

REPUBLIC OF SOUTH AFRICA

**CRIMINAL LAW (SEXUAL OFFENCES
AND RELATED MATTERS)
AMENDMENT ACT AMENDMENT
BILL**

*(As introduced in the National Assembly (proposed section 75); explanatory summary of Bill and
prior notice of its introduction published in Government Gazette No. 43595 of 7 August 2020)
(The English text is the official text of the Bill)*

(MINISTER OF JUSTICE AND CORRECTIONAL SERVICES)

[B 16—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.

BILL

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;
- further regulate the inclusion of particulars of persons in the National Register for Sex Offenders;
- make provision for certain particulars of persons who have been convicted of sexual offences to be made publicly available;
- extend the list of persons who are to be protected in terms of Chapter 6 of the Act;
- 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 children, and to provide for matters connected therewith.

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

Amendment of section 2 of Act 32 of 2007

1. Section 2 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (hereinafter referred to as the “principal Act”), is hereby amended by the substitution for paragraph (g) of the following paragraph: 5

“(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 **[against children and persons who are mentally disabled]** 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

Amendment of section 5 of Act 32 of 2007

2. Section 5 of the principal Act is hereby amended by the deletion of subsection (2). 15

Amendment of section 12 of Act 32 of 2007

3. Section 12 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(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— 5
 (a) sexual penetration with each other; or
 (b) sexual violation with each other where one of them is a child,
 are, despite their mutual consent to engage in such act, guilty of the offence of incest.”. 10

Insertion of new Part in Act 32 of 2007

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

**“Part 5
 Sexual intimidation**

Sexual intimidation 15

14A. A person (“A”) who unlawfully and intentionally utters or conveys, whether directly or indirectly, a threat to a complainant (“B”) that inspires a reasonable belief of imminent harm in B that B, or a third party (“C”), shall be— 20
 (a) raped;
 (b) compelled to rape someone else;
 (c) sexually violated;
 (d) compelled to sexually violate someone else;
 (e) compelled to sexually violate himself or herself;
 (f) compelled to witness a sexual offence, sexual act or an act of self-masturbation; 25
 (g) exposed to the genital organs, anus or female breasts of another person; or
 (h) exposed to child pornography,
 as contemplated in section 3, 4, 5, 6, 7, 8, 9 or 10, respectively, is guilty of the offence of sexual intimidation.”. 30

Amendment of section 40 of Act 32 of 2007, as amended by section 36 of Act 8 of 2017

5. Section 40 of the principal Act is hereby amended—

(a) by the substitution for the definition of “employer” of the following definition: 35

“‘**employer**’ means—

- (a) any— 40
 (i) department of state or administration in the national or provincial sphere of government or any municipality in the local sphere of government; or
 (ii) other functionary or institution when exercising a power or performing a duty in terms of the Constitution of the Republic of South Africa, 1996, or a provincial constitution or exercising a public power or performing a public function in terms of any 45 legislation,

which[—

- (aa) employs employees who, in any manner and during the course of their employment, will be placed in a position to work with a [child] person who is vulnerable or in a position of authority, supervision or care of a [child] person who is vulnerable or will gain access to a [child] person who is vulnerable or places where [children] persons who are vulnerable are present or congregate; or 50

- [(bb) employs employees who, in any manner and during the course of their employment, will be placed in a position to work with a person who is mentally disabled or in a position of authority, supervision or care of a person who is mentally disabled or will gain access to a person who is mentally disabled or places where persons who are mentally disabled are present or congregate; or]** 5
- (b) any person, organisation, institution, club, sports club, association or body who or which, as the case may be—
- (i) employs employees who, in any manner and during the course of their employment, will be placed in a position of authority, supervision or care of a **[child or a person who is mentally disabled]** person who is vulnerable or working with or will gain access to a **[child or a person who is mentally disabled]** person who is vulnerable or places where **[children or persons who are mentally disabled]** persons who are vulnerable are present or congregate; or 10
- (ii) owns, manages, operates, has any business or economic interest in or is in any manner responsible for, or participates or assists in, the management or operation of any entity or business concern or trade relating to the supervision over or care of a **[child or a person who is mentally disabled]** person who is vulnerable or working with or who gains access to a **[child or a person who is mentally disabled]** person who is vulnerable or places where **[children or persons who are mentally disabled]** persons who are vulnerable are present or congregate, 15
- and 'employ', 'employing', 'employed' and 'employment relationship' have corresponding meanings;"; 20
- (b) by the substitution for the definition of "licencing authority" of the following definition: 30
- "**'licencing authority'** means any authority which is responsible for granting licences or approving the management or operation of any entity, business concern or trade relating to the supervision over or care of a **[child or a person who is mentally disabled]** person who is vulnerable;"; 35
- (c) by the insertion after the definition of "licencing authority" of the following definition:
- "**'person who is vulnerable'** means a— 40
- (a) child; 40
- (b) female under the age of 25 years; 40
- (c) person who is being cared for or sheltered in a facility that provides services to victims of crime; 40
- (d) person with a physical, intellectual or mental disability and who— 45
- (i) receives community-based care and support services, other than from a family member, for; 45
- (ii) lives in a building, structure or facility used primarily as a residence, for; or 45
- (iii) is cared for in a facility providing 24-hour care to, persons with physical, intellectual or mental disabilities; or 50
- (e) person who is 60 years of age or older and who— 50
- (i) receives community-based care and support services, other than from a family member, for; 50
- (ii) lives in a building, structure or facility used primarily as a residence, for; or 55
- (iii) is cared for in a facility providing 24-hour care to, such persons;"; 55
- (d) by the insertion after the definition of "relevant authority" of the following definition:
- "**'sexual offence'** means any— 60
- (a) sexual offence in terms of the law as it existed between 16 June 2003 and 15 December 2007; 60
- (b) offence referred to in Chapters 2, 3 and 4 and sections 55 and 71 of this Act; 60

- (c) offence referred to in Chapter 2 of the Prevention and Combating of Trafficking in Persons Act, 2013, which was committed for sexual purposes; and
- (d) contravention since 16 June 2003 of section 24B(1) or (3) of the Films and Publications Act, 1996 (Act No. 65 of 1996);; and
- (e) by the deletion of the definition of “sexual offence against a child”.

Substitution of section 41 of Act 32 of 2007

6. The following section is hereby substituted for section 41 of the principal Act:

“Prohibition on certain types of employment by certain persons who have committed sexual offences [against children and persons who are mentally disabled]

41. [(1)] A person who has been convicted of the commission of a sexual offence **[against a child]** or is alleged to have committed a sexual offence **[against a child]** and has been dealt with in terms of section 77(6) or 78(6) of the Criminal Procedure Act, 1977, whether committed before or after the commencement of this Chapter, whether committed in or outside the Republic, and whose particulars have been included in the Register, may not—

- (a) be employed to work with a **[child] person who is vulnerable** in any circumstances;
- (b) hold any position, related to his or her employment, or for any commercial benefit which in any manner places him or her in any position of authority, supervision or care of a **[child] person who is vulnerable**, or which, in any other manner, places him or her in a position of authority, supervision or care of a **[child] person who is vulnerable** or where he or she gains access to a **[child] person who is vulnerable** or places where **[children] persons who are vulnerable** are present or congregate;
- (c) be granted a licence or be given approval to manage or operate any entity, business concern or trade in relation to the supervision over or care of a **[child] person who is vulnerable** or where **[children] persons who are vulnerable** are present or congregate; or
- (d) become the foster parent, kinship care-giver, temporary safe care-giver or adoptive parent of a child or the curator of a person who is mentally disabled.

[(2) A person who has been convicted of the commission of a sexual offence against a person who is mentally disabled or is alleged to have committed a sexual offence against a person who is mentally disabled and has been dealt with in terms of section 77(6) or 78(6) of the Criminal Procedure Act, 1977, whether committed before or after the commencement of this Chapter, whether committed in or outside the Republic and whose particulars have been included in the Register, may not—

- (a) be employed to work with a **person who is mentally disabled** in any circumstances;
- (b) hold any position, related to his or her employment, or for any commercial benefit which in any manner places him or her in a position of authority, supervision or care of a **person who is mentally disabled**, or which, in any other manner, places him or her in a position of authority, supervision or care of a **person who is mentally disabled** or where he or she gains access to a **person who is mentally disabled** or places where **persons who are mentally disabled** are present or congregate;
- (c) be granted a licence or be given approval to manage or operate any entity, business concern or trade in relation to the supervision over or care of a **person who is mentally disabled** or where **persons who are mentally disabled** are present or congregate; or
- (d) become the curator of a **person who is mentally disabled.**”.