

THE NEW SEXUAL OFFENCES ACT

protecting our children from sexual predators

Certain sections of the long-awaited Criminal Law (Sexual Offences and Related Matters) Amendment Act, No. 32 of 2007, came into effect on the 16th of December 2007 after being signed into law by President Thabo Mbeki. Section 72 of the Act provides for the implementation of Chapters 1 to 4 and 7, which mainly deal with the creation of statutory sexual offences, special protection measures for children and persons who are mentally disabled, certain transitional arrangements and evidence-related matters. The Act will help intensify South Africa's efforts to fight sexual crimes against all persons and, especially, sexual offences being committed against vulnerable groups, including women, children and people who are mentally disabled.

The Act also addresses the archaic law on sexual offences that existed prior to this law coming into effect. Amongst other critical things, it repeals the common law offence of rape and replaces it with a new expanded statutory offence of rape, applicable to all forms of sexual penetration without consent, irrespective of gender. This simply means that a woman, a man (or a child) can now be raped by another woman or man.



The common law offence of indecent assault is also repealed and replaced with the new offence of sexual assault which contains an expanded definition of a wider range of acts of sexual violation without consent.

Another development coming with the Act is the enactment of new, expanded or amended sexual offences against children and persons who are mentally disabled, including offences relating to sexual exploitation or grooming, exposure to or display of child pornography or pornography to children and the creation of child pornography.

Some of these offences are similar to offences in respect of adults but it specifically aims to address the particular vulnerability of these groups. It also criminalises the compelling or causing the witnessing of certain sexual conduct and certain parts of the human anatomy.



Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007)



the doj & cd

Department:
Justice and Constitutional Development
REPUBLIC OF SOUTH AFRICA

“TEENAGE KISSING” AND THE NEW ACT

RECENT MEDIA REPORTS ON “TEENAGE KISSING” AND THE NEW ACT

Ever since its implementation; this new law has been met with mixed reviews by the South African public - with the legal fraternity and some advocacy groups applauding certain aspects, but raising concern about others. Based on public comments and a significant number of media reports since the Act came into operation; it has become clear that there is confusion both in the media and public arena regarding the provisions of sections 15 and 16 of the new Act.

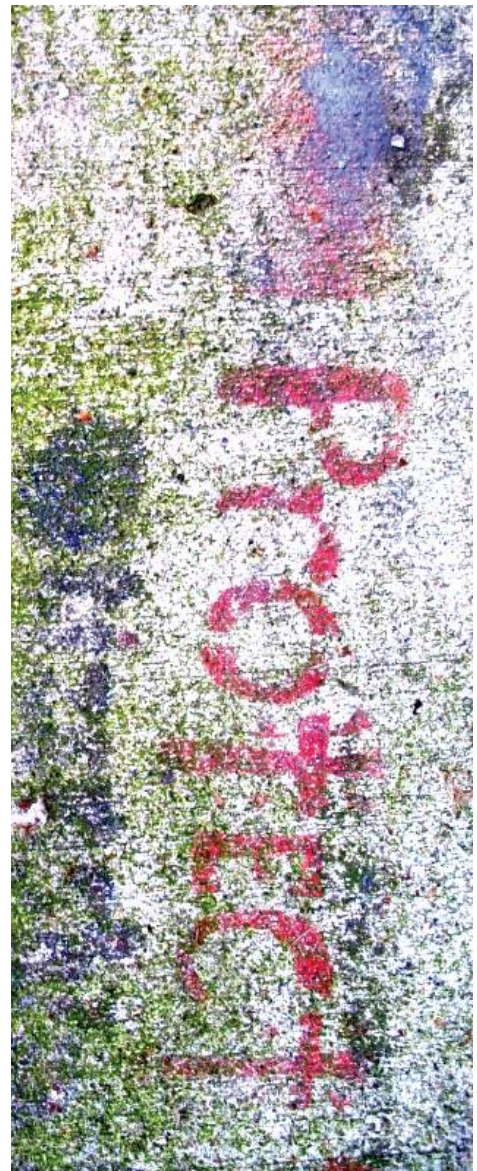
Section 15 aims to criminalise acts of sexual penetration by adults with children between the ages of 12 and 16 years, despite their consent.

Section 16 is intended to criminalise acts of consensual sexual violation committed by adults with children between the ages of 12 and 16 years.

The Act provides, among others, that children who engage in certain acts with each other, such as kissing, cannot be prosecuted for doing so if both agreed to such acts and the age difference between the two children is not more than two years. The Act even goes further to ensure that children who innocently engage in certain acts with each other are not prosecuted by affording the Directors of Public Prosecutions with the discretion to decide whether prosecutions should be instituted or not in those cases where there are two children involved.

The provisions of section 16, read with sections 56(2)(b) and 66(2)(a)(vi), of the Act have been carefully drafted so as **to avoid the situation that teenage sexual experimentation of a non-penetrative nature attracts criminal prosecution**, but, at the same time, ensuring that persons who sexually abuse children do not go unpunished.

Most of the creative and flawed reporting on the Act is mainly focussing on section 16; saying it effectively bans kissing and cuddling between children under the age of sixteen. This is because some individuals and organisations have been reading sections of the Act in isolation of its overall intention; thus missing the point about the 2007 Sexual Offences Act.





It should further be remembered that the prosecuting authority, besides the provisions contained in the Act dealing with those who breach sections 15 or 16, is the one with the final say – based on its discretionary powers – to institute criminal proceedings or not. In all instances, prosecutors will still manage these matters on a case to case basis and will still exercise their prosecutorial discretion in deciding whether to prosecute or not on the merits of each case.

The concept of reasonableness will continue to guide the prosecuting authority, and the **focus will be on detecting instances where there has been some clear form of sexual abuse.** This is precisely to ensure that children who innocently hold hands and kiss each other are not prosecuted for doing so. What the Act does address is **the problem of older sexual predators preying on young children.**

EFFECTIVELY PROSECUTE A WIDER RANGE OF SEXUAL OFFENCES

Importantly, the Act is expected to enable prosecutors to effectively prosecute a wider range of sexual offences, in collaboration with Investigating Officers from the South African Police Service (SAPS). The design of guidelines on Prosecutor-Guided Investigations (PGI) will also be enhanced by this legislation, as it calls for the holistic management of sexual offences matters by all role-players.

The Act also makes interim provisions relating to trafficking in persons for sexual purposes. Chapter 5 deals with services for victims of sexual offences and the compulsory HIV testing of certain alleged sexual offenders and will take effect on Human Rights Day, 21 March 2008, or an earlier date fixed by the President.



The Act further provides for the creation of a National Register for Sex Offenders in terms of Chapter 6 of the Act. In terms of the Act persons who are convicted of a sexual offence against a child or a person who is mentally disabled may not work with, supervise or have access to a child or a person with a mental disability in the course of his or her employment.



The Register will keep record of those who have been convicted of sexual offences against children or persons who are mentally disabled. It will be a confidential record, accessed only by employers in respect of employees and employees in respect of their own particulars. The Register will help to prevent certain persons from gaining access to children or persons with mental disabilities in the course of their employment.

An obligation is also placed on, for example, schools, entertainment centres and facilities for the mentally disabled to ensure that they do not employ such individuals. Contravention of this obligation will be a criminal offence. Chapter 6 of the Act will be operational at the end of 2008.

Additionally, the Act makes provision for the establishment of the National Inter-Sectoral Committee on the Sexual Offences Amendment Act. The Committee must, among others, advise the Minister for Justice and Constitutional Development on various matters including the implementation of the Act.

This Committee will consist of several Government departments including the following:

- **The South African Police Services (SAPS);**
- **The National Prosecuting Authority;**
- **Correctional Services;**
- **Justice and Constitutional Development;**
- **Social Development; and**
- **Health.**

The Committee has been identified as critical in the co-ordination and the successful implementation of the Act.