

Please note that most Acts are published in English and another South African official language. Currently we only have capacity to publish the English versions. This means that this document will only contain even numbered pages as the other language is printed on uneven numbered pages.



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THE PRESIDENCY

No. 1 J1

26 June 2012

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

No. 6 of 2012: Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2012.



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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.

*(English text signed by the President)
(Assented to 23 June 2012)*

ACT

To amend the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, so as to expressly provide that the imposition of penalties in respect of certain offences contained in the Act is left to the discretion of the courts; and to provide for matters connected therewith.

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

Substitution of section 11 of Act 32 of 2007

1. The following section is hereby substituted for section 11 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (hereinafter referred to as the principal Act): 5

“Engaging sexual services of persons 18 years or older

11. A person (‘A’) who unlawfully and intentionally engages the services of a person 18 years or older (‘B’), for financial or other reward, favour or compensation to B or to a third person (‘C’)— 10

(a) for the purpose of engaging in a sexual act with B, irrespective of whether the sexual act is committed or not; or

(b) by committing a sexual act with B, 15

is guilty of the offence of engaging the sexual services of a person 18 years or older.”

Amendment of section 17 of Act 32 of 2007

2. Section 17 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) A person (‘A’) who unlawfully and intentionally engages the services of a child complainant (‘B’), with or without the consent of B, for financial or other reward, favour or compensation to B or to a third person (‘C’)— 20

(a) for the purpose of engaging in a sexual act with B, irrespective of whether the sexual act is committed or not; or

(b) by committing a sexual act with B, is, in addition to any other offence which he or she may be convicted of, guilty of the offence of sexual exploitation of a child.”

Amendment of section 23 of Act 32 of 2007

3. Section 23 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection: 5

“(1) A person (‘A’) who unlawfully and intentionally engages the services of a complainant who is mentally disabled (‘B’), for financial or other reward, favour or compensation to B or to a third person (‘C’)—

(a) for the purpose of engaging in a sexual act with B, irrespective of whether the sexual act is committed or not; or 10

(b) by committing a sexual act with B, is, in addition to any other offence which he or she may be convicted of, guilty of the offence of sexual exploitation of a person who is mentally disabled.”

Amendment of section 56 of Act 32 of 2007 15

4. Section 56 of the principal Act is hereby amended—

(a) by the substitution for the heading of the following heading:

“Defences [and sentencing]”; and

(b) by the deletion of subsection (7).

Insertion of section 56A in Act 32 of 2007 20

5. The following section is hereby inserted in the principal Act after section 56:

“Sentencing

56A. (1) A court shall, if—

(a) that or another court has convicted a person of an offence in terms of this Act; and 25

(b) a penalty is not prescribed in respect of that offence in terms of this Act or by any other Act,

impose a sentence, as provided for in section 276 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), which that court considers appropriate and which is within that court’s penal jurisdiction. 30

(2) If a person is convicted of any offence under this Act, the court that imposes the sentence shall consider as an aggravating factor the fact that the person—

(a) committed the offence with the intent to gain financially, or receive any favour, benefit, reward, compensation or any other advantage; or 35

(b) gained financially, or received any favour, benefit, reward, compensation or any other advantage,

from the commission of such offence.”

Short title

6. This Act is called the Criminal Law (Sexual Offences and Related Matters) Amendment Act Amendment Act, 2012. 40