

# PENAL CODE (AMENDMENT) ACT, 2021

No. 27



of 2021

## ARRANGEMENT OF SECTIONS

### SECTION

1. Citation and commencement
- 1A. Amendment of Cap. 08:01
2. Amendment of section 142 of the Act
3. Amendment of section 143 of the Act
4. Amendment of section 144 of the Act
5. Amendment of section 146 of the Act
6. Amendment of section 147 of the Act
7. Amendment of section 148 of the Act
8. Amendment of section 149 of the Act
9. Amendment of section 150 of the Act
10. Amendment of section 151 of the Act
11. Amendment of section 152 of the Act
12. Amendment of section 153 of the Act
13. Amendment of section 158 of the Act
14. Amendment of section 159 of the Act
15. Amendment of section 168 of the Act
16. Insertion of section 168A. in the Act
17. Insertion of section 168B. in the Act
18. Deletion of section 169 of the Act

**An Act to amend the Penal Code to, among others, enhance penalties for sexual offences.**

*Date of Assent:* 19/11/2021

*Date of Commencement:* On Notice

ENACTED by the Parliament of Botswana.

1. This Act may be cited as the Penal Code (Amendment) Act, 2021, and shall come into operation on such date as the Minister may, by Order published in the *Gazette*, appoint.

Citation and commencement

1A. The Penal Code (hereinafter referred to as “the Act”) is amended in section 141 by substituting for the words “, in the case of a married person, by personating that person’s spouse” appearing therein, the words “by personating another person.”.

Amendment of Cap. 08:01

Amendment of  
section 142 of  
the Act

2. The Act is amended by substituting for section 142, the following  
new section —

"Punishment  
for rape

142. (1) Any person who is charged with the offence of rape shall, subject to subsections (2) and (4), upon conviction be sentenced to a minimum term of 20 years' imprisonment or to a maximum term of life imprisonment.

(2) Where an act of rape is attended by violence resulting in injury to the victim, the person convicted of the act of rape shall be sentenced to a minimum term of 25 years' imprisonment or to a maximum term of life imprisonment with or without corporal punishment.

(3) Any person convicted of the offence of rape shall be required to undergo a test for Human Immunodeficiency Virus or any disease as may be prescribed by the Minister, before the person is sentenced by the court.

(4) Any person who is convicted under subsection (1) or subsection (2) and whose test for the Human Immunodeficiency Virus or a disease prescribed by the Minister under subsection (3) is positive shall be sentenced —

(a) to a minimum term of 25 years' imprisonment or to a maximum term of life imprisonment with corporal punishment, where it is proved that such person was unaware of being Human Immunodeficiency Virus positive or of suffering from a disease prescribed by the Minister under subsection (3); or

(b) to a minimum term of 30 years' imprisonment or to a maximum term of life imprisonment with corporal punishment, where it is proved that on a balance of probabilities such person was aware of being Human Immunodeficiency Virus positive or of suffering from a disease prescribed by the Minister under subsection (3).

(5) Notwithstanding the provisions of subsections (2), (3) and (4), where —

(a) a person convicted of the act of rape is —

(i) a parent or guardian of or a person in authority over, the person against whom the act of rape is committed, or

(ii) a repeat offender; or

(b) the victim of the act of rape is a person —

(i) below the age of 14 years, or

(ii) with a disability,

the person convicted of the act of rape shall be sentenced to a minimum term of 30 years' imprisonment or to a maximum term of life imprisonment with or without corporal punishment.

(6) For purposes of this section, “repeat offender” means a person who has been convicted of more than one act of rape.”.

3. Section 143 of the Act is amended in subsection (1) by substituting for the words “5 years” appearing therein, the words “15 years”.

Amendment of section 143 of the Act

4. Section 144 of the Act is amended by substituting for the words “seven years” appearing therein, the words “15 years”.

Amendment of section 144 of the Act

5. Section 146 of the Act is amended by substituting for subsection (3), the following new subsection —

Amendment of section 146 of the Act

“(3)Whoever utters any word, makes any sound or gesture or exhibits any object to insult the modesty of another person, whether such word or sound is heard or not, or such gesture or object is seen or not, by such other person or intrudes upon the privacy of such person, is guilty of an offence and is liable to imprisonment for a term not exceeding one year.”.

6. The Act is amended by substituting for section 147, the following new section —

Amendment of section 147 of the Act

“Defilement of persons under 18 years

(1) Any person who unlawfully and carnally knows any person under the age of 18 years is guilty of an offence and on conviction shall be sentenced to a minimum term of 20 years’ imprisonment or to a maximum term of life imprisonment.

(2) Any person convicted under subsection (1) shall be required to undergo a test for Human Immunodeficiency Virus or any disease as may be prescribed by the Minister before the person is sentenced by the court.

(3) Any person who is convicted under subsection (1) and whose test for the Human Immunodeficiency Virus or a disease prescribed by the Minister under subsection (2) is positive shall on conviction be sentenced to a —

(a) minimum term of 25 years’ imprisonment or to a maximum term of life imprisonment with or without corporal punishment, where it is proved that such person was unaware of being Human Immunodeficiency Virus positive or of suffering from a disease prescribed by the Minister under subsection (2); or

(b) minimum term of 30 years imprisonment or to a maximum term of life imprisonment with or without corporal punishment, where it is proved that on a balance of probabilities such person was aware of being Human Immunodeficiency Virus positive or of suffering from a disease prescribed by the Minister under subsection (2).

(4) Any person who attempts to have unlawful carnal knowledge of any person under the age of 18 years is guilty of an offence and is liable to a minimum term of 15 years' imprisonment or to a maximum term of life imprisonment, with or without corporal punishment.

(5) It shall be a sufficient defence to any charge under this section if it appears to the court before whom the charge is brought that the person so charged is —

- (a) less than two years older than the person so defiled;
- (b) not in a position of trust or authority towards the person so defiled;
- (c) not a person with whom the person so defiled is in relationship of dependency; and
- (d) not in a relationship with the person so defiled that is exploitative of the person so defiled.”.

Amendment of section 148 of the Act

7. The Act is amended by substituting for section 148, the following new section —

“Defilement of mentally disabled persons

148. Any person who, knowing another person to be mentally disabled, has or attempts to have unlawful carnal knowledge of that person under circumstances not amounting to rape, but which prove that the offender knew at the time of the commission of the offence that the person against whom the offence was committed was mentally disabled, is guilty of an offence and is liable to a minimum term of 30 years' imprisonment or to a maximum term of life imprisonment, with or without corporal punishment.”.

Amendment of section 149 of the Act

8. The Act is amended by substituting for section 149 the following new section —

“Procuration

149. Any person who —

- (a) procures or attempts to procure any person to have unlawful carnal connection, either in Botswana or elsewhere, with any other person or persons;
- (b) procures or attempts to procure any person to become, either in Botswana or elsewhere, a common prostitute;
- (c) procures or attempts to procure any person to leave Botswana, with intent that the procured person may become an inmate of or frequent a brothel elsewhere; or
- (d) procures or attempts to procure any person to leave that person's usual place of abode in Botswana with intent that the person may, for the purposes of prostitution, become an inmate of or frequent a brothel either in Botswana or elsewhere,

is guilty of an offence and is liable to a fine not exceeding P500 000 or to a minimum term of 15 years' imprisonment but not exceeding 25 years with or without corporal punishment, or to both:

Provided that no person shall be convicted of an offence under this section upon the evidence of one witness only, unless such witness be corroborated in some material particular by evidence implicating the accused.”.

Amendment of section 150 of the Act

**9.** The Act is amended by substituting for section 150 the following new section —

“Procuring defilement of person by threats, fraud or administering drugs

150. Any person who —

- (a) by threats or intimidation procures or attempts to procure any other person to have any unlawful carnal connection, either in Botswana or elsewhere;
- (b) by false pretences or false representations procures any other person to have any unlawful carnal connection, either in Botswana or elsewhere; or
- (c) applies, administers to, or causes to be taken by any other person any drug, matter, or thing, with intent to stupefy or overpower so as to have unlawful carnal connection with such person,

is guilty of an offence and is liable to a fine not exceeding P500 000 or to a minimum term of 15 years’ imprisonment but not exceeding 25 years with or without corporal punishment, or to both:

Provided that no person shall be convicted of an offence under this section upon the evidence of one witness only, unless such witness be corroborated in some material particular by evidence implicating the accused.”.

Amendment of section 151 of the Act

**10.** The Act is amended by substituting for section 151 the following new section —

“Householder, etc., permitting defilement of person under 18 years of age on his or her premises

151. Any person who, being the owner or occupier of premises or having or acting or assisting in the management or control thereof, induces or knowingly suffers any person under the age of 18 years to resort to or be upon such premises for the purpose of being unlawfully and carnally known by any person, whether such carnal knowledge is intended to be with any particular person or generally, is guilty of an offence and is liable to a minimum term of 15 years’ imprisonment or to a maximum term of 20 years:

Provided that it shall be a sufficient defence to any charge under this section if it appears to the court before whom the charge is brought that the person so charged had reasonable cause to believe and did in fact believe that the person against whom the offence was committed was of or above the age of 18 years.”.

Amendment of section 152 of the Act

**11.** Section 152 of the Act is amended by substituting for the words “for a term not exceeding five years” appearing therein, the words “for a minimum term of 15 years”.

Amendment of section 153 of the Act

**12.** Section 153 of the Act is amended by substituting for subsection (1), the following new subsection —

“(1) Any person who detains any other person against that other person’s will —

(a) in or upon any premises with intent that the person detained may be unlawfully and carnally known by a particular person or generally by other persons; or

(b) in a brothel,

is guilty of an offence and is liable to a fine not exceeding P500 000 or to a minimum term of 15 years’ imprisonment but not exceeding 25 years with or without corporal punishment, or to both.”.

Amendment of section 158 of the Act

**13.** Section 158 of the Act is amended by inserting immediately after the words “is guilty of an offence” appearing therein, the words “and is liable to a fine not exceeding P200 000 or to imprisonment for a term not exceeding 15 years, or to both.”.

Amendment of section 159 of the Act

**14.** Section 159 of the Act is amended by substituting for the words “seven years” appearing therein, the words “15 years”.

Amendment of section 168 of the Act

**15.** Section 168 of the Act is amended by substituting for subsection (1), the following new subsection —

“(1) Any person who knowingly has carnal knowledge of another person knowing that person to be his or her grandchild, child, stepchild, brother, sister, parent or step-parent, is guilty of an offence and is liable to imprisonment for a minimum term of 3 years or to a maximum term of 10 years imprisonment:

Provided that if it is alleged in the indictment or summons and proved that the person of whom carnal knowledge was had is under the age of 18 years, the offender shall be liable to be punished in the same manner as a person convicted under section 147.”.

Insertion of section 168A. in the Act

**16.** The Act is amended by inserting immediately after section 168, the following new section —

“Compensation 168A. (1) Where a person is guilty of a sexual offence under this Part, the court may, *mero motu* in addition to any other punishment order the guilty person to pay the victim such sum as appears to the court to be reasonable compensation.

(2) In determining what a reasonable compensation is, the Court may take into account the following —

(a) the pain and suffering of the victim, and the nature and extent of physical or mental injury suffered by the victim;

(b) the cost of medical treatment for any physical or mental injury;

(c) any loss of earning arising from any physical or mental injury;

(d) the amount or value of property lost, damaged or destroyed as a result of the commission of the offence; and

(e) any other necessary and reasonable expenses incurred by or on behalf of the victim.

(2) The compensation payable under this section shall be legally collectable at all times notwithstanding any law providing to the contrary.”

17. The Act is amended by inserting immediately after section 168, the following new subsection —

“False  
allegations

168B. (1) A person who knowingly makes false or misleading allegations against another person to the effect that the person has committed a sexual offence under this Part commits an offence and is liable to imprisonment for a term not exceeding five years.

(2) For purposes of this section, an allegation is false or misleading if at any stage of investigations or prosecution, it is proved that the alleged act did not take place.

(3) For the avoidance of doubt, an acquittal for an offence under this Act does not amount to a false allegation.”

18. The Act is amended by deleting section 169.

Insertion of  
section 168B.  
in the Act

Deletion of  
section 169  
of the Act

PASSED by the National Assembly this 16th day of August, 2021.

BARBARA N. DITHAPO,  
*Clerk of the National Assembly.*