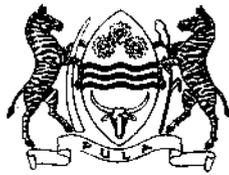


**THE CRIMINAL PROCEDURE AND EVIDENCE
(AMENDMENT) ACT, 1971**

No. 16



ARRANGEMENT OF SECTIONS

SECTION

1. Short title.
2. Amendment of section 3 of Chapter 18.
3. Insertion of section 91A in Chapter 18.
4. Insertion of section 92 of Chapter 18.
5. Amendment of section 166 B of Chapter 18.
6. Amendment of section 166 F of Chapter 18.
7. Substitution of section 166 J of Chapter 18.
8. Insertion of sections 166 K — 166 T into Chapter 18.

**AN ACT TO AMEND THE CRIMINAL PROCEDURE
AND EVIDENCE PROCLAMATION (CHAPTER 18) BY
MAKING FURTHER PROVISION RELATING TO PERSONS
OF UNSOUND MIND INCAPABLE OF MAKING THEIR
DEFENCE AND TO CRIMINAL LUNATICS.**

Date of Assent: 28.4.1971

Date of Commencement: 7.5.1971

ENACTED by the Parliament of Botswana.

Short title **1.** This Act may be cited as the Criminal Procedure and Evidence (Amendment) Act, 1971.

Amendment
of section 3 of
Chapter 18.

2. Section 3 of the Criminal Procedure and Evidence Proclamation (hereinafter referred to as the principal law) is amended by the insertion immediately after the definition of “magistrate” of the following definition —

“ “Master” means the Master of the High Court;”.

Insertion of
section 91A in
Chapter 18
Indictment by
Attorney-
General in
certain cases

3. The principal law is amended by the insertion immediately after section 91 thereof of a new section as follows —

91A. (1) Notwithstanding anything contained elsewhere in this law the Attorney-General may, if he considers it desirable so to do, at any time and whether or not a preparatory examination has been commenced, serve upon an accused notice of his intention to indict him for trial before the High Court on a charge of any offences specified in such notice.

(2) A copy of the notice served under subsection (1) shall be served upon any magistrate having jurisdiction in the district in which a preparatory examination in respect of the offence could be or is being held and, thereupon, such magistrate shall cause the accused to be brought before him and shall, notwithstanding anything contained elsewhere in this law, forthwith commit the accused for trial before the High Court in respect of the offence specified in such notice and commit the accused to jail there to be detained until brought to trial before the High Court for the offence specified in the warrant or until admitted to bail or liberty in the due course of law.

(3) Where an accused person has been committed for trial under subsection (2) there shall be served upon him at the same time as the indictment and notice of trial are served upon him under the provisions of section 118 a list of the witnesses whom it is proposed to call and a summary of the evidence of each of such witnesses. Such summary shall be deemed to be a deposition for the purposes of section 93 of this law.

Amendment
of section 92
of Chapter 18

4. Section 92 of the principal law is amended by the deletion of the words “under the powers conferred upon the Attorney-General by paragraph (c) of subsection (1) of section 90” appearing therein and by the substitution therefor of the words “in exercise of the powers conferred upon him by section 90 (1) (c) or in accordance with the provisions of section 91A (2).

Amendment
of section 166
B of Chapter
18

5. Section 166 B of the principal law is amended by the deletion of subsection (4) and the substitution therefor of —

“(4) If the case is one in which bail may not be granted or if sufficient security is not given the judicial officer may remand the accused in custody.

(5) In either of the cases mentioned in subsections (3) and (4) the judicial officer shall report, in the case of a Subordinate Court, to the High Court which shall report to the President, and, in the case of the High Court, to the President direct.

(6) On consideration of a report made to him in terms of subsection (5) the President may order the accused to be confined during his pleasure in a place of safe custody or may take such other course as seems to him proper in the circumstances.”

Amendment
of section 166
F of Chapter
18

6. Section 166 F of the principal law is amended by the deletion of “this Part” and the substitution therefor of “section *one hundred and sixty-six B*”.

Substitution
of section 166
J of Chapter
18.

7. Section 166 J of the principal law is repealed and there is substituted therefor —

“Transfers
from Place of
Safe Custody

166 J. Subject to any contrary direction that may in any particular case be given by the President, any person confined under the provisions of this Part may be transferred from a place of safe custody to a place of safe custody which is a mental or other hospital with the consent of the Director of Medical Services, and from a place of safe custody to a place of safe custody which is a prison with the consent of the Director of Prisons.”

Insertion of
sections 166 K
— 166 T into
Chapter 18
“Notification
of confine-
ment and
transfer

8. Part XA of the principal law is amended by the insertion of the following sections immediately after section 166 J —

166 K. (1) Whenever an order is made by the President under subsection (6) of section *one hundred and sixty-six B* or subsection (3) of section *one hundred and sixty-six D* that a person be confined in a place of safe custody which is a mental or other hospital, a copy of such order shall be transmitted to the Master and to the Director of Medical Services.

(2) Whenever an order is made by the President under the provisions mentioned in subsection (1) that a person be confined in a place of safe custody which is a prison, a copy of such order shall be transmitted to the Master, Director of Medical Services and the Director of Prisons.

(3) Whenever a person confined by virtue of an order made under any of the provisions mentioned in subsection (1) is transferred from one place of safe custody to another the person in charge of the former place shall notify the Master of such transfer.

Inquiry into
continued
confinement

166 L. (1) Any person confined in a place of safe custody under the provisions of this Part may directly or through a *curator-ad-litem* apply, and the husband, wife or any other relative or any friend of a person so confined may apply, and the Master may apply, to the President for an inquiry into the mental condition, and the desirability of the continued confinement, of such person.

(2) On consideration of any such application the President shall have power to direct that such an inquiry be held by a Judge of the High Court.

(3) The Judge holding such inquiry may, after the conclusion thereof —

(a) in the case of any person so confined, make recommendations for the consideration of the President respecting the release or further confinement of such person; or

(b) in the case of a person confined under the provisions of section *one hundred and sixty-six B*, order that the postponed proceedings be resumed, subject to the provisions of subsection (2) of section *one hundred and sixty-six E*, in a court, and within a period, to be specified in the order.

(4) On consideration of recommendations made in pursuance of paragraph (a) of subsection (3) the President may make such order, and attach thereto such conditions, as he thinks fit.

(5) A copy of any order made under subsection (4) shall be transmitted to the Master and the Director of Medical Services and, if it relates to a person confined in a place of safe custody which is a prison, to the Director of Prisons.

(6) An inquiry held under this section shall be held at such time and place as the Judge holding it may determine.

Appointment
of Curator
Bonis of
person con-
fined

(7) The Chief Justice may make rules to regulate the conduct of inquiries under this section.

166 M. (1) Whenever any person, in this section referred to as the person confined, is confined in a place of safe custody under the provisions of this Part the Master may of his own motion or at the instance of any person appoint a *curator bonis* for the care or custody of any property of the person confined, and where it appears to the Master desirable that provision should be made for the maintenance and other necessary purposes or requirements of the person confined, or any member of his family, out of any cash or available securities belonging to him in the hands of his bankers or of any other person, the Master may authorise and require such banker or other person to pay to the *curator bonis* or the person in charge of the place of safe custody in which the person confined is confined such sums as may be deemed necessary and may give instructions as to the application thereof for the benefit of the person confined or the relief of his family.

(2) The Master shall transmit notice of any appointment made or authorisation given under subsection (1) to the person in charge of the place of safe custody in which the person confined is confined and, when such place is a mental or other hospital, to the Director of Medical Services and, when such place is a prison, to the Director of Prisons.

(3) Any authorisation given in terms of subsection (1) may be reviewed by the High Court at any time on application by the Master or any person able to show *locus standi* and may be varied, cancelled or replaced, as the Court thinks fit.

(4) The Chief Justice may make rules respecting applications for review in terms of the last preceding subsection.

Reports on
persons con-
fined

166 N. (1) Whenever a person is confined in a place of safe custody under the provisions of this Part the person in charge of such place shall transmit in the prescribed form annually to the Director of Medical Services a report on the mental and physical condition of the person confined, and shall transmit a copy of such report to the Master.

(2) The Director of Medical Services, if not satisfied with such report, may call for such further information as he may require, or may himself visit and examine the person confined in reference to his mental condition or instruct some other medical practitioner to examine the person confined and report on his mental condition.

(3) The person in charge of any place of safe custody shall give notice forthwith —

(a) of the death of any person confined under the provisions of this Part to —

- (i) the President;
- (ii) the District Commissioner;
- (iii) the District Registrar of Births and Deaths;
- (iv) the Director of Medical Services;
- (v) the Master; and
- (vi) in the case of a person confined in a prison, the Director of Prisons;

(b) of the escape of a person so confined to —

- (i) the District Commissioner;
- (ii) the nearest police station;
- (iii) the Director of Medical Services;
- (iv) the Master; and
- (v) in the case of a person confined in a prison, the Director of Prisons.

Cessation of
mental disorder
etc. of criminal
lunatic

166 O. (1) Where two medical practitioners have certified, or the Mental Health Board has certified, to the Director of Medical Services in such manner as may be prescribed that a person confined under the provisions of section *one hundred and sixty-six D* is no longer a mentally disordered or defective person, the Director, after making such inquiry into the matter as he may think fit may report to the President who, on consideration of such report and such certificate, may make such order concerning —

- (a) the continued confinement; or
- (b) the release; or
- (c) the conditions governing or affecting the confinement or release;

of the person so confined, as he may think fit.

(2) A copy of any order made under subsection (1) shall be transmitted to the Master and the Director of Medical Services and, if it relates to a person confined in a place of safe custody which is a prison, to the Director of Prisons.

False statements

166 P. Every person is guilty of an offence who makes any wilful mis-statement of any material fact in any application, statement of particulars, report or certificate made, submitted or given under this Part.

Ill-treatment of persons confined

166 Q. Any person in charge of, or any officer, medical officer, nurse, attendant, servant or other person employed or performing duties at a place of safe custody who ill-treats or wilfully neglects any person confined under the provisions of this Part is guilty of an offence.

Conniving at escape of person confined

166 R. Any person who wilfully assists or permits or connives at the escape or attempted escape of any person confined under the provisions of this Part or who secretes or harbours such a person who has escaped is guilty of an offence.

Employment of male persons in custody of females

166 S. (1) Subject to the provisions of subsection (2), it shall not be lawful to employ any male person in any place of safe custody to exercise the personal custody or restraint of any female person there confined, and any person employing a male person contrary to this section is guilty of an offence.

(2) This section shall not prohibit the employment of male persons on such occasions of urgency as may, in the opinion of the person in charge of the place of safe custody, render such employment necessary.

Penalties

166 T. Any person convicted of an offence under section 166 P, 166 Q, 166 R or 166 S shall be liable to a fine of five hundred rand and to imprisonment for a period of twelve months."

Passed by the National Assembly this day, the 1st April, 1971.

G.T. MATENGE,
Clerk of the National Assembly.