

REPUBLIC OF SOUTH AFRICA

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

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(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.

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**BILL**

**To amend the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, so as to introduce a two year age gap in respect of children between the ages of 12 and 16 years who engage in sexual acts with each other, to provide presiding officers with 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 introduce 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.**

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**PARLIAMENT** of the Republic of South Africa enacts, as follows:—

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

1. Section 15 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (hereinafter referred to as 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—

(a) commits an act of sexual penetration with a child (“B”); and

(b) the age difference between A and B is more than two 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.

(2) (a) The institution of a prosecution for an offence referred to in subsection (1) must be authorised in writing by the **[National]** relevant Director of Public Prosecutions if **[both] A [and B were children] was a child** at the time of the alleged commission of the offence[: **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**

2. 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—

(a) commits an act of sexual violation with a child (“B”); and

(b) the age difference between A and B is more than two 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.

(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 a child** at the time of the alleged commission of the offence[: **Provided that, in the event that the Director of Public Prosecutions concerned 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**

3. Section 46 of the principal Act is hereby amended—

(a) by 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 in the Register must without delay disclose such conviction or finding to his or her employer.”; and

(b) by 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 in the Register disclose such conviction or finding when applying for employment.”.

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

4. 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 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**

5. 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 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**

**6.** Section 50 of the principal Act is hereby amended—

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

“(2) (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.

(b) When making an order contemplated in paragraph (a), the court must, in the case of any person other than a person referred to in paragraph (c)(i), explain the contents and implications of such an order, including section 45, to the person in question.

(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);
- (ii) receive and consider an assessment report compiled by a psychologist or psychiatrist duly registered or deemed to be registered in terms of the Health Professions Act, 1974 (Act No. 56 of 1974), or a social worker registered in terms of the Social Service Professions Act, 1978 (Act No. 110 of 1978), dealing with the likelihood whether or not the person will commit another sexual offence against a child or a person who is mentally disabled, as the case may be; and

(iii) afford the person referred to in subparagraph (i) an opportunity to make representations why such an order should not be made, where after the court may direct that the particulars of such a person not be included in the Register.”; and

(b) by 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 paragraph (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**

7. Section 51 of the principal Act is hereby amended—

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

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

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

“(2A) (a) A person falling into the categories contemplated in subsection (1), who was a child at the time of the commission of the offences concerned, may, at any time before the expiration of the periods referred to in subsection (1), apply in writing to the Registrar to have his or her particulars removed from the Register which application must be accompanied by—

(i) a report, obtained at the person’s own cost, compiled by a psychologist or psychiatrist duly registered or deemed to be registered in terms of the Health Professions Act, 1974 (Act No. 56 of 1974), or a social worker registered in terms of the Social Services Professions Act, 1978 (Act 110 of 1978), to the effect that the person concerned 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

(ii) an affidavit by the person concerned 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.

(b) The Registrar must, after having considered the application and if the Registrar is satisfied that it is unlikely that the person will commit another sexual offence against a child or a person who is mentally

disabled, as the case may be, and that there is no charge relating to a sexual offence concerned pending against him or her, remove the particulars of the person contemplated in paragraph (a) from the Register.”.

**Amendment of section 56 of Act 32 of 2007, as amended by section 4 of Act 6 of 2012**

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

**Short title**

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