

REPUBLIC OF SOUTH AFRICA

---

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

---

(PORTFOLIO COMMITTEE ON JUSTICE AND CONSTITUTIONAL DEVELOPMENT)

---

**[B 19—2012]**

ISBN 978-1-77037-969-5

No. of copies printed .....1800



(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 by—

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

“**Defences [and sentencing]**”; and

(b) 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

**MEMORANDUM ON THE OBJECTS OF THE CRIMINAL LAW  
(SEXUAL OFFENCES AND RELATED MATTERS) AMENDMENT  
ACT AMENDMENT BILL, [B19—2012]**

**1. PURPOSE OF BILL**

1.1 On 11 May 2012 the Western Cape High Court, in the case of *Director of Public Prosecutions, Western Cape v Arnold Prins* (case number A134/08), declared that although the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007) (“the Act”), sets out what constitutes crimes, it does not prescribe penalties in some instances. In terms of the judgment charges in respect of the aforementioned offences do not disclose offences and accordingly no successful prosecutions can follow. The judgment has wide-ranging implications as a number of the offences described in Chapters 2, 3 and 4 of the Act do not have penalty provisions. The Director of Public Prosecutions, Western Cape was granted leave, on 24 May 2012, to appeal the judgment to the Supreme Court of Appeal.

1.2 It was decided that while the appeal is pursued as a matter of urgency, legislative amendments should also be promoted.

1.3 The purpose of the Bill is therefore to amend the Act, 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.

**2. OBJECTS OF BILL**

2.1 **Clauses 1 to 3** aim to amend sections 11, 17 and 23 of the Act, respectively, in order to promote consistency with the wording of other provisions of the Act in terms of which various offences have been created.

2.2 **Clause 4** aims to affect consequential amendments to section 56 of the Act by amending the heading thereof and omitting subsection (7) from that section in order to insert that subsection in the proposed new section 56A of the Act.

2.3 **Clause 5** aims to introduce a new section 56A in the Act in order to expressly clarify the intention of the Legislature that the imposition of penalties in respect of certain offences contained in the Act is left to the discretion of the courts within their penal jurisdiction.

**3. DEPARTMENTS/BODIES/PERSONS CONSULTED**

The Portfolio Committee on Justice and Constitutional Development called for and considered written submissions in respect of the Bill.

**4. IMPLICATIONS FOR PROVINCES**

None.

**5. FINANCIAL IMPLICATIONS FOR STATE**

None.

**6. PARLIAMENTARY PROCEDURE**

The Portfolio Committee on Justice and Constitutional Development is of the opinion that the Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.