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REPUBLIC OF SOUTH AFRICA
IRIPHABLIKHI YOMZANTSI-AFRIKA

Vol. 619 Cape Town, 19 January 2017 **No. 40564**
Kaapstad,

THE PRESIDENCY

No. 42 19 January 2017

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

Act No. 17 of 2016: Children's Amendment Act, 2016

IHHOVISI LIKAMONGAMELI

No. 42 19 January 2017

Ngaloku kwaziswa ukuthi uMongameli usewuvumile loMthetho nosewuzoshicilelwa umphakathi:—

Ino. 17 Ka 2016: uMthetho oChibiyela amaLungelo abaNtwana, 2016



AIDS HELPLINE: 0800-0123-22 Prevention is the cure

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.

(English text signed by the President)
(Assented to 18 January 2017)

ACT

To amend the Children's Act, 2005, so as to insert certain definitions; to provide that a person convicted of certain offences be deemed unsuitable to work with children; to afford a child offender an opportunity to make representations as to why a finding of unsuitability to work with children should not be made; to provide that the National Commissioner of the South African Police Service must forward to the Director-General all the particulars of persons found unsuitable to work with children; to provide for a child offender to apply in the prescribed manner to have their particulars removed from the Register; to provide for the review of a decision to remove a child without a court order; to extend the circumstances as to when a child is adoptable; to extend the effects of an adoption order by providing that an adoption order does not automatically terminate all parental responsibilities and rights of a parent of a child when an adoption order is granted in favour of the spouse or permanent domestic life-partner of that parent; and to provide for matters connected therewith.

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

Amendment of section 1 of Act 38 of 2005, as amended by section 3 of Act 41 of 2007

1. Section 1 of the Children's Act, 2005 (hereinafter referred to as the principal Act), is hereby amended—

(a) by the insertion after the definition of "commissioning parent" of the following definition:

"**'Constitution'** means the Constitution of the Republic of South Africa, 1996;" and

- (b) by the insertion after the definition of “sexual abuse” of the following definition:

“**‘sexual offence’** means sexual offence as defined in the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007), and any offence of a sexual nature in any other law;”.

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Amendment of section 120 of Act 38 of 2005

2. Section 120 of the principal Act is hereby amended—

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

“(1A) The provisions of subsection (1)(c) are not applicable to a person who was a child at the time of the commission of the alleged offence.”;

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- (b) by the substitution for subsection (4) of the following subsection:

“(4) In criminal proceedings, subject to the provisions of subsection (4A), a person must be **[found]** deemed unsuitable to work with children—

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- (a) on conviction of murder, **[attempted murder,]** rape, indecent assault or any sexual offence contemplated in the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007), assault with the intent to do grievous bodily harm **[with regard to a child]**, where a child is the victim of any such offence, or any attempt to commit any such offence, or possession of child pornography as contemplated in section 24B of the Films and Publications Act, 1996 (Act No. 65 of 1996), or offences in terms of section 8, 9, 10 or 24A(5) of the Prevention and Combating of Trafficking in Persons Act, 2013 (Act No. 7 of 2013); or

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- (b) if a court makes a finding and gives a direction in terms of section 77(6) or 78(6) of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), that the person is by reason of mental illness or mental defect not capable of understanding the proceedings so as to make a proper defence or was by reason of mental illness or mental defect not criminally responsible for the act which constituted **[murder, attempted murder, rape, indecent assault or assault with the intent to do grievous bodily harm with regard to a child]** an offence contemplated in paragraph (a).”;

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- (c) by the insertion after subsection (4) of the following subsection:

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“(4A) If a court has, in terms of this Act or any other law, convicted a person of an offence referred to in subsection (4)(a) and such a person was a child at the time of the commission of such offence, or if a court has made a finding and given a direction referred to in subsection (4)(b) in respect of such person who was a child at the time of the alleged commission of the offence, the court may not make an order as contemplated in subsection (4)(a) unless—

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- (a) the prosecutor has made an application to the court for such an order;
- (b) the court has considered a report by the probation officer referred to in section 71 of the Child Justice Act, 2008, which deals with the probability of committing an offence contemplated in subsection (4), against a child;
- (c) the person concerned has been given the opportunity to address the court as to why his or her particulars should not be included in the Register; and
- (d) the court is satisfied that substantial and compelling circumstances exist based upon such report and any other evidence, which justify the making of such an order.

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- (4B) In the event that a court finds that substantial and compelling circumstances exist which justify the making of an order as contemplated in subsection (4), the court must enter such circumstances on the record of the proceedings.”; and
- (d) by the substitution for subsection (5) of the following subsection: 5
- “(5) Any person who has been convicted of an offence contemplated in subsection (4)(a), whether committed in or outside the Republic during the five years preceding the commencement of this Chapter, is deemed to be unsuitable to work with children unless such person was a child at the time of the commission of the offence.”. 10

Amendment of section 122 of Act 38 of 2005

3. Section 122 of the principal Act is hereby amended by the insertion after subsection (1) of the following subsection:

- “(1A) The National Commissioner of the South African Police Service must, in the prescribed manner, forward to the Director-General all the particulars of persons referred to in section 120(4) and (5) and of any criminal conviction contemplated in section 120(4A).”.

Amendment of section 128 of Act 38 of 2005

4. Section 128 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection: 20

- “(1) A person whose name appears in Part B of the Register, or a person who was under the age of 18 years when he or she committed the offence in respect of which the finding was made, may in terms of subsection (2) apply for the removal of his or her name and any information relating to that person from the Register.”.

Amendment of section 150 of Act 38 of 2005

5. Section 150 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words: 25
- “(1) A child is in need of care and protection if **[the] such a child—**”; 30
- and
- (b) by the substitution in subsection (1) for paragraph (a) of the following paragraph: 35
- “(a) has been abandoned or orphaned and **[is without any visible means of support]** does not have the ability to support himself or herself and such inability is readily apparent;”.

Insertion of section 152A in Act 38 of 2005

6. The following section is hereby inserted in the principal Act after section 152:

“Review of decision to remove child without court order

152A. (1) When a matter contemplated in section 152(2)(c) is brought before court the presiding officer may—

- (a) if he or she is satisfied, after considering all relevant information, that the police official or designated social worker, in removing the child, has satisfied the provisions of section 152(1), issue an order confirming the removal of the child; or 40
- (b) if he or she is not satisfied that the police official or designated social worker, in removing the child, has satisfied the provisions of section 152(1), issue an order setting aside the removal and placement of the child. 45
- (2) Where the court has issued an order contemplated in—
- (a) subsection (1)(a) the presiding officer may, in addition, issue an order contemplated in section 151(2); or 50

- (b) subsection (1)(b) the presiding officer may, in addition, order that the child be returned to its parent, guardian or care giver, as the case may be, or order that the question of whether the child is in need of care and protection be referred to a designated social worker for an investigation contemplated in section 155(2).”.

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Amendment of section 155 of Act 38 of 2005

7. Section 155 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

- “(1) A children’s court must decide the question of whether a child who was the subject of proceedings in terms of section 47, 151, 152, 152A or 154 is in need of care and protection.”.

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Amendment of section 159 of Act 38 of 2005

8. Section 159 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

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“An order made by a children’s court in terms of section 156, except an order contemplated in section 46(1)(c)—”; and

- (b) by the substitution for subsection (3) of the following subsection:

“(3) **[No]** Subject to section 176(2), a court order referred to in subsection (1) [extends] may not extend beyond the date on which the child in respect of whom it was made reaches the age of 18 years.”.

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Amendment of section 230 of Act 38 of 2005

9. Section 230 of the principal Act is hereby amended by the deletion in subsection (3) of the word “or” at the end of paragraph (d) and the addition of the following paragraphs:

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- “(f) the child is the stepchild of the person intending to adopt; or
(g) the child’s parent or guardian has consented to the adoption unless consent is not required.”.

Amendment of section 242 of 38 of 2005

10. Section 242 of the principal Act is hereby amended by the deletion in subsection (2) of the word “and” at the end of paragraph (c), the insertion of the word “and” at the end of paragraph (d) and the addition of the following paragraph:

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- “(e) does not automatically terminate all parental responsibilities and rights of the parent of a child, when an adoption order is granted in favour of the spouse or permanent domestic life-partner of that parent.”.

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Amendment of Table of Contents of Act 38 of 2005

11. The Table of Contents after the long title of the principal Act is hereby amended by the insertion after “152. Removal of child to temporary safe care without court order” of the following:

- “152A. Review of decision to remove child without court order”.

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Short title and commencement

12. This Act is called the Children’s Amendment Act, 2016, and comes into operation on a date determined by the President by proclamation in the *Gazette*.