

**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.

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

**P**ARLIAMENT 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.” 15

**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 5  
(1) of the following subsection:

“(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 10  
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 person who is mentally disabled.”.

#### **Amendment of section 56 of Act 32 of 2007**

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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**

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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 25  
this Act; and

(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 35  
any favour, benefit, reward, compensation or any other advantage; or

(b) gained financially, or received any favour, benefit, reward, compensa-  
tion 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) 40  
Amendment Act Amendment Act, 2012.