



Government Gazette

REPUBLIC OF SOUTH AFRICA

Vol. 679

Cape Town
Kaapstad

28 January 2022

No. 45823

THE PRESIDENCY

No. 787 **28 January 2022**

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

Act No. 13 of 2021: Criminal Law (Sexual Offences and Related Matters) Amendment Act Amendment Act, 2021

DIE PRESIDENSIE

No. 787 **28 Januarie 2022**

Hierby word bekend gemaak dat die President sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

Wet No. 13 van 2021: Wysigingswet op die Strafwysigingswet (Seksuele Misdrywe en Verwante Aangeleenthede), 2021

ISSN 1682-5845



9 771682 584003



AIDS HELPLINE: 0800-0123-22 Prevention is the cure

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.

(English text signed by the President)
(Assented to 25 January 2022)

ACT

To amend the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, so as to—

- extend the ambit of the offence of incest;
- introduce a new offence of sexual intimidation;
- substitute the phrase “a person who is mentally disabled” or “persons who are mentally disabled” wherever the phrase appears with the phrase “a person with a mental disability” or “persons with mental disabilities”;
- further regulate the inclusion of particulars of persons in the National Register for Sex Offenders;
- extend the list of persons who are to be protected in terms of Chapter 6 of the Act;
- extend the list of persons who are entitled to submit applications to the Registrar of the National Register for Sex Offenders;
- further regulate the removal of particulars of persons from the National Register for Sex Offenders; and
- further regulate the reporting duty of persons who are aware that sexual offences have been committed against persons who are vulnerable, and to provide for matters connected therewith.

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

Amendment of section 1 of Act 32 of 2007, as amended by section 48 of Act 7 of 2013, section 1 of Act 5 of 2015 and section 35 of Act 8 of 2017

1. Section 1 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (hereafter referred to as the “principal Act”), is hereby amended— 5

(a) by the substitution of the definition of “care giver” of the following definition:

“ ‘**care giver**’ means any person who, in relation to a person [**who is mentally disabled**] with a mental disability, takes responsibility for meeting the daily needs of or is in substantial contact with such person;” 10

(b) by the substitution for the words preceding paragraph (a) of the definition of “person who is mentally disabled” of the following words:

“ ‘**person [who is mentally disabled] with a mental disability**’ means a person affected by any mental disability, including any disorder or 15

ALGEMENE VERDUIDELIKENDE NOTA:

- [] Woorde in vet druk tussen vierkantige hake dui skappings uit bestaande verordeninge aan.
- _____ Woorde met 'n volstreep daaronder, dui invoegings in bestaande verordeninge aan.

 (Engelse teks deur die President geteken)
 (Goedgekeur op 25 Januarie 2022)

WET

Tot wysiging van die Strafwysigingswet (Seksuele Misdrywe en Verwante Aangeleenthede), 2007, ten einde—

- die trefwydte van die misdryf van bloedskanie uit te brei;
- 'n nuwe misdryf van seksuele intimidasie in te voeg;
- die frase “persoon wat verstandelik gestremd is” of “persone wat verstandelik gestremd is” waar die frase ook al voorkom met die frase “persoon met 'n verstandelike gestremdheid” of “persone met verstandelike gestremdhede” te vervang;
- die invoeging van die besonderhede van persone in die Nasionale Register vir Seks-oortreders verder te reël;
- die lys van persone wat ingevolge Hoofstuk 6 van die Wet beskerm word, uit te brei;
- die lys van persone wat aansoek kan doen by die Registrateur van die Nasionale Register vir Seks-oortreders uit te brei;
- die verwydering van die besonderhede van persone uit die Nasionale Register vir Seks-oortreders verder te reël; en
- die aanmeldingsplig van persone wat daarvan bewus is dat seksuele misdrywe teen persone wat kwesbaar is, gepleeg is, verder te reël, en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

DIE PARLEMENT van die Republiek van Suid-Afrika verorden, soos volg:—

Wysiging van artikel 1 van Wet 32 van 2007, soos gewysig deur artikel 48 van Wet 7 van 2013, artikel 1 van Wet 5 van 2015 en artikel 35 van Wet 8 van 2017

1. Artikel 1 van die Wysigingswet op die Strafwet (Seksuele Misdrywe en Verwante Aangeleenthede), 2007 (hierna die “Hoofwet” genoem), word hierby gewysig—
- (a) deur die woorde wat paragraaf (a) van die omskrywing van “persoon wat verstandelik gestremd is” voorafgaan deur die volgende woorde te vervang:
 “ ‘persoon [wat verstandelik gestremd is] met 'n verstandelike gestremdheid’ iemand wat deur enige verstandelike gestremdheid, met inbegrip van enige afwyking of gestremdheid van die verstand, tot so 'n mate aangetas is dat hy of sy, ten tyde van die beweerde pleeg van die betrokke misdryf—”;
- (b) deur die omskrywing van “sorggewer” deur die volgende omskrywing te vervang:
 “ ‘sorggewer’ iemand wat, met betrekking tot iemand [wat verstandelik gestremd is] met 'n verstandelike gestremdheid, die verant-

- disability of the mind, to the extent that he or she, at the time of the alleged commission of the offence in question, was—”; and
- (c) by the substitution for subparagraph (v) of subsection (3)(d) of the following subparagraph:
- “(v) a person [**who is mentally disabled**] with a mental disability.”. 5

Amendment of section 2 of Act 32 of 2007

2. Section 2 of the principal Act is hereby amended by the substitution for paragraph (g) of the following paragraph:
- “(g) establishing a National Register for Sex Offenders in order to establish a record of persons who are or have been convicted of any ‘sexual offences’ [**sexual offences against children and persons who are mentally disabled**], as defined in section 40, so as to prohibit such persons from being employed in a manner that places them in a position to work with or have [**access to or**] authority or supervision over or care of [**children or persons who are mentally disabled**] persons who are vulnerable.”. 10 15

Amendment of section 5 of Act 32 of 2007

3. Section 5 of the principal Act is hereby amended by the deletion of subsection (2).

Amendment of section 12 of Act 32 of 2007

4. Section 12 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection: 20
- “(1) Persons who may not lawfully marry each other on account of consanguinity, affinity or an adoptive relationship and who unlawfully and intentionally engage in an act of—
- (a) sexual penetration with each other; or
- (b) sexual violation with each other where one of them is a child, and the act of sexual violation was of such a nature that it was reprehensible for the adult person to have acted in that manner under the circumstances concerned, 25
- are, despite their mutual consent to engage in such act, guilty of the offence of incest.”. 30

Insertion of new Part in Act 32 of 2007

5. The following Part is hereby inserted after Part 4 of Chapter 2 of the principal Act:

“Part 5

Sexual intimidation

Sexual intimidation

14A. A person (‘A’) who unlawfully and intentionally utters or conveys a threat to a complainant (‘B’) that inspires a reasonable belief of imminent harm in B that a sexual offence will be committed against B, or a third party (‘C’) who is a member of the family of B or any other person in a close relationship with B, is guilty of the offence of sexual intimidation and may be liable on conviction to the punishment to which a person convicted of actually committing a sexual offence would be liable.”. 35 40

woordelikheid vir die daaglikse behoeftes van sodanige persoon aanvaar of in wesenlike kontak met sodanige persoon is;” en

(c) deur subparagraaf (v) van subartikel (3)(d) deur die volgende subparagraaf te vervang:

“(v) ’n persoon is [**wat verstandelik gestremd is**] met ’n 5
verstandelike gestremdheid.”.

Wysiging van artikel 2 van Wet 32 van 2007

2. Artikel 2 van die Hoofwet word hierby gewysig deur paragraaf (g) deur die volgende paragraaf te vervang:

“(g) ’n Nasionale Register vir Seks-oortreders in te stel ten einde ’n rekord van 10
persone in te stel wat aan [**seksuele misdrywe teenoor kinders en persone**
wat verstandelik gestremd is,] enige ‘seksuele misdryf’, soos in artikel 40
omskryf, skuldig bevind is ten einde sodanige persone te verbied om in diens
geneem te word op ’n wyse wat hulle in ’n posisie plaas om met [**kinders of**
persone wat verstandelik gestremd is] persone wat kwesbaar is, te werk of 15
[**toegang tot hulle te hê of**] in ’n posisie van gesag of toesig oor hulle geplaas
te word.”.

Wysiging van artikel 5 van Wet 32 van 2007

3. Artikel 5 van die Hoofwet word hierby gewysig deur subartikel (2) te skrap.

Wysiging van artikel 12 van Wet 32 van 2007

4. Artikel 12 van die Hoofwet word hierby gewysig deur subartikel (1) deur die volgende subartikel te vervang:

“(1) Persone wat nie wettiglik met mekaar op grond van bloedverwantskap,
aanverwantskap of ’n aannemingsverhouding mag trou nie en wat wederregtelik en
opsetlik ’n handeling van— 25
(a) seksuele penetrasie met mekaar; of
(b) seksuele skending met mekaar waar een van hulle ’n kind is en die daad van
seksuele skending was van so ’n aard dat dit afkeurenswaardig vir die
volwasse persoon was om onder die omstandighede sodanig op te tree,
pleeg, is, ondanks hul gesamentlike toestemming om sodanige handeling te pleeg, 30
skuldig aan die misdryf van bloedskaande.”.

Invoeging van nuwe Deel in Wet 32 van 2007

5. Die volgende Deel word hierby na Deel 4 van Hoofstuk 2 van die Hoofwet ingevoeg:

“*Deel 5* 35

Seksuele intimidasie

Seksuele intimidasie

14A. Iemand (‘A’) wat wederregtelik en opsetlik ’n dreigement uiter
of oordra aan ’n klaer of klagster (‘B’) wat ’n redelike geloof van
dreigende gevaar in B opwek dat B, of ’n derde party (‘C’) wat ’n lid van 40
die familie van B is of enige iemand anders wat in ’n noue verhouding
met B is, is skuldig aan die misdryf van seksuele intimidasie en kan by
skuldigbevinding gestraf word met die straf waarmee ’n persoon wat
weens die werklike pleging van daardie misdryf skuldig bevind is,
gestraf kan word.” 45