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THE PRESIDENCY

No. 1519 14 December 2022

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

Act No. 8 of 2022: Criminal Law (Forensic Procedures) Amendment Act, 2022

DIE PRESIDENSIE

No. 1519 14 Desember 2022

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

Wet No. 8 van 2022: Wysigingswet op die Strafreg (Forensiese Prosedures), 2022

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GENERAL EXPLANATORY NOTE:

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

(English text signed by the President)
(Assented to 9 December 2022)

ACT

To make provision for the full implementation of certain transitional arrangements contained in the Criminal Law (Forensic Procedures) Amendment Act, 2013; to provide for the enforcement of the obligation to submit to the taking of a buccal sample; and to provide for matters connected therewith.

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

Definitions

1. In this Act any word or expression to which a meaning has been assigned in the Criminal Law (Forensic Procedures) Amendment Act, 2013 (Act No. 37 of 2013), bears the meaning so assigned thereto.

Amendment of section 7 of Act 37 of 2013

2. Section 7 of the Criminal Law (Forensic Procedures) Amendment Act, 2013, is hereby amended—

(a) by the substitution for subsection (7) of the following subsection:

"(7) *(a)* The National Commissioner of the South African Police Service must, with the assistance of the National Commissioner of Correctional Services, ensure that a buccal sample is taken from any person serving a sentence of imprisonment in respect of any offence listed in Schedule 8 to the Criminal Procedure Act, 1977 (Act No. 51 of 1977)—

(i) before the release of the person, if the buccal sample had not already been taken upon his or her arrest; or

(ii) who is released before his or her sentence is completed, either on parole or under correctional supervision by a court.

(b) The National Commissioner of Correctional Services, or his or her delegate, must submit a report to the National Commissioner of the South African Police Service—

(i) on the prescribed information of persons contemplated in paragraph *(a)*, at least three months prior to the planned release date of such persons; and

(ii) on the implementation of paragraph *(a)*, on a quarterly basis.

ALGEMENE VERDUIDELIKENDE NOTA:

Woorde met volstreep daaronder, dui invoegings in bestaande verordeninge aan.

(Engelse teks deur die President geteken)
(Goedgekeur op 9 Desember 2022)

WET

Ten einde voorsiening te maak vir die volle uitvoering van sekere oorgangsbepalings vervat in die Wysigingswet op die Strafreg (Forensiese Prosedures), 2013; voorsiening te maak vir die afdwinging van die verpligting om sigself aan die neem van 'n wangholtemonster te onderwerp; en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

DAAR WORD BEPAAL deur die Parlement van die Republiek van Suid-Afrika, soos volg:—

Woordomskrywing

1. In hierdie Wet dra enige woord of uitdrukking waaraan 'n betekenis in die Wysigingswet op die Strafreg (Forensiese Prosedures), 2013 (Wet No. 37 van 2013), toegewys is, die betekenis aldus daaraan toegewys.

Wysiging van artikel 7 van Wet 37 van 2013

2. Artikel 7 van die Wysigingswet op die Strafreg (Forensiese Prosedures), 2013, word hierby gewysig—

(a) deur subartikel (7) deur die volgende subartikel te vervang:

"(7) *(a)* Die Nasionale Kommissaris van die Suid-Afrikaanse Polisiediens moet, met die bystand van die Nasionale Kommissaris van Korrektiewe Dienste, verseker dat 'n wangholtemonster geneem word van elke persoon wat 'n vonnis van gevangenisstraf uitdien vir enige misdryf gelys in Bylae 8 tot die Strafproseswet, 1977 (Wet No. 51 van 1977)—

(i) voordat die persoon vrygelaat word, as die wangholtemonster nie reeds by sy of haar inhegtenisneming geneem is nie; of

(ii) wat vrygelaat word voordat sy of haar vonnis uitgedien is, hetsy op parool of onder korrektiewe toesig van 'n hof.

(b) Die Nasionale Kommissaris van Korrektiewe Dienste, of sy of haar gedelegeerde, moet 'n verslag aan die Nasionale Kommissaris van die Suid-Afrikaanse Polisiediens voorlê—

(i) oor die voorgeskrewe inligting van persone in paragraaf *(a)* beoog, ten minste drie maande voor die beplande datum van vrylating van sodanige persone; en

(ii) by die uitvoering van paragraaf *(a)*, kwartaalliks.

(c) The National Commissioner of the South African Police Service must on a quarterly basis submit a written report to the Minister on the progress made regarding the taking of buccal samples from persons contemplated in paragraph *(a)*.''; and

(b) by the insertion after subsection (7) of the following subsections:

''(7A) If a person contemplated in subsection (7) does not consent to the taking of a buccal sample under this section—

(a) the National Commissioner of the South African Police Service, or his or her delegate, must apply *ex parte* to a judge or a magistrate for a warrant authorising the taking of the buccal sample, which application must be supported by information supplied under oath or solemn declaration, establishing the facts on which the application is based; and

(b) a judge or magistrate may issue the warrant referred to in paragraph *(a)* if satisfied that—

(i) the person to whom it relates, is a person serving a sentence of imprisonment as contemplated in subsection (7)*(a)*; and

(ii) the provisions of section 15J(2), (3), (4) or (5) of the South African Police Service Act 1995 (Act No. 68 of 1995), relating to the removal of a forensic DNA profile, do not apply.

(7B) Despite the provisions of section 32(1)*(c)* of the Correctional Services Act, 1998 (Act No. 111 of 1998), an authorised person assisted by correctional officials may use minimum force against a person who refuses to submit to the taking of a buccal sample under authority of a warrant contemplated in subsection (7A).

(7C) The National Commissioner of the South African Police Service, in consultation with the National Commissioner of Correctional Services, must issue and publish in the *Gazette* national instructions regarding the use of minimum force contemplated in subsection (7B).

(7D) The provisions of section 32(5) and (6) of the Correctional Services Act, 1998, apply with the necessary changes to the use of force in terms of subsection (7B).''.

Short title and commencement

3. This Act is called the Criminal Law (Forensic Procedures) Amendment Act, 2022, and comes into operation on a date determined by the President by proclamation in the *Gazette*.

(c) Die Nasionale Kommissaris van die Suid-Afrikaanse Polisiediens moet kwartaalliks 'n skriftelike verslag aan die Minister voorlê oor die vordering gemaak met die neem van wangholtemonsters van persone in paragraaf *(a)* beoog.''; en

(b) deur die volgende subartikels na subartikel (7) in te voeg:

''(7A) Indien 'n persoon in subartikel (7) beoog nie tot die neem van 'n wangholtemonster kragtens hierdie artikel toestem nie—

(a) moet die Nasionale Kommissaris van die Suid-Afrikaanse Polisiediens, of sy of haar gedelegeerde, *ex parte* by 'n regter of 'n landdros aansoek doen om 'n lasbrief wat die neem van 'n wangholtemonster magtig, welke aansoek ondersteun moet word deur inligting onder eed of plegtige verklaring gegee, ter stawing van die feite waarop die aansoek gegrond is; en

(b) 'n regter of landdros kan die lasbrief bedoel in paragraaf *(a)* uitreik indien oortuig dat—

(i) die persoon met wie dit verband hou, 'n persoon is wat 'n vonnis van gevangenisstraf soos beoog in subartikel (7)*(a)* uitdien; en

(ii) die bepalings van artikel 15J(2), (3), (4) of (5) van die Wet op die Suid-Afrikaanse Polisiediens, 1995 (Wet No. 68 van 1995), betreffende die verwydering van 'n forensiese DNA-profiel, nie van toepassing is nie.

(7B) Ondanks die bepalings van artikel 32(1)*(c)* van die Wet op Korrektiewe Dienste, 1998 (Wet No. 111 van 1998), kan 'n gemagtigde persoon wat deur korrektiewe beamptes bygestaan word, minimum dwang gebruik teen 'n persoon wat weier om sigself aan die neem van 'n wangholtemonster kragtens die magtiging van 'n lasbrief beoog in subartikel (7A) te onderwerp.

(7C) Die Nasionale Kommissaris van die Suid-Afrikaanse Polisiediens, in oorleg met die Nasionale Kommissaris van Korrektiewe Dienste, moet nasionale instruksies aangaande die gebruik van minimum dwang in subartikel (7B) beoog, uitreik en in die Staatskoerant publiseer.

(7D) Die bepalings van artikel 32(5) en (6) van die Wet op Korrektiewe Dienste, 1998, is met die nodige veranderinge van toepassing op die gebruik van dwang ingevolge subartikel (7B).''.

Kort titel en inwerkingtreding

3. Hierdie Wet heet die Wysigingswet op die Strafreg (Forensiese Prosedures), 2022, en tree in werking op 'n datum deur die President by proklamasie in die Staatskoerant vasgestel.

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