SEXUAL OFFENCES AND AMENDMENT ACT 5 OF 2015

KZN PROVINCIAL COUNCIL ON AIDS MEETING, 11 NOVEMBER 2015, GREYS HOSPITAL
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PMB MAGISTRATE
OUTLINE OF PRESENTATION

• Purpose Definitions
• Sections 15 and 16 of Act 32 of 2007
• Criticism against 15 and 16 (Teddy Bear case)
• Sexual Offences and Related Matters Amendment Act 5 of 2015
• Implications
• Conclusion
PURPOSE

- To highlight the provisions of Sexual Offences and Amendment Act 5 of 2015 and its impact on regulation of consensual sexual intercourse among adolescents
DEFINITIONS

• According to the Constitution and the Sexual Offences and Related Matters Amendment Act 5 of 2015;
  – A Child is a person under the age of 18
• According to section 15 and 16 of Act 32 of 2007;
  – A Child is a person under the age of 16

• Sexual Act means an act of sexual penetration or an act of sexual violation
  - Sexual penetration refers to penetration of sexual nature
  - Sexual violation refers to violation of sexual nature e.g. kissing and fondling

• Consensual sexual act is a sexual act( penetration or violation) that take place with the consent of both parties.
SECTION 15 AND 16 OF ACT 32 OF 2007 BEFORE AMENDMENT

• Section 15 – prohibited consensual sexual penetration with children
  - Adult + Child = criminal offence
  - Child + Child = criminal offence

• Section 16 – prohibited consensual violation with children
  - Adult + Child = criminal offence
  - Child + Child = Criminal Offence
CRITICISM OF ACT 32 – TEDDY BEAR CASE

• Violation of the constitutional rights of children (Right to Dignity and Right to Privacy)

• Disregard to the principle that the best interest of the child must prevail in all situations.
2015 ACT 5 AMENDMENTS

- Act of sexual penetration or sexual violation
  - Child + Child = No criminal prosecution
  - Adult + Child = Criminal Prosecution
  - Child aged 16 or 17 + another child = No prosecution UNLESS age gap is over two years.
• Details of a child convicted for sexual offence must not be entered in the National list for sex offender **UNLESS**
  - The public prosecutor has made an application for such;
  - Probation officer’s report has been obtained;
  - The child has been given opportunity to address the court on that aspect; and
  - Exceptional and compelling circumstance exist
IMPLICATIONS

• Children from 12 to 15 years are not criminally liable for consensual sexual intercourse between themselves.

• Children aged 16 and 17 years are not criminally liable for sexual activities with other children (17 years and younger) UNLESS the age gap is more than two years.

• A person aged 18 and above commits a criminal Act if he engages in consensual sexual activity with a child under the age of 16.
CONCLUSIONS

• Non consensual sexual intercourse still constitutes a crime of rape; even if committed by a child.
• Consensual sexual intercourse between an adult and child is a criminal offence on part of the adult.
• Only in exceptional circumstance can child's name be entered on registry for sex offenders.