating to extradition or fugitive offenders or otherwise, liable to be arrested or detained in custody in Zimbabwe;
- (f) any person being or loitering in any place under such circumstances as to afford reasonable grounds for believing that he has committed or is about to commit an offence;
- (g) any person reasonably suspected of committing or of having committed an offence under any enactment governing the making, supply, use, possession or conveyance of intoxicating liquor, habit-forming drugs, traditional beer or harmful liquids or the possession or disposal of arms or ammunition;
- (h) any person reasonably suspected of being a prohibited immigrant in Zimbabwe, for the purpose of any enactment regulating entry into or residence in Zimbabwe;
- (i) any person found in any gambling-house or at any gambling-table, the keeping or visiting whereof is in contravention of any enactment for the prevention or suppression of gambling or games of chance;
- (j) any person reasonably suspected of being or having been in unlawful possession of stock or produce, as defined in any enactment for preventing the theft of stock or produce.

(3) Whenever it is provided in any enactment that the arrest of any person may be made by a police officer or other official without warrant, subject to conditions or to the existence of circumstances in that enactment set out, an arrest by any peace officer, without warrant or order, may be made of such person, subject to those conditions or the existence of those circumstances.

32 Procedure after arrest without warrant

(1) For the purposes of this section—

“**court day**” means any day except a Sunday or a public holiday.

(2) Subject to subsections (3a), (3b) and (3c), a person arrested without warrant shall as soon as possible be brought to a police station or charge office and, if not released by reason that no charge is to be brought against him, may be detained for a period not exceeding forty-eight hours unless he is brought before a judge or magistrate upon a charge of any offence and his further detention is ordered by that judge or magistrate or a warrant for his further detention is obtained in terms of section *thirty-three*:

Provided that if the person arrested without warrant is charged with any offence referred to in paragraph 10 of the Third Schedule—

- (a) the judge or magistrate before whom he is brought in terms of this section shall not decline to order his further detention or to issue a warrant for his further detention solely on the basis that there are no *prima facie* grounds for the charge; and
- (b) no court shall admit such person to bail for a period of seven days from the date when an order or warrant for his further detention was issued in terms of paragraph (a).

[Subsection as substituted by s. 44 of Act No. 1 of 2002 and amended by s. 3 of Act No. 14 of 2004.]

(3) If the period referred to in subsection (2) expires—

- (a) on a day which is not a court day or on any court day after four o'clock in the afternoon, the said period shall be deemed to expire at four o'clock in the afternoon of the court day next succeeding that day; or
- (b) on any court day before four o'clock in the afternoon, the said period shall be deemed to expire at four o'clock in the afternoon of that court day:

Provided that this subsection shall not in any case be construed as extending the period referred to in subsection (1) beyond a period of ninety-six hours.

(3a) Where the person arrested without warrant is charged with any offence referred to in paragraph 10 of the Third Schedule and the judge or magistrate before whom the person is brought in terms of this section is satisfied that there is a reasonable suspicion that the person committed the

offence, the judge or magistrate shall order that person's further detention or issue a warrant for his or her further detention for a period of twenty-one days.

[Subsections (3a) to (3d) inserted by s. 3 of Act 14/2004.]

(3b) Where the person arrested without warrant is charged with any offence referred to in the Ninth Schedule and there is produced to the judge or magistrate before whom the person is brought in terms of this section—

(a) a certificate issued by or on behalf of the Attorney-General stating that, in the Attorney-General's opinion—

- (i) the offence in question involves significant prejudice or significant potential prejudice to the economy or other national interest of Zimbabwe; and
- (ii) the further detention of the person arrested for a period of up to twenty-one days is necessary for any one or more of the following reasons—
 - A. the complexity of the case; or
 - B. the difficulty of obtaining evidence relating to the offence in question; or
 - C. the likelihood that the person arrested will conceal or destroy the evidence relating to the offence in question or interfere with the investigation of the offence or both;

and

(b) the following, where the arrest is made in the circumstances referred to in paragraph (b) of subsection (1) of section *twenty-five*—

- (i) proof that the arresting officer was an officer of or above the rank of assistant inspector at the time of the arrest, or that the arresting officer made the arrest with the prior leave of such an officer; and
- (ii) where the alleged offence was disclosed through an anonymous complaint, a copy of the complaint as recorded in accordance with subparagraph (ii) of the proviso to paragraph (b) of subsection (1) of section *twenty-five*;

the judge or the magistrate shall, if satisfied that there is a reasonable suspicion that the person committed the offence, order that person's detention or issue a warrant for his or her further detention for a period of twenty-one days or the lesser period specified in the certificate.

[Subsections (3a) to (3d) inserted by s. 3 of Act 14/2004.]

(3c) A person referred to in subsection (3a) or (3b) shall, unless the charge or charges against him or her are earlier withdrawn, remain in detention for twenty-one days or the lesser period specified in a certificate mentioned in subsection (3b), as the case may be, from the date when an order or warrant for the person's further detention was issued in terms of the relevant subsection, and no court shall admit such person to bail during that period.

[Subsections (3a) to (3d) inserted by s. 3 of Act 14/2004.]

(3d) A person referred to in subsection (3a) or (3b) may continue to be detained after the expiry of the period referred to in subsection (3c) pending the outcome of the investigations into the charge or charges against him or her if (without prejudice to the person's right to apply for bail) an order or warrant for that person's further detention is obtained from a judge or magistrate in terms of section *thirty-three* within forty-eight hours of the expiry of the period referred to in subsection (3c).

[Subsections (3a) to (3d) inserted by s. 3 of Act 14/2004.]

(4) ...

[Subsection repealed by s. 3 of Act 14/2004.]

(5) When an arrest is made without warrant, the person arrested shall be informed forthwith by the person arresting him of the cause of the arrest.

34 Execution of warrants

(1) Every peace officer is authorized and required to obey and execute any warrant issued in terms of section *thirty-three*.

(2) A peace officer or other person arresting any person by virtue of a warrant under this Act shall, upon demand of the person arrested, produce the warrant to him and notify him of the substance thereof.

(3) A person arrested by virtue of a warrant under this Act shall as soon as possible be brought to a police station or charge office, unless any other place is specially mentioned in the warrant as the place to which such person shall be brought, and he shall thereafter be brought as soon as possible before a judicial officer upon a charge of the offence mentioned in the warrant.

(4) If a person arrested by virtue of a warrant is charged with any offence referred to in—

- (a) paragraph 10 of the Third Schedule, and the judicial officer before whom the person is brought in terms of this section is satisfied that there is a reasonable suspicion that the person committed the offence, the judicial officer shall order that person's continued detention for a period of twenty-one days; or
- (b) the Ninth Schedule and there is produced to the judicial officer before whom the person is brought in terms of this section a certificate issued by or on behalf of the Attorney-General in the same terms as those specified in subsection (3b) of section *thirty-two*, the judicial officer shall, if satisfied that there is a reasonable suspicion that the person committed the offence, order that person's continued detention for a period of twenty-one days or the lesser period specified in the Attorney-General's certificate.

[Subsections (4), (5) and (6) inserted by s. 4 of Act 14/2004.]

(5) A person referred to in subsection (4) shall, unless the charge or charges against him or her are earlier withdrawn, remain in detention for twenty-one days or the lesser period specified in a certificate mentioned in paragraph (b) of subsection (4), as the case may be, from the date when an order for the person's further detention was issued in terms of that section, and no court shall admit such person to bail during that period.

[Subsections (4), (5) and (6) inserted by s. 4 of Act 14/2004.]

(6) A person referred to in subsection (4) may continue to be detained after the expiry of the period referred to in subsection (5) pending the outcome of investigations into the charge or charges against him or her if (without prejudice to the person's right to apply for bail) an order or warrant for that person's further detention is obtained from a judge or magistrate within forty-eight hours of the expiry of the period referred to in subsection (5).

[Subsections (4), (5) and (6) inserted by s. 4 of Act 14/2004.]

PART IX

BAIL

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116 Power to admit to bail

(1) Subject to this section and sections *thirty-two* and *thirty-four*, a person may be admitted to bail or have his conditions of bail altered—

[Introductory words amended by s. 5 of Act 14/2004 – insertion of references to ss. 32 and 24.]

- (a) in respect of any offence, by a judge at any time after he has appeared in court on a charge and before sentence is imposed;
- (b) in respect of any offence, except an offence specified in the Third Schedule, by a magistrate within whose area of jurisdiction the accused is in custody at any time after he has appeared in court on a charge and before sentence is imposed:

Provided that, with the consent of the Attorney-General, a magistrate may admit a person to bail or alter a person's conditions of bail in respect of any offence;

- (c) if he is a person whose case is adjourned in terms of subsection (1) of section 55 of the Magistrates Court Act [*Chapter 7:10*] or in respect of whom an order has been made in terms of subsection (4) of section *three hundred and fifty-one*, by a judge or by any magistrate within whose area of jurisdiction he is in custody:

Provided that—

- (i) the Attorney-General, in the case of any application to a judge in terms of this subsection, or the local public prosecutor, in the case of any application to a magistrate in terms of this subsection, shall be given reasonable notice of any such application;
- (ii) where an application in terms of this subsection is determined by a judge or magistrate, a further application in terms of this subsection may only be made, whether to the judge or magistrate who has determined the previous application or to any other judge or magistrate, if such application is based on facts which were not placed before the judge or magistrate who determined the previous application and which have arisen or been discovered after that determination;
- (iii) a magistrate shall not, without the consent of the Attorney-General, admit a person to bail or alter a person's conditions of bail in respect of an offence specified in the Third Schedule.

(2) Where a person has applied to a judge for bail in respect of an offence referred to in the [Third Schedule](#), the Minister responsible for the administration of the Public Order and Security Act [*Chapter 11:17*] may issue a certificate stating—

- (a) that in his opinion it is likely that public security would be prejudiced if the applicant were admitted to bail; and
- (b) the grounds on which he bases that opinion.

[Subsection amended by s. 44 of Act No. 1 of 2002.]

(3) Whenever it is practicable to do so, a copy of any certificate issued in terms of subsection (1) shall be served on the accused person concerned before the hearing of his application.

(4) Where a certificate issued in terms of subsection (2) is produced in any application to a judge for bail in respect of an offence referred to in the Third Schedule, the judge shall refuse bail unless the applicant satisfies him that, despite the grounds stated in the certificate, he should be admitted to bail.

(5) If the Minister responsible for the administration of the Extradition Act [*Chapter 9:08*], certifies in writing that a person who has applied for bail has been extradited to Zimbabwe from a foreign country and that the Minister has given an undertaking to the government or other responsible authority of that country—

- (a) that the accused person will not be admitted to bail while he is in Zimbabwe, the judge or magistrate hearing the matter shall not admit the accused person to bail;
- (b) that the accused person will not be admitted to bail while he is in Zimbabwe except on certain conditions which the Minister shall specify in his certificate, the judge or magistrate hearing the matter shall not admit the accused person to bail except on those conditions:

Provided that the judge or magistrate may fix further conditions, not inconsistent with the conditions specified by the Minister, on the grant of bail to the accused person.

(6) A document purporting to be a certificate issued by a Minister in terms of subsection (2) or (5) shall be admissible in any proceedings on its production by any person as *prima facie* evidence of its contents.

(7) Subject to subsection (4) of section 13 of the Constitution, in any case in which the judge or magistrate has power to admit the accused person to bail, he may refuse to admit such person to bail if he considers it likely that if such person were admitted to bail he would—

- (a) not stand his trial or appear to undergo the preparatory examination or to receive sentence; or
- (b) interfere with the evidence against him; or
- (c) commit an offence;

but nothing in this subsection shall be construed as limiting in any way the power of the judge or magistrate to refuse to admit an accused person to bail for any other reason which to him seems good and sufficient.

117 Application for bail

(1) An accused person may at any time apply verbally or in writing to the judge or magistrate before whom he is appearing to be admitted to bail immediately or may make such application in writing to a judge or magistrate.

(2) Every written application for bail shall be made in such form as may be prescribed in rules of court.

(3) Every application in terms of subsection (2) shall be disposed of without undue delay.

118 Conditions of recognizance

(1) Where a judge or magistrate has granted an application referred to in subsection (1) of section *one hundred and seventeen*, a recognizance shall, before the accused is admitted to bail, be taken from him or from him and one or more sureties according to the conditions fixed by the judge or magistrate, as the case may be.

- (2) The conditions of the recognizance shall be that the prisoner—
- (a) in the case of a prisoner who is undergoing a preparatory examination and is admitted to bail before such preparatory examination is concluded, shall appear at a time and place to be specified in writing and as often as may be necessary thereafter and undergo examination or further examination until the conclusion of such preparatory examination:
Provided that the conditions of the recognizance may include all or any of the conditions specified in paragraph (b);
 - (b) in the case of a prisoner who has been committed for trial or sentence, shall—
 - (i) appear and undergo any further examination which the magistrate or the Attorney-General may consider desirable; and
 - (ii) answer to any indictment that may be presented or charge that may be made against him in any competent court for the offence with which he is charged at any time; and
 - (iii) attend during the hearing of the case and to receive sentence; and
 - (iv) accept service of any summons to undergo further examination and of any such indictment or charge, notice of trial and summons thereon and any other notice under this Act at some certain and convenient place within Zimbabwe chosen by him and stated therein;
 - (c) in the case of a prisoner whose case has been adjourned in terms of subsection (2) of section 54 of the Magistrates Court Act [*Chapter 7:10*], shall appear in any competent court at any time to receive sentence in that case and that he will accept service of any notice in respect thereof at some certain and convenient place within Zimbabwe chosen by him and stated therein;
 - (d) in the case of a prisoner whose case has been adjourned in terms of subsection (1) of section 55 of the Magistrates Court Act [*Chapter 7:10*] or in respect of whom an order has been made in terms of subsection (5) of section *three hundred and fifty-eight*, shall appear in the High Court or a magistrates court, as the case may be, on the date and at the place to be notified to him by the registrar of the High Court or the clerk of the magistrates court, as the case may be, to show cause why the sentence postponed or suspended should not be imposed or brought into operation and that he will accept service of any notice in respect thereof at some certain and convenient place within Zimbabwe chosen by him and stated therein;
 - (e) in the case of a prisoner, other than a prisoner mentioned in paragraph (c), admitted to bail when a criminal case before a magistrate is adjourned or postponed and the prisoner is remanded, shall appear at a time and place to be specified in writing and as often as may be necessary thereafter until final judgment in his case has been given to answer the charge of the offence alleged against him or the charge of any other offence which may appear to the Attorney-General or the local public prosecutor to have been committed by the accused.
- (3) The judge or magistrate referred to in subsection (1) may require to be added to the recognizance any condition which he may think necessary or advisable in the interests of justice as to—
- (a) the surrender by the accused of his passport; or
 - (b) the times and place at which, and the persons to whom, the accused shall personally present himself; or
 - (c) the places where the accused is forbidden to go; or
 - (d) the prohibition against communication by the accused with witnesses for the prosecution; or
 - (e) any other matter relating to the accused's conduct.
- (4) The recognizance taken in respect of a prisoner mentioned in paragraph (b) of subsection (2) shall continue in force notwithstanding that for any reason, when the trial takes place, no verdict is then given, unless the indictment or charge is withdrawn.

119 Recognizance to be forfeited on failure of accused to appear at trial

(1) If upon the day appointed for the hearing of a case it appears by the return of the proper officer or by other sufficient proof that a copy of the indictment and notice of trial or, in case of a remittal to a magistrates court, the summons or charge or, where the case has been adjourned in terms of subsection (2) of section 54 or subsection (1) of section 55 of the Magistrates Court Act [*Chapter 7:10*] or an order has been made in terms of subsection (5) of section *three hundred and fifty-eight*, the notice prescribed in the rules of court has been duly served and the accused does not appear after he has been called by name three times in or near the court premises, the prosecutor may apply to the court for a warrant for the arrest of the accused and may also move the court that the accused and his sureties, if any, be called upon their recognizance and, in default of his appearance, that the same may be then and there declared forfeited.

(2) Any declaration of forfeiture in terms of subsection (1) shall have the effect of a judgment on the recognizance for the amounts therein named against the accused and his sureties respectively.

120 Excessive bail not to be required

The amount of bail to be taken in any case shall be in the discretion of the judge or magistrate to whom the application to be admitted to bail is made:

Provided that no person shall be required to give excessive bail.

121 Appeals against decisions regarding bail

(1) Subject to this section and to subsection (5) of section 44 of the High Court Act [*Chapter 7:06*], where a judge or magistrate has admitted or refused to admit a person to bail—

- (a) the Attorney-General or his representative, within seven days of the decision; or
- (b) the person concerned, at any time;

may appeal against the admission or refusal or the amount fixed as bail or any conditions imposed in connection therewith.

(2) An appeal in terms of subsection (1) against a decision of—

- (a) a judge of the High Court, shall be made to a judge of the Supreme Court;
- (b) a magistrate, shall be made to a judge of the High Court.

(3) A decision by a judge or magistrate to admit a person to bail shall be suspended if, immediately after the decision, the judge or magistrate is notified that the Attorney-General or his representative wishes to appeal against the decision, and the decision shall thereupon be suspended and the person shall remain in custody until—

- (a) if the Attorney-General or his representative does not appeal in terms of subsection (1)—
 - (i) he notifies the judge or magistrate that he has decided not to pursue the appeal; or
 - (ii) the expiry of seven days;whichever is the sooner; or
- (b) if the Attorney-General or his representative appeals in terms of subsection (1), the appeal is determined.

(4) An appeal in terms of subsection (1) by the person admitted to bail or refused admission to bail shall not suspend the decision appealed against.

(5) A judge who hears an appeal in terms of this section may make such order relating to bail or any condition in connection therewith as he considers should have been made by the judge or magistrate whose decision is the subject of the appeal.

(6) Subsections (2) to (6) of section one hundred and *sixteen* shall apply, *mutatis mutandis*, in relation to any appeal in terms of this section.

(7) Any order made by a judge in terms of subsection (5) shall be deemed to be the order made in terms of the appropriate section of this Part by the judge or magistrate whose decision was the subject of the appeal.

(8) There shall be no appeal to a judge of the Supreme Court from a decision or order of a judge of the High Court in terms of paragraph (b) of subsection (2), unless the decision or order relates to the admission or refusal of admission to bail of a person charged with any offence referred to in—

- (a) paragraph 10 of the Third Schedule; or
- (b) the Ninth Schedule in respect of which the Attorney-General has issued a certificate referred to in subsection (3b) or section *thirty-two*.

[Subsection substituted by s. 6 of Act 14/2004.]

(9) This section shall apply in regard to a private prosecution as if references to the Attorney-General were references to the private party instituting the prosecution.

[Section as substituted by s. 2 of Act No. 8 of 1997.]

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[Section repealed by s. 2 of Act No. 8 of 1997]

123 Power to admit to bail pending appeal or review

(1) Subject to this section, a person may be admitted to bail or have his conditions of bail altered—

- (a) in the case of a person who has been convicted and sentenced or sentenced by the High Court and who applies for bail—
 - (i) pending the determination by the Supreme Court of his appeal; or
 - (ii) pending the determination of an application for leave to appeal or for an extension of time within which to apply for such leave;
 by a judge of the Supreme Court or the High Court;
- (b) in the case of a person who has been convicted and sentenced by a magistrates court and who applies for bail—
 - (i) where the record of a case is required or permitted, in terms of section 57 or 58 of the Magistrates Court Act [*Chapter 7:10*], to be transmitted for review, pending the determination of the review; or
 - (ii) pending the determination by the High Court of his appeal; or
 - (iii) pending the determination of an application for leave to appeal or for an extension of time within which to apply for such leave;
 by a judge of the High Court or by any magistrate within whose area of jurisdiction he is in custody:

(Paragraph as amended by s. 10 of Act No. 9 of 1997)

Provided that—

- (i) the Attorney-General, in the case of any application to a judge in terms of this subsection, or the local public prosecutor, in the case of any application to a magistrate in terms of this subsection, shall be given reasonable notice of any such application;
- (ii) where an application in terms of this subsection is determined by a judge or magistrate, a further application in terms of this subsection may only be made, whether to the judge or magistrate who has determined the previous application or any other judge or magistrate, if such application is based on facts which were not placed before the judge or magistrate who determined the previous application and which have arisen or been discovered after that determination.
- (iii) a magistrate shall not, without the consent of the Attorney-General, admit a person to bail or alter a person's conditions of bail in respect of an offence specified in the Third Schedule.

(2) Where a person has applied to a judge for bail in respect of an offence referred to in the [Third Schedule](#), the Minister responsible for the administration of the Public Order and Security Act [*Chapter 11:17*] may issue a certificate stating—

- (a) that in his opinion it is likely that public security would be prejudiced if the applicant were admitted to bail; and
- (b) the grounds on which he bases that opinion.

[Subsection amended by s. 44 of Act No. 1 of 2002.]

(3) Whenever it is practicable to do so, a copy of any certificate issued in terms of subsection (1) shall be served on the accused person concerned before the hearing of his application.

(4) Where a certificate issued in terms of subsection (2) is produced in any application to a judge for bail in respect of an offence referred to in the Third Schedule, the judge shall refuse bail unless the applicant satisfies him that despite the grounds stated in the certificate he should be admitted to bail.

(5) If the Minister responsible for the administration of the Extradition Act [*Chapter 9:08*] certifies in writing that a person who has applied for bail has been extradited to Zimbabwe from a foreign country and that the Minister has given an undertaking to the government or other responsible authority of that country—

- (a) that the applicant will not be admitted to bail while he is in Zimbabwe, the judge or magistrate hearing the matter shall not admit the applicant to bail;
- (b) that the applicant will not be admitted to bail while he is in Zimbabwe except on certain conditions

which the Minister shall specify in his certificate, the judge or magistrate hearing the matter shall not admit the applicant to bail except on those conditions:

Provided that the judge or magistrate may fix further conditions, not inconsistent with the conditions specified by the Minister, on the grant of bail to the applicant.

(6) A document purporting to be a certificate issued by a Minister in terms of subsection (2) or (5) shall be admissible in any proceedings on its production by any person as *prima facie* evidence of its contents.

(7) If a judge or magistrate refuses an application for bail referred to in subsection (1), he may—

- (a) direct that the person be treated as an unconvicted prisoner pending the determination of his appeal, application or review, as the case may be; or
- (b) postpone the payment of any fine.

(8) The time during which a person, pending the determination of an appeal, application or review, is—

- (a) admitted to bail; or
- (b) subject to any direction which the Supreme Court or High Court may give to the contrary on any appeal or review, treated as an unconvicted prisoner in terms of this section;

shall not count as part of any term of imprisonment under his sentence.

(9) The term of imprisonment of a person shall be resumed or begin to run, as the case requires—

- (a) if such person is treated as an unconvicted prisoner in terms of this section, subject to any directions which the Supreme Court or the High Court may give to the contrary, as from the day on which the appeal, application or review is determined; or
- (b) if such person is admitted to bail in terms of this section, as from the day on which he is received into prison under his sentence.

(10) A recognizance shall be taken on the admission of a person to bail either from that person alone or from him and one or more sureties, in the discretion of the judge or magistrate according to the nature and circumstances of the case, and it shall be a condition of such recognizance that the person shall, upon service on or for him at some place to be mentioned in the recognizance of a notice signed by the registrar of the High Court or, where the conviction or sentence appealed against took place in a magistrates court, by the clerk of that court informing that person of the decision of the High Court or the Supreme Court, as the case may be—

- (a) pay the fine, if any, due by him within such time and to such person as shall be specified in the notice; or
- (b) surrender himself within such time and to such person as shall be specified in the notice in order to undergo any other punishment which he is liable to undergo, and the judge or magistrate may add any or all of the conditions mentioned in subsection (3) of section *one hundred and eighteen* which he may think necessary or advisable to impose.

(11) The provisions of section *three hundred and eighty-two* shall apply, *mutatis mutandis*, to the service of a notice referred to in subsection (10).

(12) In granting bail in terms of subsection (1) the judge or magistrate may take bail also for the cost and charge of serving the notice referred to in subsection (10), which cost and charge shall be the same as that of serving a summons in a civil case in a magistrates court against the same person at the same place.

(13) When a person has been admitted to bail in terms of subsection (1), a judge, in the case where the conviction or sentence took place in the High Court, or a magistrate in any other case, may, upon the application of the Attorney-General or local public prosecutor, as the case may be, and upon information being made in writing and upon oath that default has been made in any condition of the recognizance taken from such person—

- (a) issue a warrant for the arrest of such person; and

- (b) issue an order calling upon him and his sureties, if any, to appear on a day and at a place specified in the order to show cause why the recognizance should not be declared forfeited; and
- (c) if cause to the satisfaction of the judge or magistrate, as the case may be, is not shown against any such declaration, declare the recognizance to be forfeited, and such declaration of forfeiture shall have the effect of a judgment on the recognizance for the amounts therein named against such person and his sureties, respectively.

124

[Section repealed by s. 3 of Act No. 8 of 1997.]

125 Insufficiency of sureties

If, through mistake, fraud or otherwise, insufficient sureties have been accepted or if they afterwards become insufficient, the judge or magistrate granting the bail may issue a warrant of arrest directing that the accused be brought before him, and may order him to find sufficient sureties, and on his failing so to do may commit him to prison.

126 Alteration of recognizances or committal of person on bail to prison

(1) Any judge or magistrate who has granted bail to a person in terms of this Part may, if he is of the opinion that it is necessary or advisable in the interests of justice that the conditions of a recognizance entered into by that person should be altered or added to or that that person should be committed to prison, order that the said conditions be altered or added to or commit the person to prison, as the case may be:

Provided that—

- (i) if the judge or magistrate who granted bail is not available, any other judge or magistrate, as the case may be, may act in terms of this subsection;
 - (ii) a judge or magistrate shall not act in terms of this subsection unless facts which were not before the judge or magistrate who granted bail are brought to his attention.
- (2) In order to secure the presence before him of a person for the purpose of acting in terms of subsection (1), a judge or magistrate may issue a warrant for the arrest of the person and thereafter subsection (1) shall apply.
- (3) The provisions of section *thirty-five* shall apply, *mutatis mutandis*, in respect of a warrant issued in terms of subsection (2).

127 Person on bail may be arrested without warrant if about to abscond or interfere with witness

(1) If a peace officer believes on reasonable grounds that a person to whom bail has been granted in terms of this Part is about to abscond for the purpose of evading justice or to interfere with the evidence against him, he may arrest the person without warrant and shall as soon as possible take him before a magistrate who may, upon being satisfied that the ends of justice would otherwise be defeated, commit the person to prison.

(2) A person arrested in terms of subsection (1) shall be informed forthwith by the person arresting him of the cause of the arrest.

128 Release of sureties and death of surety

(1) All or any sureties for the attendance and appearance of an accused person released on bail may at any time apply to the judge or magistrate before whom the recognizance was entered into to discharge the recognizance, either wholly or so far as relates to the applicants.

(2) On an application in terms of subsection (1), the judge or magistrate shall issue a warrant of arrest directing that the accused be brought before him.

(3) On the appearance of the accused pursuant to the warrant or on his voluntary surrender, the judge or magistrate shall direct the recognizances to be discharged, either wholly or so far as relates to the applicants, and shall call upon the accused to find other sufficient sureties, and if he fails to do so may commit him to prison.

(4) When a surety to a recognizance dies before any forfeiture has been incurred, his estate shall be discharged from all liability in respect of the recognizance, but the accused may be required to find a new surety.

129 Rendering in court

The sureties may bring the accused into the court at which he is bound to appear during any sitting thereof, and then, by leave of the court, render him in discharge of such recognizance at any time before sentence, and the accused shall be committed to a prison there to remain until discharged by due course of law but such court may admit the accused person to bail for his appearance at any time it thinks fit.

130 Sureties not discharged until sentence or discharge of accused

The pleading or conviction of any accused person released on bail in terms of this Part shall not discharge the recognizance, but the same shall be effectual for his appearance during the trial and until sentence is passed or he is discharged:

Provided that the court may commit the accused to a prison upon his trial or may require new or additional sureties for his appearance for trial or sentence, as the case may be, notwithstanding such recognizance, and such commitment shall be a discharge of the sureties.

131 Deposit instead of recognizance

(1) When any person is required by any judge or magistrate to enter into recognizances, with or without sureties, under this Act, such judge or magistrate may, except in the case of a bond for good behaviour, instead of causing such recognizances to be entered into, permit him or some person on his behalf to deposit a sum of money or Government securities or other property of any description whatsoever acceptable to the Attorney-General to such amount as the judge or magistrate may fix.

(2) Conditions in writing shall be made in respect of any deposit in terms of subsection (1) of money, securities or property of the same nature as the conditions prescribed by this Part in respect of recognizances, and all the provisions of this Part prescribing the circumstances in which recognizances taken from the accused or an appellant, as the case may be, alone shall be forfeited, his arrest if about to abscond and remission of forfeited bail shall apply, *mutatis mutandis*, in respect of any such deposit of money, securities or property.

132 Admission to bail by police

(1) Except where the charge against an accused person is one of the offences specified in the [Fifth Schedule](#), any police officer of or above the rank of assistant inspector, or a police officer of whatever rank in charge of a police station, may, at a police station and at such times as no judicial officer is available, admit to bail an accused person who makes or on whose behalf is made a deposit of such sum of money as such police officer may in the particular circumstances fix.

(2) The provisions of section *one hundred and thirty-one* as to conditions, forfeiture and remission of forfeited bail shall apply, *mutatis mutandis*, in respect of any deposit of money made under subsection (1).

133 Provision in case of default in conditions of recognizance

If it appears to the judge or magistrate who admitted the accused to bail that default has been made in any condition of the recognizance or if it appears to a judge or magistrate of the court before which an accused person has to appear in terms of any recognizance that default has been made in any condition of such recognizance, such judge or magistrate may—

- (a) issue an order declaring the recognizance forfeited and such order shall have the effect of a judgment on the recognizance for the amounts therein named against the person admitted to bail and his sureties respectively;
- (b) issue a warrant for the arrest of the person admitted to bail and afterwards, upon being satisfied that the ends of justice would otherwise be defeated, commit him when so arrested to prison until his trial.

134 Remission of bail

The Attorney-General may, in his discretion, remit the whole or any portion of any amount forfeited under section *ninety-seven* or this Part and may, where a portion of such amount has been remitted, enforce payment in part only.

135 Release of juvenile offenders without bail

(1) When a person under the age of eighteen years is accused of any offence other than treason, murder or rape, any judge, magistrate or police officer who has power under this Part to admit the said person to bail may, instead of admitting him to bail or instead of detaining him—

- (a) release him without bail and warn him to appear before a court or magistrate at a time and on a date then fixed by the judge, magistrate or police officer; or
- (b) release him without bail to the care of the person in whose custody he is and warn that person to bring him or cause him to be brought before a court or magistrate at a time and on a date then fixed as aforesaid; or
- (c) place him in a place of safety as defined in section 2 of the Children's Protection and Adoption Act [*Chapter 5:06*] pending his appearance before a court or magistrate or until he is otherwise dealt with according to law.

(2) Any person who, having been warned in terms of paragraph (b) of subsection (1), fails without reasonable excuse, the burden of proof of which shall rest upon him, to act in accordance with that warning, shall be guilty of an offence and liable to a fine not exceeding twenty dollars or, in default of payment, to imprisonment for a period not exceeding one month.

FIRST SCHEDULE (Sections 25, 27, 30 and 42)

SPECIFIED OFFENCES IN RELATION TO POWERS OF ARREST

1. Any offence at common law, other than bigamy, blasphemy, compounding an offence, contempt of court, criminal defamation, incest or violating a grave or dead body.
2. Any offence in terms of any enactment in respect of which a punishment of a period of imprisonment exceeding six months is provided and may be imposed without the option of a fine.

[Paragraph substituted by s. 8(1) of Act 14/2004.

Section 8(2) of that Act provides that the amendment is for the sole purpose of clarifying the meaning of the provision amended, and does not affect the validity of anything done in connection with that provision before the date of commencement of the Act, namely, the XX October, 2004.]

3. A conspiracy, incitement or attempt to commit, or being an accessory after the fact to, any of the offences specified in paragraph 1 or 2.

SECOND SCHEDULE (Section 62)

OFFENCES IN CONNECTION WITH WHICH THINGS MAY BE SEIZED AND CONFISCATED IN TERMS OF SECTION 62

1. Any offence under any enactment relating to the unlawful possession, conveyance or supply of habit-forming drugs or harmful liquids.
2. Any offence under any enactment relating to the unlawful possession of, or dealing in, precious metals or precious stones.
3. Theft, either at common law or as defined by any enactment.
4. Breaking and entering any premises with intent to commit an offence, either at common law or in contravention of any enactment.

THIRD SCHEDULE (Sections 116 and 123)

OFFENCES IN RESPECT OF WHICH POWER TO ADMIT PERSONS TO BAIL IS EXCLUDED OR QUALIFIED

1. Treason.
2. Murder.
3. Rape.
4. Robbery accompanied by the use of a firearm or lethal weapon.
5. Kidnapping.
6. Arson.
7. Theft of a motor vehicle as defined in section 2 of the Road Traffic Act [*Chapter 13:11*].
8. A conspiracy, incitement or attempt to commit any offence referred to in paragraph 5 or 6.
9. Any offence where the Attorney-General has notified a magistrate of his intention to indict the person concerned in terms of subsection (1) of section *one hundred and one* or subsection (1) of section *one hundred and ten*.
10. Contravening section 5, 6, 7, 8, 9, 10 or 11 of the Public Order and Security Act [*Chapter 11:17*].

[Schedule substituted by s. 44 of Act No. 1 of 2002.]

FOURTH SCHEDULE (Sections 121 and 124)

OFFENCES IN RESPECT OF WHICH BAIL MAY NOT BE GRANTED PENDING APPEAL

~~[Schedule impliedly repealed by sections 2 and 3 of Act 8/1997 which, respectively, substituted section 121 and repealed section 124 of this Act, thereby removing from the Act all references to this Schedule.]~~

[Schedule formally repealed by s. 44 of Act No. 1 of 2002.]

FIFTH SCHEDULE (Section 132)

OFFENCES IN CONNECTION WITH WHICH BAIL MAY NOT BE GRANTED IN TERMS OF SECTION 132 (1)

1. Treason.
2. Sedition.
3. Murder.
4. Rape.
5. Robbery.
6. Assault in which a dangerous injury is inflicted.
7. Arson.
8. Breaking or entering any premises with intent to commit an offence, either at common law or in contravention of any enactment.
9. Theft, receiving any stolen property knowing it to have been stolen, fraud, forgery or uttering a forged document knowing it to be forged, if the amount or value involved in any such offence exceeds one thousand dollars.
10. Contravening section 5, 6, 7, 8, 9, 10 or 11 of the Public Order and Security Act [*Chapter 11:17*].
11. Any conspiracy, incitement or attempt to commit an offence specified in paragraphs 1 to 10.
12. Any offence referred to in the Ninth Schedule in respect of which the Attorney-General has issued a certificate referred to in subsection (3b) of section *thirty-two* or paragraph (a) of subsection (3c) of section *thirty-four*.

[Paragraphs 10, 11 and 12 substituted by s. 9 of Act 14/2004.]

SIXTH SCHEDULE (Section 345)

OFFENCES FOR WHICH SENTENCE OF PERIODICAL IMPRISONMENT MAY BE IMPOSED

1. An offence in terms of—
 - (a) subsection (2) of section 54; or
 - (b) subsection (2) of section 55; or
 - (c) subsection (3) of section 76; or
 - (d) subsection (6) of section 77;of the Road Traffic Act [*Chapter 13:11*].
2. Contravening subsection (1) of section 23 of the Maintenance Act [*Chapter 5:09*].

SEVENTH SCHEDULE (Section 346)

EXTENDED IMPRISONMENT OFFENCES

1. Murder.
2. Rape.
3. Robbery.
4. Assault with intent to commit murder, rape or robbery or to do grievous bodily harm.
5. Culpable homicide involving an assault.
6. Indecent assault.
7. Arson.
8. Fraud.
9. Forgery or uttering a forged instrument knowing it to be forged.
10. Breaking or entering any premises, whether at common law or in contravention of any enactment, with intent to commit an offence.
11. Theft, whether at common law or in contravention of any enactment.
12. Receiving stolen property knowing it to have been stolen.
13. Extortion.
14. Any offence, not being an offence under the law of Zimbabwe, by whatever name called, which is substantially similar to an offence specified in paragraphs 1 to 13.
15. Any offence in terms of any enactment in respect of which the maximum punishment is imprisonment for a period of six months or more without the option of a fine.
16. Any attempt, conspiracy or incitement to commit, or being an accessory after the fact to the commission of, an offence specified in paragraphs 1 to 15.

EIGHTH SCHEDULE (Section 358)

OFFENCES THE COMMISSION WHEREOF DISQUALIFIES OFFENDER FROM BEING DEALT WITH AS FIRST OFFENDER IN
TERMS OF PART XVIII

1. Murder, other than the murder by a woman of her newly born child.
2. Any conspiracy or incitement to commit murder.
3. Any offence in respect of which any enactment imposes a minimum sentence and any conspiracy, incitement or attempt to commit any such offence.

NINTH SCHEDULE (Section 25(1)(b) and 32(3b))

OFFENCES INVOLVING CORRUPTION, ORGANISED CRIME OR
HARM TO THE NATIONAL ECONOMY

1. Contravening the Prevention of Corruption Act [*Chapter 9:16*].
2. Contravening section 63 (“Money-laundering”) of the Serious Offences (Confiscation of Profits) Act [*Chapter 9:17*].
3. The sale, removal or disposal outside Zimbabwe of any controlled product in contravention of the Grain Marketing Act [*Chapter 18:14*].
4. Any offence under any enactment relating to the unlawful possession of, or dealing in, precious metals or precious stones.
5. Any offence under any enactment relating to the unlawful dealing in habit-forming drugs.
6. Contravening section 42 (“Offences relating to banknotes”) of the Reserve Bank of Zimbabwe Act [*Chapter 22:15*] or committing any offence relating to the coinage.
7. Contravening subparagraph (i) of paragraph (a) of subsection (1) of section 5 of the Exchange Control Act [*Chapter 22:05*] as read with—
 - (a) subsection (1) of section 4 of the Exchange Control Regulations, 1996, published in Statutory Instrument 109 of 1996 (in this paragraph and paragraph 8 called “the Exchange Control Regulations”), by dealing in any foreign currency in contravention of paragraph (a) or (b) of that provision of the Regulations without the permission of an exchange control authority;
 - (b) subsection (1) of section 10 of the Exchange Control Regulations, by unlawfully making any payment, placing any money or accepting any payment in contravention of paragraph (a), (b), (c) or (d) of that provision of the Regulations;
 - (c) paragraph (a) or (b) of subsection (1) of section 11 of the Exchange Control Regulations, by unlawfully making any payment outside Zimbabwe or incurring an obligation to make any payment outside Zimbabwe;
 - (d) paragraph (b), (e) or (f) of subsection (1) of section 20 of the Exchange Control Regulations, by unlawfully exporting any foreign currency, gold, silver or platinum, or any article manufactured from or containing gold, silver or platinum, or any precious or semiprecious stone or pearl from Zimbabwe;
 - (e) subsection (2) of section 21 of the Exchange Control Regulations, by unlawfully exporting any goods from Zimbabwe in contravention of that provision of the Regulations.
8. Contravening paragraph (b) of subsection (1) of section 5 of the Exchange Control Act [*Chapter 22:05*] by making any false statement or producing any false document in connection with a contravention of subsection (2) of section 21 of the Exchange Control Regulations.
9. Theft of a motor vehicle as defined in section 2 of the Road Traffic Act [*Chapter 13:11*].
10. Theft or forgery of—

- (a) a document issued to a person in terms of subsection (1) or (2) of section 7 of the National Registration Act [*Chapter 10:17*], or a passport or drivers licence issued by or on behalf of the Government of Zimbabwe; or
- (b) any visitors entry certificate or other certificate or permit issued to a person in terms of the Immigration Act [*Chapter 4:02*], or in terms of any enactment relating to refugees; or
- (c) any passport, identity document or drivers licence issued by a foreign government; or
- (d) a vehicle registration plate; or
- (e) any documentation relating to the registration or insurance of a motor vehicle.

11. Theft of a bovine or equine animal.

12. A conspiracy, incitement or attempt to commit any offence referred to in paragraphs 1 to 11.

[Schedule inserted by s. 10 of Act 14/2004.]