

REPUBLIC OF SOUTH AFRICA

PRESCRIPTION IN CIVIL AND CRIMINAL MATTERS (SEXUAL OFFENCES) AMENDMENT BILL

*(As introduced in the National Assembly (proposed section 75); explanatory summary of
Bill and prior notice of its introduction published in Government Gazette No. 42854
of 22 November 2019)
(The English text is the official text of this Bill)*

(MINISTER OF JUSTICE AND CORRECTIONAL SERVICES)

[B 22—2019]

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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.

BILL

To amend the Prescription Act, 1969, so as to extend the list of sexual offences in respect of which prescription does not commence to run under certain circumstances regarding a debt that is based on the alleged commission of any of those sexual offences; to amend the Criminal Procedure Act, 1977, so as to extend the list of sexual offences in respect of which a prosecution may be instituted after a period of 20 years has lapsed since the date of the alleged commission of the sexual offence; and to provide for matters connected therewith.

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

Amendment of section 12 of Act 68 of 1969, as amended by section 1 of Act 11 of 1984, section 68 of Act 32 of 2007 and section 48 of Act 7 of 2013

1. Section 12 of the Prescription Act, 1969, is hereby amended by the substitution for subsection (4) of the following subsection: 5

“(4) (a) Prescription shall not commence to run in respect of a debt that is based on the alleged commission of—

(i) **[an alleged sexual offence as contemplated in sections 3, 4, 17, 18(2), 20(1), 23, 24(2) and 26(1) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007,]** any sexual offence in terms of the common law or a statute; and 10

(ii) an **[alleged]** offence as provided for in sections 4, 5[,] and 7 and involvement in these offences as provided for in section 10 of the Prevention and Combating of Trafficking in Persons Act, 2013, 15

during the time in which the creditor is unable to institute proceedings because of his or her mental or **[psychological condition]** intellectual disability, disorder or incapacity.

(b) Paragraph (a)(i) is deemed to have come into operation on 27 April 1994.”.

Amendment of section 13 of Act 68 of 1969, as amended by section 11 of Act 139 of 1992 20

2. Section 13 of the Prescription Act, 1969, is hereby amended by the substitution in subsection (1) for paragraph (a) of the following paragraph:

“(a) the creditor is a minor or is **[insane]** a person with a mental or intellectual disability, disorder or incapacity, or is a person under curatorship or is 25 prevented by superior force including any law or any order of court from interrupting the running of prescription as contemplated in section 15(1); or”.

Substitution of section 18 of Act 51 of 1977, as substituted by section 68 of Act 32 of 2007 and amended by section 48 of Act 7 of 2013 and section 8 of Act 8 of 2017

3. The following section is hereby substituted for section 18 of the Criminal Procedure Act, 1977:

“Prescription of right to institute prosecution

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18. (1) The right to institute a prosecution for any offence, other than [the offences of]—

- (a) murder;
- (b) treason committed when the Republic is in a state of war;
- (c) robbery, if aggravating circumstances were present;
- (d) kidnapping;
- (e) child-stealing;
- (eA) the—
 - (i) common law offence of bribery;
 - (ii) the offence referred to in section 1 of the Corruption Act, 1994 (Act No. 92 of 1994); or
 - (iii) offences referred to in Parts 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004);
- (f) **[rape or compelled rape as contemplated in section 3 or 4 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, respectively]** any sexual offence in terms of the common law or statute;
- (g) genocide, crimes against humanity and war crimes, as contemplated in section 4 of the Implementation of the Rome Statute of the International Criminal Court Act, 2002;
- (h) any contravention of section 4, 5 or 7 and involvement in these offences as provided for in section 10 of the Prevention and Combating of Trafficking in Persons Act, 2013 (Act No. 7 of 2013);
- [(hA) trafficking in persons for sexual purposes by a person as contemplated in section 71(1) or (2) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007;**
- (i) **using a child or person who is mentally disabled for pornographic purposes as contemplated in sections 20(1) and 26(1) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007;**]
- (j) torture as contemplated in section 4(1) and (2) of the Prevention and Combating of Torture of Persons Act, 2013 (Act No. 13 of 2013), shall, unless some other period is expressly provided for by law, lapse after the expiration of a period of 20 years from the time when the offence was committed.

(2) Subsection (1)(f) is deemed to have come into operation on 27 April 1994.”.

Short title

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4. This Act is called the Prescription in Civil and Criminal Matters (Sexual Offences) Amendment Act, 2019.