

THE NATIONAL REGISTER FOR SEX OFFENDERS

Chapter 6 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, Amendment 13 of 2021

NATIONAL REGISTER FOR SEX OFFENDERS (NRSO) AIMS TO STOP SPATE OF INCIDENTS AGAINST VULNERABLE PERSONS

- The National Register for Sex Offenders (NRSO) was established in 2007.
- It is a record of particulars of individuals found guilty of a sexual offence against vulnerable persons.
- The Register gives employers in the public or private sectors such as schools; crèches and hospitals the right to check that the person being hired is fit to work with against vulnerable persons.

WHY DO WE NEED IT?

South Africa needs a register to curb the high prevalence of sexual offences against vulnerable person, by registering on the NRSO all the particulars of convicted sexual offenders.

WHAT IS SEXUAL ASSAULT?

- A sexual assault occurs when a person sexually violates another person without their consent/permission.
- A sexual act involves penetration or an act of sexual violation.
- All sexual offences against vulnerable persons are placed on the Register.

WHAT OFFENCES ARE COVERED IN THE ACT?

The principal Act expanded the definition of rape to include all forms of sexual penetration without consent, irrespective of gender and age.

The amended sexual Offences Act, 13 of 2021 introduces additional sexual offences:

- Rape
- Compelled rape
- Sexual assault
- Compelled sexual assault
- Sexual grooming
- Child pornography
- Child prostitution
- Flashing
- Bestiality
- Incest
- Sexual Intimidation

WHO ARE VULNERABLE PERSONS?

- child or a person with a mental disability;
- female under the age of 25 years who receives tuition at an institution of higher learning or receives vocational training at any training institute, or as part of their employment; or lives in a students' residence;
- person who is being cared for in a shelter that provides services to victims of crime;
- person with physical, intellectual or sensory disability, who receives community-based care and support services, other than from a family member, from a facility or lives in such facility to receive such services; and
- an older person who receives community-based care and support services, other than from a family member, or lives in facility or building to receive such care and services.

SEXUAL OFFENCES COURT

Special courts have been set up around the country with safety and comfort at the heart of justice for vulnerable persons and victims of sexual offences. To make victims feel safer, toys are provided, as well as a television (one way mirror) to get testimony in a manner that a vulnerable person can feel comfortable.

REMOVAL

Q: How can a person's name be removed from the Register?

A: The Amendment Act has extended periods in which particulars of a sex offender remain in the Register. The removal of particulars is made upon application to the Registrar of the NRSO. The prescribed forms are available at www.justice.gov.za.

Q: What time period must elapse before one can apply for removal of name from the Register?

A: Periods to qualify for the removal of particulars from the Register have been doubled: the particulars of a person— (a) who—:

- i. has been sentenced for a conviction of a sexual offence to a term of imprisonment, periodical imprisonment, correctional supervision or to imprisonment as contemplated in section 276(1)(i) of the Criminal Procedure Act, 1977, without the option of a fine for a period of at least six months but not exceeding eighteen months, whether the sentence was suspended or not, may, on application, be removed from the Register after a period of 20 years has lapsed after that person has been released from prison or the period of suspension has lapsed;
- ii. has been sentenced for a conviction of a sexual offence to a term of imprisonment, periodical imprisonment, correctional supervision or to imprisonment as contemplated in section 276(1) (i) of the Criminal Procedure Act, 1977, without the option of a fine for a period of six months or less, whether the sentence was suspended or not, may, on application, be removed from the Register after a period of 14 years has lapsed after that person has been released from prison or the period of suspension has lapsed; or is alleged to have committed a sexual offence in respect of whom a court, whether before or after the commencement of this Chapter, has made a finding and given a direction in terms of section 77(6) or 78(6) of the Criminal Procedure Act, 1977, may, on application, be removed from the Register after a period of ten years has lapsed after such person has recovered from the mental illness or mental defect in question and is discharged in terms of the Mental Health Care Act, 2002 (Act No. 17 of 2002), from any restrictions imposed on him or her; or who has been sentenced for a conviction of a sexual offence to any other form of lesser punishment or court order may, on application, be removed from the Register after a period of ten years has lapsed since the particulars of that person were included in the Register.

Q: What happens in the case of a lesser punishment?

A: Where the offender has been sentenced to any other form of lesser punishment or court order, the offender may apply to be removed from the Register after ten (10) years has lapsed since the particulars of that person were included in the Register.

Q: What happens if the offender has two or more convictions?

A: The Act still prohibits the removal of particulars of a registered sex offender from the Register if such convicted sex offender is sentenced to an imprisonment of 18 months and more, or is a repeat convicted sexual offender.

Q: What happens to an offender who has been declared a state patient in terms of the Criminal Procedure Act?

A: if an offender has been declared a patient of a Judge in Chambers as a result of allegedly committing a sexual offence against a vulnerable person, the offender may apply to be removed from the Register after a period of five (5) has lapsed after such person has recovered from the mental illness or mental defect in question and is discharged.

However, this would depend on a successful review based from the Register and the patient must not have any other case or charge relating to a sexual offence against a vulnerable person. The finalization of the application must be postponed until the Registrar is has received information on the outcome of the investigation or case.

Q: What happens if ones name gets onto the Register in error?

A: That person may apply to the Registrar to have his or her particulars removed from the Register, if the Registrar is satisfied that the entry of those particulars in the Register was clearly in error.

EXPUNGEMENT

Q: What does expungement of a criminal record mean?

A: Simply, expungement of a criminal record means to remove something completely, especially from a written record. For all practical purposes the offence can be handled as if it never happened. Legally you do not have to declare the offence unless asked.

Q: What are the circumstances under which a criminal record can be expunge?

- A:**
- If 10 years has lapsed after the date of the conviction for that offence.
 - If the person has not been convicted of any other offence and sentenced to a period of imprisonment without the option of a fine during those 10 years.
 - If the fine imposed did not exceed R 20000.
 - Was not convicted of a sexual offence against a child or a person who is mentally disabled, and whose name is not included in the National Register for Sex Offenders.
 - Was not found unsuitable to work with children by a Court and his/her name is not included in the National Child protection register.
 - He or she was convicted of an offence which would not be regarded as an offence in an open and Democratic society based on human dignity equality and freedom under the democratic constitutional dispensation.

Q: What is the process towards applying for an expungement?

A: Before submitting an application for expungement of a conviction, a clearance certificate (SAPS 365) obtained from the Criminal Record Centre of the South African Police Service (CRC) showing 10 years has lapsed after the conviction(s) and sentence(s). Officials at your nearest police station may be of assistance in this regard or you may contact the CRC at 012 393 3797 for assistant.

Q: Does one apply to the Register as well?

A: The clearance certificate must accompany the application. If the person's name has been included in the National Register for Sex Offenders, a confirmation must be obtained from the Registrar that his or her name has been removed from the register.

Q: What happens if an offender's name is in the Social Development Register?

A: The offender must also apply to Social Development for removal from its register. The confirmation or a certified true copy of the confirmation must be attached to the application. If the person's name has been included in the National Child Protection Register, a confirmation must be obtained from the Director General: Social Development that his or her name has been removed from the Register. The confirmation or a certified true copy of the confirmation must be attached to the application.

Q: What is the difference between NRSO and the Social Development Register?

A: The NRSO contains names of offenders against Vulnerable Persons while the Social Development Register lists offenders of all forms of child abuse.



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