

09 FEBRUARY 2016

## DISCUSSION ON THE AMENDMENTS TO THE PROPOSED BILLS

Children's Amendment Bill [B 13-2015]

Page 2

The definition of "Sexual Offence" in the Bill as introduced has been amended:

### Old

'**sexual offence**' means sexual offence as defined in the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007);" **[and any offence of a sexual nature in any other law].**

### New

**'sexual offence'** means sexual offence as defined in the Sexual Offences Act, 1957 (Act No. 23 of 1957), the Criminal Law (Sexual Offences and Related Matters) Act 32 of 2007 and the Films and Publications Act, 1996 (Act No. 65 of 1996) **[and any offence of a sexual nature in any other law] –**  
**Committee to guide on this further amendment.**

Page 3 before line 5 insert new section 1(A)

"(1A) the provisions of subsection (1)(c) are not applicable to a person who was a child at the time of the commission of the alleged offence". NB this principle is in line with the Constitutional Court decision regarding the automatic listing of child offenders on the sexual offenders register.

Page 3 after line 5 rape and indecent assault which were removed in the Bill as introduced will be retained. The section will read as follows: "on conviction of murder, **rape, indecent assault** or any other sexual offence contemplated in the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007), assault with the intent to do grievous bodily harm....."

Page 3 line 25, a new section 4A

4A) If a court has, in terms of this Act or any other law, convicted a person of a sexual offence referred to in section 4 (a) and such a person was a child at the time of the commission of such offence, or if a court has made a finding and given a direction referred to in section 4(b) in respect of such person who was a child at the time of the alleged commission of the offence, the court may not make an order as contemplated in section 4

(a) unless—

(i) the prosecutor has made an application to the court for such an order;

(ii) the court has considered a report by the probation officer referred to in section 71 of the Child Justice Act, 2008, which deals with the probability of A committing another sexual offence against a child or a person who is mentally disabled, as the case may be, in future;

(iii) the person concerned has been given the opportunity to address the court as to why his or her particulars should not be included in the Register; and

(iv) the court is satisfied that substantial and compelling circumstances exist based upon such report and any other evidence, which justify the making of such an order.

(d) In the event that a court finds that substantial and compelling circumstances exist which justify the making of an order as contemplated in section 4, the court must enter such circumstances on the record of the proceedings."

The principle in this aforementioned section is in line with the recent Constitutional Court decision regarding the Sexual Offences Act

On page 3 after line 35, to insert an exception

“(5) Any person who has been convicted of an offence contemplated in subsection (4)(a), whether committed in or outside the Republic during the five years preceding the commencement of this Chapter, is deemed to be unsuitable to work with children, **unless such a person was a child at the commission of the offence**”

On page 3 after line 40, insert a new sub paragraph

(aA) of any criminal conviction contemplated in section 120 (4A)

Page 4 in line 5 omit [**ostensibly**] and add at the end of that paragraph the words **“and such inability is readily apparent”**.

This section will now read as follows: has been abandoned or orphaned and does not have the ability to support himself or herself **and such inability is readily apparent**”

#### Children’s Second Amendment Bill [B 14 -2015]

Page 2 after line 10 to add the words in bold

“a social worker in the employ of the Department or a provincial department of social development, including a social worker employed as such on a part-time or contract basis; **has a speciality in adoption services and is registered in terms of the Social services Professions Act, 1978 (Act No. 10 of 1978)**”.

On page 3, in line 50 remove the words "placement of the child in temporary safe care" and add "the removal of the child"

the matter is placed before the children's court for review before the expiry of the next court day after **the removal of the child**;

page 5 after line 10 insert the words in bold

the continued stay in that care is necessary to enable that person to complete his or her grade 12, higher education, further education and training, **internship, learnership** or vocational training.";