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Kenya Gazette Supplement No. 163 (Senate Bills No. 50)



REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

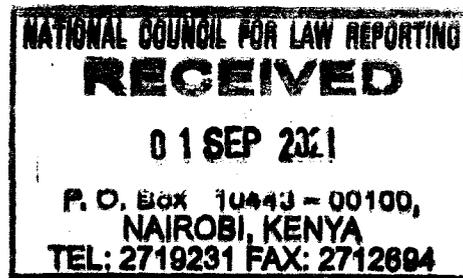
SENATE BILLS, 2021

NAIROBI, 20th August, 2021

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THE PENAL CODE (AMENDMENT) BILL, 2021

A Bill for

**AN ACT of Parliament to amend the Penal Code; and
for connected purposes**

ENACTED by the Parliament of Kenya, as follows—

1. This Act may be cited as the Penal Code
(Amendment) Act, 2021.

Short title.

2. The Penal Code, hereafter referred to as the
principal Act, is amended by deleting section 146.

Repeal of section
146 of cap 63.

3. The principal Act is amended by deleting section
226.

Repeal of section
226 of cap 63.

MEMORANDUM OF OBJECTS AND REASONS**Statement of the Objects and Reasons for the Bill**

The principal object of the Bill is to amend the Penal Code, Cap 63 Laws of Kenya in order to ensure that persons living with mental disability are not referred to in a derogatory manner and enhance protection of vulnerable victims. Sexual offences that violate persons living with mental disability are covered under the Sexual Offences Act, No. 3 of 2016.

Further, the Bill decriminalizes attempted suicide to ensure that victims are provided with the necessary assistance in line with the Mental Health Act. Attempted suicide is a mental health issue which should not be subject to a criminal process.

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

The Bill does not delegate legislative powers nor does it limit the fundamental rights and freedoms.

Statement on how the Bill concerns county governments

Article 28 of the Constitution provides for the right to human dignity where every person has inherent dignity and the right to have that dignity respected and protected. Since persons living with disability are members of different communities within counties, protection and respect of such individuals will impact greatly on equality and freedom from discrimination even at county level. The use of derogatory and demeaning terms is therefore disrespectful and inhumane. Further, both the national and county governments have a duty to uphold and promote the Bill of Rights.

The Bill is therefore a Bill concerning county government in terms of Article 110 (1) (a) of the Constitution.

Statement that the Bill is not a money Bill, within the meaning of Article 114 of the Constitution

This Bill is not a money Bill within the meaning of Article 114 of the Constitution.

Dated the 24 February, 2021.

ABSHIRO HALAKE,
Senator.

Section 146 of cap 63 of which it is proposed to amend—

146. Defilement of idiots or imbeciles

Any person who, knowing a person to be an idiot or imbecile, has or attempts to have unlawful carnal connection with him or her 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 was an idiot or imbecile, is guilty of a felony and is liable to imprisonment with hard labour for fourteen years.

Section 226 of cap 63 of which it is proposed to amend—

226. Attempting suicide

Any person who attempts to kill himself is guilty of a misdemeanor.

