

CRIMINAL LAW SEXUAL OFFENCES AND RELATED MATTERS ACT 14 OF 2021





What is Gender Based Violence (GBV)?

Gender-based violence (GBV) - UMBRELLA term for any harmful act that is perpetrated against a person's will and that is based on socially ascribed differences between males and females.

Refers to acts that inflict physical, sexual, mental harm, suffering, threats of such acts, coercion, and other deprivations of liberty.

Categories of GBV:

- sexual violence (rape, sexual assault, sexual harassment, trafficking, sexual exploitation),
- physical violence (hitting, slapping, beating),
- emotional violence (psychological and verbal abuse),
- economic violence (restriction of movement, denial of resources),
- harmful traditional practices (child marriage, female genital mutilation, so-called "honour" killings),
- Technological violence- harassment – Cyber Violence (Cyberstalking, revenge porn, harassment, sextortion, grooming, EE trafficking)

Criminal Law Sexual Offences and Related Matters Act 14 of 2021 came into effect on the 5th August 2022 and amends –

- the Criminal Procedure Act, 1977, to further regulate -
 - the granting and cancellation of bail;
 - the giving of evidence by means of closed circuit television or similar electronic media;
 - the giving of evidence by a witness with physical, psychological or mental disability; the appointment,
 - oath and competency of intermediaries; and
 - the right of a complainant in a domestic related offence to participate in parole proceedings
- the Criminal Law Amendment Act, 1997, to further regulate
 - sentences in respect of offences that have been committed against vulnerable persons,
- the Magistrates' Courts Act, 1944 and the Superior Courts Act, 2013,
 - to provide for the appointment of intermediaries and
 - the giving of evidence through intermediaries in proceedings other than criminal proceedings;
 - the oath and competency of intermediaries; and
 - the giving of evidence through audiovisual link in proceedings other than criminal proceedings;



- **Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007**

- 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,

DEFINITIONS

■ Sexual penetration:

- Any act causing penetration to any extent –
 - by genital organs of 1 into or beyond genital organs, anus or mouth of another
 - any other part of body of 1 or any object, incl. any part of body of animal, into or beyond the genital organs or anus of another person OR
 - Genital organs of animal, into or beyond the mouth of another person

■ Genital organs

- Includes whole or part of male & female genital organs, incl. surgically constructed or reconstructed genital organs

■ Sexual violation

- Any act that causes direct or indirect contact
- Genital organs/anus/breasts – 1 with any part of body of another, including object
- Mouth of 1 and Genital organs/anus/breasts of another or mouth of another
- Any other part of body of another which could be used in act of sexual penetration; cause sexual arousal/stimulation; be sexually aroused/stimulated thereby.
- Mouth of complainant & genital organs/anus of animal

- Masturbation of 1 by another
- Insertion of object resembling / representing genital organs of person / animal into / beyond mouth of another

DEFINITION – CONSENT

- Consent = voluntary or uncoerced agreement
- Circumstances when NOT voluntary or uncoerced
 - Complainant submits or is subjected to act by
 - Use of force / intimidation – person / property
 - Threat of harm – person / property
 - Abuse of power / authority – inhibited to indicate unwillingness / resistance
 - Committed under false pretences / fraudulent means
 - Believe A is a particular person but is a different person
 - Sexual act something other than the act
- Incapable of appreciating nature of sexual act
- Asleep, unconscious, under influence
- Under the age of 12, person with mental disability



Note

It is NOT a valid defence for an accused person to contend that a marital or other relationship exists or existed between him or her and the complainant. [section 56(1)]

CHAPTER 2 - SEXUAL OFFENCES

- **Persons 18 years or older: Compelling or causing persons 18 years or older to witness sexual offences, sexual acts or self-masturbation, exposure or display of or causing exposure or display of genital organs, anus or female breasts (“flashing”), child pornography to persons 18 years or older or engaging sexual services of persons 18 years or older**
 - Compelling or causing persons 18 years or older to witness sexual offences, sexual acts or self-masturbation
 - Exposure or display of or causing exposure or display of genital organs, anus or female breasts to persons 18 years or older (“flashing”)
 - Exposure or display of or causing exposure or display of child pornography to persons 18 years or older
 - Engaging sexual services of persons 18 years or older



- **Persons 18 years or older: Harmful disclosure of pornography and orders to protect complainant against harmful effects of disclosure of pornography**
 - Harmful disclosure of pornography
 - Orders to protect complainant against harmful disclosure of pornography pending finalisation of criminal proceedings
 - Electronic communications service provider to furnish particulars to court
 - Orders on finalisation of criminal proceedings



Note

16 – Cybercrime Act – Disclosure of data message of intimate image; Film and Publications Act – prohibitions – disclosure of private sexual photographs and films, also depicting sexual violence & violence against children

- Incest
- Bestiality
- Sexual acts with corpse
- Sexual intimidation

■ **NB: Children over the age of 12 years and under the age of 16 years**

SEXUAL OFFENCES AGAINST CHILDREN

- Consensual sexual acts with certain children
 - Acts of consensual sexual penetration with certain children (statutory rape)
 - Acts of consensual sexual violation with certain children (statutory sexual assault)

CHAPTER 3 – SEXUAL OFFENCES AGAINST CHILDREN

- Sexual exploitation and sexual grooming of children, exposure or display of or causing exposure or display of child pornography or pornography to children, child pornography and using children for pornographic purposes or benefiting from child pornography
- Sexual exploitation of children
- Sexual grooming of children
- Exposure or display of or causing exposure or display of child
- Pornography or pornography to children
- Offences relating to child pornography
- Using children for or benefiting from child pornography
- Compelling or causing children to witness sexual offences, sexual acts or self-



masturbation and exposure or display of or causing exposure or display of genital organs, anus or female breasts (“flashing”) to children

- Compelling or causing children to witness sexual offences, sexual acts or self-masturbation
- Exposure or display of or causing of exposure or display of genital organs, anus or female breasts to children (“flashing”)

CHAPTER 4 - SEXUAL OFFENCES AGAINST PERSONS WITH MENTAL DISABILITIES

- Sexual exploitation and sexual grooming of, exposure or display of or causing exposure or display of child pornography or pornography to persons with mental disabilities and using persons with mental disabilities for pornographic purposes or benefiting there from
- Sexual exploitation of persons with mental disabilities
- Sexual grooming of persons with mental disabilities
- Exposure or display of or causing exposure or display of child pornography or pornography to persons with mental disabilities
- Using persons with mental disabilities for pornographic purposes or benefiting from them

CHAPTER 5 - SERVICES FOR VICTIMS OF SEXUAL OFFENCES AND COMPULSORY HIV TESTING OF ALLEGED SEX OFFENDERS

- Definitions and services for victims of sexual offences
- Services for victims relating to Post Exposure Prophylaxis and compulsory HIV testing of alleged sex offenders
- Designation of public health establishments for purposes of providing Post Exposure Prophylaxis and carrying out compulsory HIV testing
- Application for compulsory HIV testing of alleged sex offender by victim
- Application by victim or interested person for HIV testing of alleged sex offender
- Consideration of application by magistrate and issuing of order
- Application for compulsory HIV testing of alleged offender by investigating officer
- Application by investigating officer for HIV testing of alleged offender



CHAPTER 6 - NATIONAL REGISTER FOR SEX OFFENDERS

- Establishment of National Register for Sex Offenders and designation of Registrar of Register
- Persons whose names must be included in Register and related matters
- Obligations in respect of applications for fostering, kinship caregiving, temporary safe caregiving, adoption of children or curatorship
- Prohibition on certain types of employment by certain persons who have committed sexual offences. Obligations of employers in respect of employees to search and ensure employees are not on the register, Obligations of employees to inform employer if on the register.
- Removal of particulars from Register; Enquiries for purposes of expungement applications in terms of Criminal Procedure Act, 1977
- Access to Register by National Commissioner of South African Police Service
- Obligations of Director General: Home Affairs and Registrar to keep record

DEFINITIONS:

40 – new definition ‘person who is vulnerable’ means a -

- child or a person with a mental disability;
- female under the age of 25 years who-
 - receives tuition at a higher education college, higher education institution or university college as defined in section 1 of the Higher Education Act, 1997 (Act No. 101 of 1997);
 - receives vocational training at any training institute, other than the institutions referred to in subparagraph (i), or as part of their employment; or
 - lives in a building, structure or facility used primarily as a residence for any of the persons referred to in subparagraphs (i) and (ii);
- person who is being cared for or sheltered in a facility that provides services to victims of crime;
- person with a physical, intellectual or sensory disability and who-
 - receives community-based care and support services, other than from a family member for;
 - lives in a building, structure or facility used primarily as a residence for; or
 - is cared for in a facility providing 24-hour care to, persons with physical, intellectual or sensory disabilities; or
- person who is 60 years of age or older and who-
 - receives community-based care and support services, other than from a family member for;
 - lives in a building, structure or facility used primarily as a residence for; or
 - is cared for in a facility providing 24-hour care to, such persons;

Obligation to report commission of sexual offences against vulnerable persons and attempt, conspiracy, incitement or inducing another person to commit sexual offence

- Attempt, conspiracy, incitement or inducing another person to commit sexual offence
- A person who has knowledge, reasonable belief or suspicion that a sexual offence has been committed against a person who is vulnerable as defined in section 40 must report such knowledge, reasonable belief or suspicion immediately to a police official.
- A person who fails to report such knowledge, reasonable belief or suspicion is guilty of an offence and is liable on conviction to a fine or to imprisonment for a period not exceeding five years or to both a fine and such imprisonment.
- A person who in good faith reports such reasonable belief or suspicion shall not be liable to any civil or criminal proceedings by reason of making such report.

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