



ZIMBABWEAN

GOVERNMENT GAZETTE EXTRAORDINARY

Published by Authority

Vol. CII, No. 73

18th SEPTEMBER, 2024

Price USD\$2,00

General Notice 1441A of 2024.

CONSTITUTION OF ZIMBABWE

Publication of Law

THE following law, which was assented to by His Excellency the President, is published in terms of section 131(6) of the Constitution of Zimbabwe—

Criminal Laws Amendment (Protection of Children and Young Persons Act, 2024 (No. 1) of 2024.

18-9-2024. Dr. M. RUSHWAYA,
Chief Secretary to the President and Cabinet.

CONTENTS

General Notice

<i>Number</i>	<i>Page</i>
1441A. Constitution of Zimbabwe: Publication of Law	1765



ZIMBABWE

ACT

To amend the Criminal Law Code and the Criminal Procedure and Evidence Act [*Chapter 9:07*]; and to provide for matters connected with or incidental to the foregoing.

ENACTED by the Parliament and the President of Zimbabwe.

PART I

PRELIMINARY

1 Short title

This Act may be cited as the Criminal Laws Amendment (Protection of Children and Young Persons) Act, 2024.

2 Interpretation

In this Act—

“Criminal Law Code” means the Criminal Law (Codification and Reform) Act [*Chapter 9:23*];

“Criminal Procedure Act” means the Criminal Procedure and Evidence Act [*Chapter 9:07*].

PART II

3 Amendments of section 61 of Cap. 9:23

Section 61 (“Interpretation in Part III of Chapter V”) of the Criminal Law Code is amended—

- (a) by the repeal of the definition of “brothel” and “prostitution” and the substitution of—
- ““brothel” means any place which is occupied or used for the purposes of sex work or for persons to visit for the purpose of having sexual intercourse for money or reward;
- “sex worker” means a male or female person who for money or reward—
- (a) allows other persons to have anal or vaginal sexual intercourse or engage in other sexual conduct with him or her; or
- (b) solicits other persons to have anal or vaginal sexual intercourse or engage in other sexual conduct with him or her;
- and the word “sex work” shall be construed accordingly;”;
- (b) by the repeal of the definition of “extra-marital” and being substituted with “sexual intercourse”;
- (c) by the repeal of the definition of “young person” and the substitution of—
- ““child” means a boy or girl under the age of eighteen years.”.

4 New section substituted for section 70 of Cap. 9:23

Section 70 of the Criminal Law Code is repealed and the following is substituted—

“70 Sexual intercourse or performing indecent acts with children between the ages of 12 and 18.

(1) Subject to this section, any person who—

- (a) commits upon a child any act involving physical contact that would be regarded by a reasonable person to be an indecent act; or
- (b) solicits or entices a child to have sexual intercourse with him or her or to commit any act with him or her involving physical contact that would be regarded by a reasonable person to be an indecent act;

shall be guilty of sexual intercourse or performing an indecent act with a child, as the case may be, and liable to a fine not exceeding level 12 or imprisonment for a period not exceeding ten years or both.

(2) It shall be no defence to a charge of sexual intercourse or performing an indecent act with a child to prove that he or she consented to such sexual intercourse or indecent act.

(3) Where sexual intercourse or an indecent act takes place between—

- (a) children between whom the difference in age is not more than three years; or
- (b) a child and an adult who is not more than three years older than the child;

neither of them shall be charged with sexual intercourse or performing an indecent act with a child unless the Prosecutor-General, after considering

a report by a probation officer appointed in terms of the Children's Act [Chapter 5:06], has authorised the charge.

(4) The requirements of subsection (3) shall be additional to the requirements of any other law relating to the prosecution and charging of children.

(5) It shall be a defence to a charge under subsection (1) for the accused person to satisfy the court that he or she had reasonable cause to believe that the putative child concerned was of or over the age of eighteen years at the time of the alleged crime:

Provided that such a defence may be refuted by the prosecutor adducing evidence to the effect that the accused person knew or had reasonable cause to believe that the child concerned was under the age of eighteen years at the time of the alleged crime.”.

5 New section inserted after section 70 of Cap. 9:23

The Criminal Law Code is amended by the insertion of the following section after section 70—

“70A Deliberate infection of child with a sexually transmitted disease

(1) In this section—

“sexually-transmitted disease” includes syphilis, gonorrhoea, herpes, HIV and all other forms of sexually-transmitted diseases.

(2) Any person who—

- (a) knowing that he or she is suffering from a sexually-transmitted disease; or
- (b) realising that there is a real risk or possibility that he or she is suffering from a sexually-transmitted disease;

intentionally infects any child with the disease, or does anything or causes or permits anything to be done with the intention or realising that there is a real risk or possibility of infecting the child with the disease, shall be guilty of deliberately infecting that child with a sexually-transmitted disease and liable to a fine up to or not exceeding level fourteen or imprisonment for a period not exceeding five years or both.

(3) If it is proved in a prosecution that the person charged was suffering from a sexually-transmitted disease at the time of the crime, it shall be presumed, unless the contrary is proved, that he or she knew or realised that there was a real risk or possibility that he or she was suffering from it.

(4) It shall not be a defence to a charge under subsection (1) for the accused to prove that the child concerned—

- (a) knew that the accused was suffering from a sexually-transmitted disease; and
- (b) consented to the act in question, appreciating the nature of the sexually-transmitted disease and the possibility of becoming infected with it.

(5) A court convicting a person for any crime constituting unlawful sexual conduct against a child shall, if it also convicts that person for deliberately infecting that child with a sexually-transmitted disease, not make any part of the sentence of imprisonment imposed for the latter crime run concurrently with any sentence of imprisonment imposed for the first-mentioned crime.”.

6 Amendment of section 73 of Cap. 9:23

Section 73 (“Sodomy”)(3) of the principal Act is amended by the deletion from paragraphs (b) and (c) of “but below the age of eighteen years”.

7 Amendment of section 75 of Cap. 9:23

Section 75 (“Sexual intercourse within a prohibited degree of relationship”) of the principal Act is amended—

- (a) in subsection (2) by the deletion from paragraphs (b) and (j) of “Marriages Act, 2022” and the substitution of “Marriages Act [*Chapter 5:15*] (No. 1 of 2022)”;
- (b) in subsection (4)(b)—
 - (i) by the repeal of subparagraphs (i) and (ii) and the substitution of—
 - “(i) whether or not the natural parents of the person were married in a customary law marriage solemnised, registered or recognised under the Marriages Act [*Chapter 5:15*] or an enactment repealed by that Act; or
 - (ii) whether or not the person lives among other members of such a community and is regarded by such other members as belonging to that community, notwithstanding that the person’s natural parents were not married to each other, or were married in a civil marriage under the Marriages Act [*Chapter 5:15*] or an enactment repealed by that Act;”.

8 New section substituted for section 76 of Cap. 9:23

Section 76 of the principal Act is repealed and substituted by—

“76 Complicity in sexual crimes

For the avoidance of doubt it is declared that any person who—

- (a) being the owner or occupier of any premises, knowingly permits another person on the premises to commit rape, aggravated indecent assault, indecent assault, sexual intercourse or performing an indecent act with a child, sodomy, bestiality or sexual intercourse within a prohibited degree of relationship; or
- (b) detains a person with the intention that a crime referred to in paragraph (a) should be committed by another person against the person so detained;

may be charged with being an accomplice or accessory to the commission of the crime concerned, or with kidnapping or unlawful detention, or both.”.

9 Repeal of section 78 of Cap. 9:23

Section 78 of the principal Act is repealed.

10 New section substituted for section 83 of Cap. 9:23

Section 83 (“Procuring”) of the principal Act is repealed and the following section is substituted—

“83 Procuring for purposes of unlawful sexual conduct

Any person who procures any other person—

- (a) for the purposes of engaging in unlawful sexual conduct with another person or with persons generally, whether inside or outside Zimbabwe; or
- (b) to become a sex worker, whether inside or outside Zimbabwe; or
- (c) to leave Zimbabwe with the intent that the other person may become a sex worker; or
- (d) to leave his or her usual place of residence, not being a brothel, with the intent that he or she may become an inmate of or frequent a brothel elsewhere;

shall be guilty of procuring and liable to a fine not exceeding level fourteen or—

- (i) in a case where the person procured is a child, imprisonment for a period not exceeding ten years, or to both such fine and such imprisonment;
- (ii) in any other case, imprisonment for a period not exceeding two years, or to both such fine and such imprisonment.”.

11 New section substituted for section 86 of Cap. 9:23

Section 86 of the principal Act is repealed and substituted by—

“86 Permitting child to resort to place for purpose of engaging in unlawful sexual conduct

(1) If the owner of a place knowingly induces or allows a child to enter or be in the place for the purpose of engaging in unlawful sexual conduct with another person or with other persons generally, the owner shall be guilty of permitting a child to resort to a place for the purpose of engaging in unlawful sexual conduct and—

- (a) if the child is under the age of twelve years, liable to a fine not exceeding level 11 or imprisonment for a period not exceeding ten years or both;
- (b) if the child is over the age of twelve years, liable to a fine not exceeding level ten or imprisonment for a period not exceeding seven years or both.

(2) It shall be a defence to a charge under subsection (1) for the accused to prove that he or she had reasonable cause to believe that the child was of or over the age of eighteen years:

Provided that such a defence may be refuted by the prosecutor adducing evidence to the effect that the accused person knew or had reasonable cause to believe that the child concerned was under the age of eighteen years at the time of the alleged crime.”.

PART III

AMENDMENTS TO CRIMINAL PROCEDURE ACT

12 Amendment of Cap. 9:07

The Criminal Procedure Act is amended—

- (a) in section 319A (“Interpretation in Part XIVA”) by the repeal of the definition of “vulnerable witness” and the substitution of—
- ““vulnerable or incapacitated witness” means a person for whom any measure has been or is to be taken in terms of section 319B.”;
- (b) in section 319B (“Measures to protect vulnerable witnesses”) by the insertion of the following subsections, the existing section becoming subsection (1)—
- “(2) If it appears to a court in any criminal proceedings that a person who is giving or will give evidence in the proceedings is unable for any reason to give evidence orally, the court may, subject to this Part, do any one or more of the following, either on its own motion or on the application of a party to the proceedings—
- (a) permit the person to give their evidence in any other manner that makes it intelligible, for example by writing or by signs or other augmentative and alternative communications:
- Provided that that the writing shall be written, and the signs and communications shall be made, in open court;
- (b) appoint an intermediary for the person;
- (c) appoint a support person for the person.
- (3) For the avoidance of doubt it is declared that a court may take measures under both subsections (1) and (2) for a person who is vulnerable as described in subsection (1) and incapacitated as described in subsection (2).”;
- (c) in section 319C (“Factors to be considered in deciding whether or not to protect vulnerable witness”) by the insertion after “vulnerable” wherever it occurs of “or incapacitated”;
- (d) in section 319F (“Persons who may be appointed intermediaries or support persons”)—
- (i) in subsection (1) by the insertion of the following provisos—
- “Provided that—
- (i) when appointing an intermediary for a vulnerable or incapacitated witness who is unable to give evidence orally, the court may appoint any person who can communicate with the witness and interpret the witness’s writing, signs, sounds or other forms of communication;
- (ii) an intermediary who is not employed by the State as an interpreter shall, before acting as intermediary, take the oath required of interpreters in the court concerned;
- (ii) in subsection (2) by the insertion after “vulnerable” of “or incapacitated”;
- (e) in section 319G (“Functions of intermediary or support person”) by the insertion after “vulnerable” wherever it occurs of “or incapacitated”;
- (f) in section 319H by the insertion after “vulnerable” of “or incapacitated”;
- (g) in Part XIVA by the insertion after section 319H of the following section—

“319I Part XIVA additional to other laws protecting children and vulnerable or incapacitated persons

The provisions of this Part shall be additional to any other law relating to protecting and assisting witnesses who are children or vulnerable or incapacitated.”.

13 Minor amendments to Cap. 9:23

The provisions of the principal Act specified in the first column of the Schedule are amended to the extent set out opposite thereto in the second column.

SCHEDULE (Section 13)

MINOR AMENDMENTS TO CRIMINAL LAW CODE

<i>Provision</i>	<i>Extent of Amendment</i>
Section 81(1)	By the deletion of “prostitution” and the substitution of “sex work”.
Sections 82	By the deletion of “prostitution” and “prostitute” wherever it occurs and the substitution of “sex work” and “sex worker” respectively.
Section 87	By the deletion of “prostitute” and “prostitutes” wherever it occurs and the substitution of “sex worker” and “sex workers” respectively.

