

Please note that most Acts are published in English and another South African official language. Currently we only have capacity to publish the English versions. This means that this document will only contain even numbered pages as the other language is printed on uneven numbered pages.



STAATSKOERANT

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KANTOOR VAN DIE STAATSPRESIDENT

STATE PRESIDENT'S OFFICE

No. 413.

4 Maart 1988

No. 413.

4 March 1988

Hierby word bekend gemaak dat die Staatspresident sy goedkeuring gegee het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

It is hereby notified that the State President has assented to the following Act which is hereby published for general information:—

■o. 2 van 1988: Ontugwysingswet, 1988.

No. 2 of 1988: Immorality Amendment Act, 1988.

GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

_____ Words underlined with solid line indicate insertions in existing enactments.

ACT

To amend the Immorality Act, 1957, so as to rectify certain obsolete expressions; to increase the maximum fines which may be imposed for certain contraventions in terms of the said Act; to extend the prohibition on a parent or guardian from procuring the defilement of his daughter so that it shall apply in respect of all his children, and to create a presumption in this connection; to make other provision in connection with the offence of assistance for the purposes of unlawful carnal intercourse, and the presumption concomitant therewith; to adapt and extend the provisions relating to sexual offences by a male with youths so that they shall also apply to a female; to extend the prohibition of sexual acts with female idiots or imbeciles so that it shall also apply in respect of male idiots or imbeciles; and to make it an offence for a person to have unlawful carnal intercourse, or to commit an act of indecency, with any other person for reward; and to provide for matters connected therewith.

(English text signed by the State President.)
(Assented to 25 February 1988.)

BE IT ENACTED by the State President and the Parliament of the Republic of South Africa, as follows:—

1. Section 1 of the Immorality Act, 1957 (hereinafter referred to as the principal Act), is hereby amended by the substitution for the definition of "court" of the following definition:
- "court" means the court [or jury] before [whom] which the charge is brought;".
- Amendment of section 1 of Act 23 of 1957, as amended by section 1 of Act 72 of 1985.
2. Section 8 of the principal Act is hereby amended—
- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:
- "If it appears to any magistrate on sworn information laid before him by not less than two householders of good repute that any house or place in the vicinity of the dwellings of such householders is being kept or used as a brothel or on similar information upon oath laid before him by any police officer not below the rank of sergeant, or by a welfare officer employed by [the Department of Social Welfare] a department of State responsible for Health and Welfare, a local authority or a welfare organization registered under the [Welfare Organizations Act, 1947 (Act No. 40 of 1947)] National Welfare Act, 1978 (Act No. 100 of 1978), the magistrate may—";
- Amendment of section 8 of Act 23 of 1957, as amended by section 1 of Act 68 of 1967.

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(b) by the substitution for subsection (2) of the following subsection:

5 “(2) Any person found in or upon such house or place who, when called upon to do so by the police officer conducting the search, refuses to furnish his name and address or furnishes a name or address which is false in any material particular or refuses to disclose the name or identity of the keeper of such house or 10 place or to produce any book, receipt, paper, document or thing which he has in his possession or custody or under his control, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding [two hundred rand] R1 000 and in default of payment to imprisonment for a period not exceeding six 15 months.”; and

(c) by the substitution in the Afrikaans text of subsection (3) for the word “magistraat” of the word “landdros”.

3. Section 9 of the principal Act is hereby amended—

Amendment of section 9 of Act 23 of 1957.

20 (a) by the substitution for subsection (1) of the following subsections:

“(1) Any person who, being a parent or guardian of any [female] child under the age of 18 years—

25 (a) permits, procures or attempts to procure such [female] child to have unlawful carnal intercourse, or to commit any immoral or indecent act, with any person other than the procurer, or to reside in or to frequent a brothel; or

30 (b) orders, permits, or in any way assists in bringing about, or receives any consideration for, the defilement, seduction or prostitution of such [female] child,
shall be guilty of an offence.

35 (1A) For the purposes of subsection (1) (b) a parent or guardian whose child has been defiled or seduced or has become a prostitute, shall be deemed to have assisted in bringing about that defilement, seduction or prostitution if he has knowingly permitted his child to consort with, or to continue in the employment of, a prostitute or a person with an immoral reputation.”; and

40 (b) by the substitution for subsection (2) of the following subsection:

“(2) The term ‘guardian’ in this section includes any person who has in law or in fact the custody or control of the [female] child.”.

45 4. Section 12A of the principal Act is hereby amended—

Amendment of section 12A of Act 23 of 1957, as inserted by section 2 of Act 68 of 1967.

(a) by the substitution for subsection (1) of the following subsection:

50 “(1) Any person who, with intent or while he reasonably ought to have foreseen the possibility that any [female, whether a particular female or not, be unlawfully carnally known by any male] person may have unlawful carnal intercourse, or commit an act of indecency, with any other person for reward, performs for reward any act [or does anything or furnishes any information] which is calculated [or likely] to enable such [male] other person to communicate with [or to establish the whereabouts of or to trace] any such [female] person,
55 shall be guilty of an offence.”; and

(b) by the deletion of subsection (2).

60 5. The following section is hereby substituted for section 14 of the principal Act:

Substitution of section 14 of Act 23 of 1957.

“Sexual offences with youths.

14. (1) Any male person who—
(a) has or attempts to have unlawful carnal intercourse with a girl under the age of [sixteen] 16 years; or

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- (b) commits or attempts to commit with such a girl or with a boy under the age of [nineteen] 19 years an immoral or indecent act; or
 - (c) solicits or entices such a girl or boy to the commission of an immoral or indecent act, shall be guilty of an offence.
- (2) It shall be a sufficient defence to any charge under [this section] subsection (1) if it shall be made to appear to the court—
- (a) that the girl at the time of the commission of the offence was a prostitute, that the person so charged was at the said time under the age of [twenty-one] 21 years and that it is the first occasion on which he is so charged; or
 - [(b) that the person so charged was at the said time under the age of sixteen years if the offence was committed in respect of a girl; or
 - (bA) that the person so charged was at the said time under the age of nineteen years if the offence was committed in respect of a boy; or]
 - (c) that the girl or person in whose charge she was, deceived the person so charged into believing that she was over the age of [sixteen] 16 years at the said time.
- (3) Any female who—
- (a) has or attempts to have unlawful carnal intercourse with a boy under the age of 16 years; or
 - (b) commits or attempts to commit with such a boy or with a girl under the age of 19 years an immoral or indecent act; or
 - (c) solicits or entices such a boy or girl to the commission of an immoral or indecent act, shall be guilty of an offence.
- (4) It shall be a sufficient defence to any charge under subsection (3) if it shall be made to appear to the court—
- (a) that the boy at the time of the commission of the offence was a prostitute, that the person so charged was at the said time under the age of 21 years and that it is the first occasion on which she is so charged; or
 - (b) that the boy or person in whose charge he was, deceived the person so charged into believing that he was over the age of 16 years at the said time.”.

6. The following section is hereby substituted for section 15 of the principal Act:

Substitution of section 15 of Act 23 of 1957.

- “Sexual offences with idiots or imbeciles.
15. Any person who—
- (a) has or attempts to have unlawful carnal intercourse with any male or female idiot or imbecile in circumstances which do not amount to rape; or
 - (b) commits or attempts to commit with such a male or female any immoral or indecent act; or
 - (c) solicits or entices such a male or female to the commission of any immoral or indecent act, shall, if it be proved that such person knew that such male or female was an idiot or imbecile, be guilty of an offence.”.

7. Section 20 of the principal Act is hereby amended—

Amendment of section 20 of Act 23 of 1957.

- (a) by the insertion after paragraph (a) of subsection (1) of the following paragraph:

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“(aA) has unlawful carnal intercourse, or commits an act of indecency, with any other person for reward; or”; and

5 (b) by the substitution for subsection (2) of the following subsection:

10 “(2) If it is made to appear to a magistrate by information on oath that there is reason to suspect that any house is used [by a female] for purposes of prostitution and that any person residing in or frequenting the house is living wholly or in part on the earnings of [the prostitute] prostitution, the magistrate may issue a warrant authorizing any police officer not below the rank of sergeant to enter and search the house and to arrest that person.”

15 8. Section 21 of the principal Act is hereby amended by the substitution for subsection (4) of the following subsection:

20 “(4) Whenever in any prosecution for an offence under section 12A it is proved—

(a) that the accused has performed any act [or has done anything or has furnished any information] for reward which was calculated [or likely] to enable any [male] person to communicate with [or to establish the whereabouts of or to trace] any [female] other person who [the accused had reason to believe to be] is a prostitute;

25 or
(b) that the other person with whom communication was made as a result of such act has had unlawful carnal intercourse, or has committed an act of indecency, with such person for reward,

30 the accused shall be presumed to have performed such act [or to have done such thing or to have furnished such information, as the case may be] with intent or while he reasonably ought to have foreseen the possibility that such [female be unlawfully carnally known by such male] other person may have unlawful carnal intercourse, or commit an act of indecency, with such person for reward unless the contrary is proved beyond reasonable doubt.”

Amendment of section 21 of Act 23 of 1957, as amended by section 3 of Act 68 of 1967 and section 3 of Act 72 of 1985.

40 9. Section 22 of the principal Act is hereby amended—

(a) by the substitution for paragraph (a) of the following paragraph:

45 “(a) in the case of an offence referred to in section 2 or 20 (1) (a) or (aA), to imprisonment for a period not exceeding three years with or without a fine not exceeding [six hundred rand] R6 000 in addition to such imprisonment;”;

(b) by the substitution for paragraph (b) of the following paragraph:

50 “(b) in the case of an offence referred to in section 9 (1), to imprisonment for a period not exceeding five years, or, if the [female] child concerned is a boy under the age of 14 years or a girl under the age of [twelve] 12 years, for life;”;

(c) by the substitution for paragraph (c) of the following paragraph:

55 “(c) in the case of an offence referred to in section 10, to imprisonment for a period not exceeding [five] seven years;”;

(d) by the substitution for paragraph (f) of the following paragraph:

60 “(f) in the case of an offence referred to in section 14 (1), 14 (3), 15 or 17, to imprisonment for a period not exceeding six years with or without a fine not

Amendment of section 22 of Act 23 of 1957, as substituted by section 4 of Act 68 of 1967 and amended by section 4 of Act 57 of 1969 and section 4 of Act 72 of 1985.

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- exceeding **[one thousand rand]** R12 000 in addition to such imprisonment;"; and
- (e) by the substitution for paragraph (g) of the following paragraph:
- 5 “(g) in the case of an offence referred to in section 18A, 19, 20 (1) (b) or (c), or 20A (1), to a fine not exceeding **[four hundred rand]** R4 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.”.
- 10 **10.** The following section is hereby substituted for section 25 of the principal Act: Substitution of section 25 of Act 23 of 1957.
- “Short title. **25.** This Act shall be called the **[Immorality] Sexual Offences Act, 1957.**”.
- 11.** This Act shall be called the Immorality Amendment Act, Short title.
15 1988.