

REPUBLIC OF SOUTH AFRICA

---

**CRIMINAL LAW (SEXUAL OFFENCES AND RELATED MATTERS)  
AMENDMENT AMENDMENT BILL**

---

(.....)

---

(MINISTER OF JUSTICE AND CORRECTIONAL SERVICES)

**GENERAL EXPLANATORY NOTE:**

[     ]     Words in bold type in square brackets indicate omissions from existing enactments.

\_\_\_\_\_     Words underlined with a solid line indicate insertions in existing enactments.

---

**BILL**

**To amend the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, so as to ensure that children of certain ages are not held criminally liable for engaging in consensual sexual acts with each other; to give presiding officers a discretion in order to decide in individual cases whether the particulars of children should be included in the National Register for Sex Offenders or not; to provide for a procedure in terms of which certain persons may apply for the removal of their particulars from the National Register for Sex Offenders; and to provide for matters connected therewith.**

---

**BE IT ENACTED** by the Parliament of the Republic of South Africa, as follows:—

**Amendment of section 1 of Act 32 of 2007**

1. Section 1 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007), (hereinafter referred to as the “principal Act”), is hereby amended by the substitution for the definition of “child” of the following definition:

“**child**” means[—]

**[(a)]** a person under the age of 18 years[; or

**(b) with reference to sections 15 and 16, a person 12 years or older but under the age of 16 years,]**

and “**children**” has a corresponding meaning;’.

### **Amendment of section 15 of Act 32 of 2007**

2. Section 15 of the principal Act is hereby amended by the substitution of the following section:

**“Acts of consensual sexual penetration with certain children (statutory rape)**

15. (1) A person (“A”) who commits an act of sexual penetration with a child (“B”) who is 12 years of age or older but under the age of 16 years is, despite the consent of B to the commission of such an act, guilty of the offence of having committed an act of consensual sexual penetration with a child, unless A, at the time of the alleged commission of such an act, was—

- (a) 12 years of age or older but under the age of 16 years; or
- (b) either 16 or 17 years of age and the age difference between A and B was not more than two years.

(2) (a) The institution of a prosecution for an offence referred to in subsection (1) must be authorised in writing by the **[National]** Director of Public Prosecutions if **[both] A [and B were children] was either 16 or 17 years of age at the time of the alleged commission of the offence and the age difference between A and B was more than two years[: Provided that, in the event that the National Director of Public Prosecutions authorises the institution of a prosecution, both A and B must be charged with contravening subsection (1)].**

(b) The **[National]** Director of Public Prosecutions concerned may **[not]** delegate his or her power to decide whether a prosecution in terms of this section should be instituted or not.”.

### **Amendment of section 16 of Act 32 of 2007**

3. Section 16 of the principal Act is hereby amended by the substitution of the following section:

**“Acts of consensual sexual violation with certain children  
(statutory sexual assault)**

16. (1) A person (“A”) who commits an act of sexual violation with a child (“B”) who is 12 years of age or older but under the age of 16 years is, despite the consent of B to the commission of such an act, guilty of the offence of having committed an act of consensual sexual violation with a child, unless A, at the time of the alleged commission of such an act, was—

- (a) 12 years of age or older but under the age of 16 years; or
- (b) either 16 or 17 years of age and the age difference between A and B was not more than two years.

(2) (a) The institution of a prosecution for an offence referred to in subsection (1) must be authorised in writing by the relevant Director of Public Prosecutions if **[both] A [and B were children]** was either 16 or 17 years of age at the time of the alleged commission of the offence and the age difference between A and B was more than two years[: **Provided that, in the event that the Director of Public Prosecutions authorises the institution of a prosecution, both A and B must be charged with contravening subsection (1)**].

(b) The Director of Public Prosecutions concerned may **[not]** delegate his or her power to decide whether a prosecution in terms of this section should be instituted or not.”.

**Amendment of section 46 of Act 32 of 2007**

4. Section 46 of the principal Act is hereby amended by—
- (a) the substitution for subsection (1) of the following subsection:

“(1) An employee in the employ of an employer at the commencement of this Chapter, who is or was convicted of a sexual offence against a child or a person who is mentally disabled, or is alleged to have committed a sexual offence against a child or a person who is mentally disabled and who has been dealt with in terms of section 77(6) or 78(6) of the Criminal Procedure Act, 1977, irrespective

of whether or not such offence was committed or allegedly committed during the course of his or her employment, and whose particulars are included or are to be included in the Register, must without delay disclose such conviction or finding to his or her employer.”; and

(b) the substitution for subsection (2) of the following subsection:

“(2) An employee who, after the commencement of this Chapter, applies for employment, must, if he or she has been convicted of a sexual offence against a child or a person who is mentally disabled or is alleged to have committed a sexual offence against a child or a person who is mentally disabled and who has been dealt with in terms of section 77(6) or 78(6) of the Criminal Procedure Act, 1977, and whose particulars are included or are to be included in the Register, disclose such conviction or finding when applying for employment.”.

#### **Amendment of section 47 of Act 32 of 2007**

5. Section 47 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) A person who, after the commencement of this Chapter, applies for a licence contemplated in subsection (1) to a licensing authority, and whose particulars are included or are to be included in the Register, must disclose that he or she has been convicted of a sexual offence against a child or a person who is mentally disabled or that he or she is alleged to have committed a sexual offence against a child or a person who is mentally disabled and has been dealt with in terms of section 77(6) or 78(6) of the Criminal Procedure Act, 1977.”.

#### **Amendment of section 48 of Act 32 of 2007**

6. Section 48 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) A person who, after the commencement of this Chapter, applies to become a foster parent, kinship care-giver, temporary safe care-giver, an adoptive parent or a curator, and whose particulars are included or

are to be included in the Register, must disclose that he or she has been convicted of a sexual offence against a child or a person who is mentally disabled or that he or she is alleged to have committed a sexual offence against a child or a person who is mentally disabled and has been dealt with in terms of section 77(6) or 78(6) of the Criminal Procedure Act, 1977.”.

#### **Amendment of section 50 of Act 32 of 2007**

7. Section 50 of the principal Act is hereby amended by—

(a) the substitution for paragraph (a) of subsection (2) of the following paragraph:

“(a) A court that has in terms of this Act or any other law—

(i) convicted a person of a sexual offence against a child or a person who is mentally disabled and, after sentence has been imposed by that court for such offence, in the presence of the convicted person; or

(ii) made a finding and given a direction in terms of section 77(6) or 78(6) of the Criminal Procedure Act, 1977, that the person is by reason of mental illness or mental defect not capable of understanding the proceedings so as to make a proper defence or was, by reason of mental illness or mental defect, not criminally responsible for the act which constituted a sexual offence against a child or a person who is mentally disabled, in the presence of that person,

must, subject to paragraph (c), make an order that the particulars of the person be included in the Register.”; and

(b) the insertion after paragraph (b) of subsection (2) of the following paragraph:

“(c) Before making an order in terms of paragraph (a), the court must—

(i) inform a person, who was under the age of 18 years at the time of the commission of the offence, of the court’s power to make an order in terms of paragraph (a); and

(ii) afford the person referred to in subparagraph (i) an opportunity to address the court as to why such an order should not be made,

whereafter the court may direct that the particulars of such a person shall not be included in the Register.”; and

(c) the substitution for subsection (4) of the following subsection:

“(4) Where a court, for whatever reason, fails to make an order under subsection (2)(a), in respect of any person other than a person referred to in subsection (2)(c)(i), the prosecuting authority or any person must immediately or at any other time bring this omission to the attention of the court and the court must make such order.”.

#### **Amendment of section 51 of Act 32 of 2007**

8. Section 51 of the principal Act is hereby amended by—

(a) the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“(1) Subject to subsections (2), (2A) and (3), the particulars of a person—”; and

(b) the insertion after subsection (2) of the following subsection:

“(2A) A person falling into the categories contemplated in subsection (1), who was a child at the time of the commission of the offence concerned, may, at any time before the expiration of the periods referred to in subsection (1), apply to the court referred to in section 50(2)(c) for an order that his or her particulars must be removed from the Register by—

(a) addressing the court on the reasons for such application and showing good cause why he or she has been rehabilitated and is unlikely to commit another sexual offence against a child or a person who is mentally disabled, as the case may be; and

(b) submitting to the court an affidavit by him or her stating that no charge relating to a sexual offence against a child or a person who is mentally disabled, as the case may be, is pending against him or her.”.

**Amendment of section 56 of Act 32 of 2007**

9. Section 56 of the principal Act is hereby amended by the deletion in subsection (2) of paragraph (b).

**Amendment of section 67 of Act 32 of 2007**

10. Section 67 of the principal Act is hereby amended by the substitution of the following section:

**“Regulations**

67. (1) The Minister, after consultation with the cabinet members responsible for safety and security, correctional services, social development and health and the National Director of Public Prosecutions, may make regulations regarding—

- (a) any matter which is required or permitted by this Act to be prescribed by regulation;
- (b) the inter-sectoral implementation of this Act; and
- (c) any other matter which is necessary or expedient to be prescribed in order to achieve or promote the objects of this Act.

(2) The Minister may make regulations regarding the procedure to be followed in respect of the applications referred to in section 51(2A) of this Act.”

**Short title**

11. This Act is called the Criminal Law (Sexual Offences and Related Matters) Amendment Act Amendment Act, 20XX.