

THE NATIONAL REGISTER FOR SEX OFFENDERS



Chapter 6 of Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act 32 of 2007), established the National Register for Sexual Offenders

National Register for Sex Offenders (NRSO) aims to stop spate of incidents against children and mentally disabled people

- The NRSO was established by an Act of Parliament in 2007.
- It is a record of names of those found guilty of sexual offences against children and mentally disabled people.
- 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 children or mentally disabled people.

Why do we need it?

South Africa needs a register to curb the high prevalence of sexual offences against children and mentally disabled persons, by registering all the details of convicted sexual offenders.



What is sexual assault?

- A sexual assault is when someone touches another person without permission.
- A sexual act involves penetration or an act of sexual violation.
- Having sex without permission is known as rape.
- All sexual offences against a child and people who are mentally disabled are placed on the Register.

What offences are covered in the Act?

The Act expands the definition of rape to include all forms of sexual penetration without consent, irrespective of gender and age. It lists new sexual offences against children and mentally disabled persons; such as:

- * Sexual grooming;
- * Exposure to pornography;
- * Creation of child pornography;
- * Flashing;
- * Causing children to witness sexual assault.

Reporting an offence to the police

- Go to the police**
 - Go to your nearest police station
 - You can ask a friend or a family member to go with you
- Fill out a statement**
 - The police will take down everything you tell them in the form of a statement.
 - You are allowed to make changes to the statement.
- Get a case number**
 - Do not forget to get a case number from the police officer
 - This number will be used to keep you informed of what's happening
- Medical Examination**
 - When reporting to the police, he/she may ask for a medical person to carry out an examination.
 - The findings will be included in your case file.
- Contact Details**
 - Don't forget to give the police officer all your contact details: address, telephone numbers.
 - Even when you move, inform the police so that they can keep you informed.



Child-friendly Sexual Offences Court

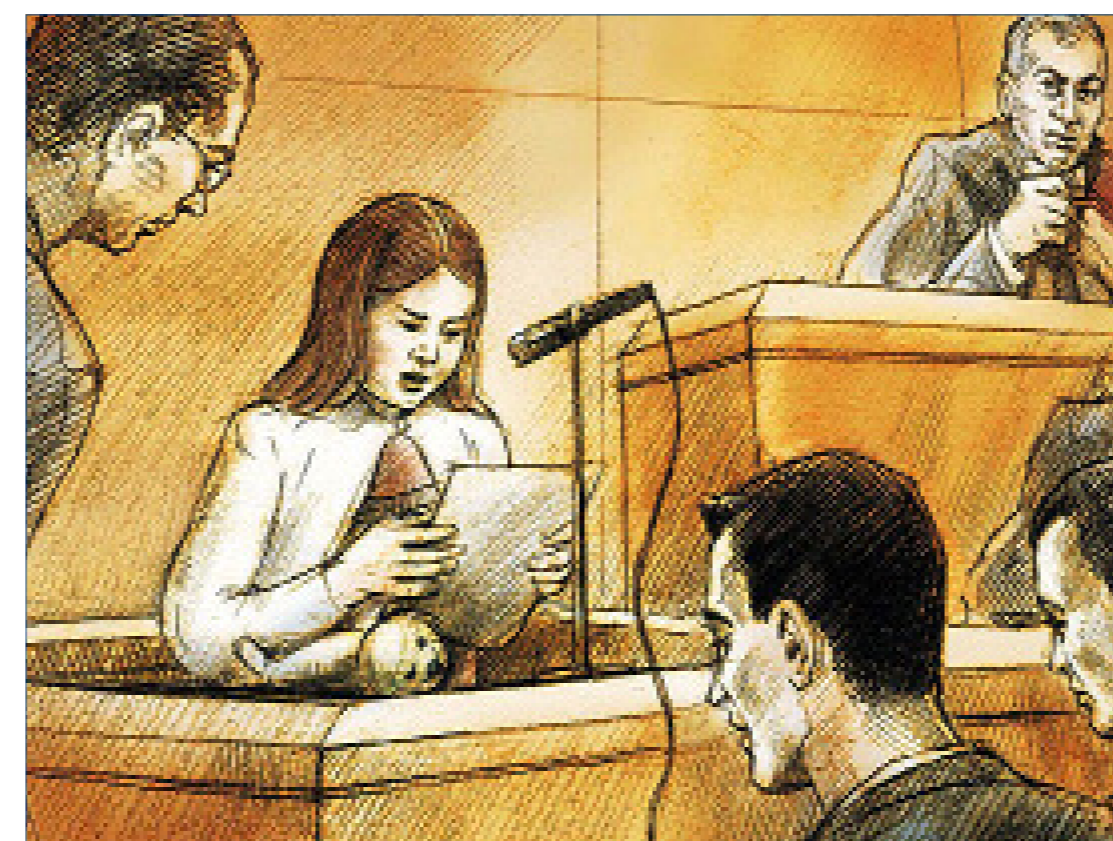
Special child-friendly courts have been set up around the country with safety and comfort at the heart of justice for children and victims of sexual offences. To make victims feel safer, toys are provided, as well as a television (one way mirror) to get testimony in a manner that makes the child comfortable.

What are the obligations of employers?

- The law requires all organisations working with children and mentally disabled persons, to take steps to prevent workers whose names are in the register from working with children or a person who is mentally disabled.
- Employers in public or private sectors such as the medical or education sector at schools and crèches can check that the person being hired is fit to work with children or mentally disabled people.
- Offenders are not allowed to apply for foster care or adoption, and any processes related to the supervision of children and mentally disabled person.

What must an employer do if a staff member's name is on the Register?

If an employer at any time finds out that the name of an employee appears in the Register, the employer must immediately terminate the employment of the worker, unless the person can be moved to another post which will not bring the worker into contact with a child or a person who is mentally disabled.



What does the Register expect of employees?

Honesty! An employee found guilty of a sexual offence against a child or a person who is mentally disabled must tell an employer about the ruling. In terms of the Criminal Procedure Act, the employee must tell his/her new employer about the court decision when applying for a job. Not telling an employer about a court decision in respect of a sexual offence could lead to one getting a fine or imprisonment, or both. A person who does not reveal that he/she has been found guilty of an offence and applies for permission to run a business or organisation working with children or mentally disabled persons is breaking the law.

Removal

- Q:** How can a person's name be removed from the register?
- A:** A person's name can be taken out if convicted for a period not more than 18 months, however, if that person is found guilty of an offence longer than 18 months, then the name may not be removed.
- Q:** What time period must elapse before one can apply for removal of name from the register?
- A:** Certain sex offenders can have their names removed from the Register after time has elapsed. The length of the period depends on the original sentence that was imposed. The categories are as follows:
Six to 18 months - Where the offender was sentenced to a term of imprisonment, periodical imprisonment, correctional supervision or to imprisonment according to the law, without the option of a fine for at least six months but not more than 18 months, whether the sentence was suspended or not, the offender may apply to be removed from the Register after 10 years has lapsed after that person has been released from prison or the period of suspension has lapsed.
Under 6 months - If the offender has been sentenced to a term of imprisonment, periodical imprisonment, correctional supervision or to imprisonment without the option of a fine for a period of six months or less, whether the sentence was suspended or not, the offender may apply to be removed from the Register after seven years has lapsed following the person's release from prison or the period of suspension has lapsed.
- Q:** What happens in the case of a lesser punishment for an offence?
- 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 five years has lapsed since the particulars of that person were included in the Register.
- Q:** What happens if an offender's punishment was more than 18 months?
- A:** If punishment exceeded 18 months, and the offender has been sentenced to a term of imprisonment, periodical imprisonment, correctional supervision or to imprisonment, without the option of a fine for more than 18 months, whether the sentence was suspended or not, may not be removed from the Register.
- Q:** What happens if someone has two or more convictions?
- A:** If an offender has two or more convictions of a sexual offence against a child or a person who is mentally disabled, the offender may not be removed from the Register.
- Q:** What happens to an offender who has been declared a states 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 child or a person who is mentally disabled, the offender may apply to be removed from the Register after a period of five years 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 Registrar and the patient must not have any other case or charge relating to a sexual offence against a child or mentally disabled person. The finalisation of the application must be postponed until the Registrar has received information on the outcome of the investigation or case.
- Q:** What happens if one's name gets onto the list 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.

Expungements

- 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 expunged?
- 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 criminal 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 showing 10 years has elapsed after the conviction(s) and sentence(s), must be obtained from the Criminal Record Centre of the South African Police Service.
- Q:** Does one apply to the Registrar 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 children and mentally disabled people while the Social Development Register lists offenders of all forms of child abuse.

For more information contact:

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