

SEXUAL OFFENCES AND AMENDMENT ACT 5 OF 2015

**KZN PROVINCIAL COUNCIL ON AIDS MEETING, 11
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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.

2015 ACT 5 AMENDMENTS CONT.

- 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 give 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.