

**THE CRIMINAL CODE (AMENDMENT) BILL**  
(No. VIII of 2012)

**Explanatory Memorandum**

The main object of this Bill is to amend the Criminal Code to authorise the termination of pregnancy in specified circumstances, namely, in cases where –

- (a) the continued pregnancy will endanger the pregnant person's life;
- (b) the termination is necessary to prevent grave permanent injury to the physical or mental health of the pregnant person;
- (c) there is a substantial risk that the continued pregnancy will result in a severe malformation, or severe physical or mental abnormality, of the foetus, as assessed by the appropriate specialists;
- (d) the pregnancy has not exceeded its fourteenth week and results from a case of rape, sexual intercourse with a female under the age of 16 or sexual intercourse with a specified person which has been reported to the police or a medical practitioner.

Consequential amendments are brought to the Medical Council Act to provide for a working regime for the proposed amendments to the Criminal Code.

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11 May 2012

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**ARRANGEMENT OF CLAUSES**

*Clause*

- 1. Short title
  - 2. Interpretation
  - 3. Section 235 of principal Act amended
  - 4. New section 235A inserted in principal Act
  - 5. Consequential amendments
  - 6. Commencement
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## A BILL

### To amend the Criminal Code to authorise termination of pregnancy in specified circumstances and for related matters

ENACTED by the Parliament of Mauritius, as follows –

#### 1. Short title

This Act may be cited as the Criminal Code (Amendment) Act 2012.

#### 2. Interpretation

In this Act –

“principal Act” means the Criminal Code.

#### 3. Section 235 of principal Act amended

Section 235 of the principal Act is amended –

- (a) by deleting the heading and replacing it by the heading “**Unlawful termination of pregnancy**”;
- (b) in section (1) –
  - (i) in the first column, by deleting the word “Quiconque” and replacing it by the words “Sauf dans les cas prévus à la section 235A, quiconque”;
  - (ii) in the second column –
    - (A) by deleting the words “Any person” and replacing them by the words “Except in the cases provided for in section 235A, any person”;
    - (B) by deleting the words “woman quick with child” and replacing them by the words “pregnant woman”;
- (c) in subsection (3), by deleting the words “Any physician, surgeon,” and replacing them by the words “Except in the cases provided for in section 235A, any medical practitioner”.

#### **4. New Section 235A inserted in principal Act**

The principal Act is amended by inserting, after section 235, the following new section –

##### **235A. Authorised termination of pregnancy**

(1) No person shall provide treatment to terminate a pregnancy unless he –

- (a) is a specialist in obstetrics and gynaecology who is registered as such under the Medical Council Act;
- (b) provides the treatment in a prescribed institution; and
- (c) complies with all the requirements of this section.

(2) The specialist referred to in subsection (1)(a) may only provide treatment to terminate a pregnancy where another specialist in the relevant field shares his opinion, formed in good faith, that –

- (a) the continued pregnancy will endanger the pregnant person's life;
- (b) the termination is necessary to prevent grave permanent injury to the physical or mental health of the pregnant person;
- (c) there is a substantial risk that the continued pregnancy will result in a severe malformation, or severe physical or mental abnormality, of the foetus, as assessed by the appropriate specialists; or
- (d) the pregnancy has not exceeded its fourteenth week and results from a case of rape, sexual intercourse with a female under the age of 16 or sexual intercourse with a specified person which has been reported to the police or a medical practitioner.

(3) (a) Subject to subsections (4) and (5), the specialist referred to in subsection (1)(a) shall not carry out a termination of pregnancy under this section except with the informed consent of the pregnant person.

(b) (i) Subject to subparagraph (ii), consent under paragraph (a) shall be given in writing.

(ii) Where the pregnant person is unable to read or write, she may give her consent by affixing her thumbprint to a written statement which is read out to her.

(4) Where a request for treatment to terminate a pregnancy under this section is made by a pregnant person who is under the age of 18, no treatment shall be provided to terminate the pregnancy except with the written informed consent of one of her parents or her legal guardian, as the case may be.

(5) Where a woman is, in the opinion of the specialists referred to in subsection (2) –

- (a) severely mentally disabled to such an extent that she is incapable of understanding the nature of, or the consequences of undergoing, the treatment to terminate her pregnancy; or
- (b) in a state of continuous unconsciousness and there is no reasonable prospect that she will regain consciousness in time to request, and to consent to, treatment to terminate her pregnancy,

the specialist referred to in subsection (1)(a) may terminate her pregnancy upon the request and with the written informed consent of her partner, spouse, parents or legal guardian, as the case may be.

(6) Where appropriate, counselling shall be provided to a pregnant person before and after a termination of pregnancy.

(7) No person shall, by means of coercion or intimidation, compel or induce a pregnant person to undergo treatment to terminate a pregnancy against her will.

(8) Any person who contravenes this section shall commit an offence and shall, on conviction, be liable to imprisonment for a term not exceeding 5 years and to a fine not exceeding 100,000 rupees.

(9) In this section –

“informed consent” means consent, obtained freely and without threat or improper inducement, to receive treatment to terminate a pregnancy after the risks, benefits and alternatives have been adequately explained to the person concerned;

“prescribed institution” has the same meaning as in section 38A of the Medical Council Act;

“specified person” has the same meaning as in section 249(5).

## 5. Consequential amendments

The Medical Council Act is amended –

(a) by inserting, after section 38, the following new section –

### **38A. Provision of treatment in prescribed institution**

(1) Subject to section 235A of the Criminal Code, a specialist in obstetrics and gynaecology registered as such under this Act may provide treatment to terminate a pregnancy in a prescribed institution.

(2) (a) Subject to paragraph (c), no person shall be under any duty, whether by contract or by any statutory or other legal requirement, to participate in any treatment to which he has a conscientious objection.

(b) In any legal proceedings, the burden of proof of conscientious objection shall rest on the person claiming to rely on it.

(c) Nothing in paragraph (a) shall affect any duty to participate in treatment which is necessary to save the life or to prevent grave permanent injury to the physical or mental health of a pregnant person.

(3) The Permanent Secretary or a public officer deputed by him may –

(a) enter and inspect a prescribed institution for the purpose of ensuring that this section is complied with;

(b) require the person in charge of the institution to provide him with such information as he may require;

(c) examine and make copies of, or take extracts from, any record or other document relating to any treatment.

- (4) Any person who –
- (a) being or having been involved in the keeping of a record or in providing any treatment, without the consent of the pregnant person, discloses any matter relating to the record or the treatment to an unauthorised person;
  - (b) wilfully obstructs the Permanent Secretary or the public officer deputed by him in the exercise of his functions under subsection (2); or
  - (c) otherwise contravenes this section,

shall commit an offence.

(5) (a) The Minister may make such regulations as he thinks fit for the purposes of this section.

(b) Any regulations made under paragraph (a) may provide for –

- (i) the institutions, hospitals, clinics or other places where treatment may be provided;
- (ii) the form in which the opinion of the specialists referred to in section 235A(2) of the Criminal Code and the informed consent of the pregnant person concerned shall be certified;
- (iii) the manner in which a record shall be kept, preserved, used, disclosed, communicated or disposed of;
- (iv) the form and manner in which notice of a treatment and other information relating to it shall be given.

(6) In this section –

“prescribed institution” means such institution, hospital, clinic or other place for providing treatment as may be prescribed under subsection (4);

“record” means a record which relates to any treatment;

“treatment” means treatment to terminate a pregnancy for the purposes of section 235A of the Criminal Code.

(b) in section 39, by inserting, after paragraph (a), the following new paragraph –

(aa) any person from doing any act which is authorised under section 235A of the Criminal Code;

(c) in section 42(1)(a), by deleting the words “or 22” and replacing them by the words “, 22 or 38A”.

## **6. Commencement**

This Act shall come into operation on a date to be fixed by Proclamation.

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