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THE SEXUAL OFFENCES (AMENDMENT) BILL, 2020

A Bill for

AN ACT of Parliament to amend the Sexual Offences Act, 2006 to provide for the manner of collection, analysis, tracking and access to forensic evidence relating to sexual assault and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

PART I—PRELIMINARY

1 This Act may be cited as the Sexual Offences (Amendment) Act, 2020 Short title

2 Section 2 of the Sexual Offences Act, in this Act referred to as “the principal Act”, is amended by— Amendment of s 2 of
No 3 of 2006

- (a) deleting the definition of “Minister” and substituting therefor the following new definition in proper alphabetical sequence—

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to legal affairs and public prosecutions,

- (b) inserting the following new definitions in proper alphabetical sequence—

“health care professional” includes any person who has obtained professional health qualifications and is licensed by the relevant regulatory body,

“Inspector General” means the holder of the office of the Inspector-General appointed in accordance with Article 245

(2)(a) of the Constitution,

“release form” means a document provided to a victim of sexual assault, which gives the victim the option of authorizing, in writing, the release of a sexual examination kit to a law enforcement agency for forensic analysis,

“restricted sexual assault examination kit” means a kit that does not have an accompanying signed release form authorizing a law enforcement agency to submit the kit for forensic analysis,

“sexual assault examination kit” means an evidence bundle, including biological material, gathered from a victim of sexual assault by a health care professional,

“system” means the Sexual Assault Forensic Evidence Tracking System” developed pursuant to section 34C,

“unrestricted sexual assault examination kit” means a kit that has an accompanying release form signed by a victim of sexual assault allowing a law enforcement agency to submit the kit for forensic analysis,

3 Section 26(7) of the principal Act is amended in paragraph (b) by deleting the word “Minister” appearing immediately after the word “any” and substituting therefor the words “Cabinet Secretary”

Amendment of s
26 of No 3 of
2006

4 The principal Act is amended by inserting the following section immediately after section 30—

Insertion of new
section 30A in No
3 of 2006

Background
checks

30A (1) An employer shall confirm that a person seeking employment to a position of care or access to children or any vulnerable person has not been charged or convicted of an offence under this Act

(2) An employer who knowingly employs a convicted sexual offender in a position of care or access to children or any vulnerable person commits an offence and is liable upon conviction to imprisonment for a term not exceeding three years or to a fine not exceeding one million shillings or to both

5 The principal Act is amended by inserting the following new sections immediately after section 34—

Insertion of new
s 34A 34B 34C and
34D in No 3 of 2006

Sexual assault
examination kit

34A When examining a victim of sexual assault, a healthcare professional shall collect evidence of the assault using a sexual assault examination kit comprising—

- (a) instructions for use,
- (b) evidence collection bags and sheets,
- (c) swabs,
- (d) sterile urine collection containers,
- (e) sterile sample containers,
- (f) blood collection devices,

(g) combs for the collection of hair and fibre,

(h) clear glass slides,

(i) self-sealing envelopes for preserving any samples collected,

(j) nail picks,

(k) sheets for collection of physical evidence stripped from a victim's body,

(l) documentation forms,

(m) labels,

(n) mouth rinses,

(o) sterile water, and

(p) saline solutions

(2) A person who manufactures, imports or sells a sexual assault examination kit shall ensure that the kit contains a trackable component which accords to the requirements of the tracking system established under section 34C

Processing of kit

34B (1) A healthcare professional who prepares a sexual examination kit shall notify the appropriate law enforcement agency of the preparation of the kit if the victim of sexual assault—

(a) requests that a law enforcement agency be so notified, and