
REPUBLIC OF SOUTH AFRICA

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

REPUBLIEK VAN SUID-AFRIKA

**WYSIGINGSWET OP
WYSIGINGSWET OP DIE
STRAFREG (SEKSUELE
MISDRYWE EN VERWANTE
AANGELEENTHEDE)**

No 5, 2015

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.

ACT

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; to provide for the removal of the particulars of children who were convicted for having engaged in consensual sexual acts with each other, from the National Register for Sex Offenders; to provide for the expungement of the criminal records of certain persons; and to provide for matters connected therewith.

PREAMBLE

BEARING IN MIND that the Constitutional Court found, in the case of *Teddy Bear Clinic for Abused Children and Others v the Minister of Justice and Constitutional Development and Others [2013] ZACC 35*, that sections 15 and 16 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007), are unconstitutional insofar as they criminalise consensual sexual conduct between adolescents;

AND BEARING IN MIND that the primary objective of sections 15 and 16 of the Act, namely to protect children, who are 12 years or older but under the age of 16 years, from adult sexual predators remains unaffected by the Constitutional Court judgment and consequently also does not lower the age of consent in respect of sexual acts to 12 years;

AND BEARING IN MIND that the purposes of discouraging adolescents from prematurely engaging in consensual sexual conduct which may harm their development, and from engaging in sexual conduct in a manner that increases the likelihood of the risks associated with sexual conduct materialising, are legitimate and important;

AND BEARING IN MIND that the Constitutional Court, in the case of *J v the National Director of Public Prosecutions and Others [2014] ZACC 13*, found that the automatic inclusion of the particulars of persons, who were children at the time of the commission of sexual offences, in the National Register for Sex Offenders is contrary to the “best interest of the child” principle and therefore not justified in an open and democratic society,

PARLIAMENT of the Republic of South Africa therefore enacts 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: 5

“‘**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,**] 10

and ‘**children**’ has a corresponding meaning.”.

Substitution of section 15 of Act 32 of 2007

2. The following section is hereby substituted for section 15 of the principal Act:

“Acts of consensual sexual penetration with certain children (statutory rape) 15

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— 20

(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).**] 25 30

(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.”.

Substitution of section 16 of Act 32 of 2007 35

3. The following section is hereby substituted for section 16 of the principal Act:

“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— 40

(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. 45

(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 50

BEPAAL die Parlement van die Republiek van Suid-Afrika derhalwe soos volg:—

Wysiging van artikel 1 van Wet 32 van 2007

1. Artikel 1 van die Wysigingswet op die Strafreg (Seksuele Misdrywe en Verwante Aangeleenthede), 2007 (Wet No. 32 van 2007) (hierna die “Hoofwet” genoem), word hierby gewysig deur die vervanging van die woordomskrywing van “kind” deur die volgende woordomskrywing:

“ ‘kind’[—]

[(a)] iemand onder die ouderdom van 18 jaar; of

(b) **met betrekking tot artikels 15 en 16, iemand van 12 jaar of ouer, maar onder die ouderdom van 16 jaar,**

en ‘kinders’ het ’n ooreenstemmende betekenis.”.

Vervanging van artikel 15 van Wet 32 van 2007

2. Artikel 15 van die Hoofwet word hierby deur die volgende artikel vervang:

“Handelinge van instemmende seksuele penetrasie met sekere kinders (statutêre verkragting)

15. (1) Iemand (‘A’) wat ’n handeling van seksuele penetrasie met ’n kind (‘B’) wat 12 jaar of ouer, maar onder die ouderdom van 16 jaar is, pleeg, is, ondanks die toestemming van B tot die pleeg van sodanige handeling, skuldig aan die misdryf van die pleeg van ’n handeling van instemmende seksuele penetrasie met ’n kind, tensy A, ten tyde van die beweerde pleeg van sodanige handeling—

(a) 12 jaar of ouer, maar onder die ouderdom van 16 jaar was; of

(b) 16 of 17 jaar oud was en die ouderdomsverskil tussen A en B nie meer as twee jaar was nie.

(2) (a) Die instelling van ’n vervolging van ’n misdryf in subartikel (1) bedoel, moet skriftelik deur die [Nasionale] Direkteur van Openbare Vervolgings gemagtig word indien [beide] A [en B kinders] 16 of 17 jaar oud was ten tyde van die beweerde pleeg van die misdryf en die ouderdomsverskil tussen A en B was meer as twee jaar: **Met dien verstande dat, in die geval waar die Nasionale Direkteur van Openbare Vervolgings die instel van ’n vervolging magtig, beide A en B van die oortreding van subartikel (1) aangekla moet word.**

(b) Die [Nasionale] betrokke Direkteur van Openbare Vervolgings mag [nie] sy of haar bevoegdheid om te besluit of ’n vervolging ingevolge hierdie artikel ingestel behoort te word al dan nie, delegeer [nie].”.

Vervanging van artikel 16 van Wet 32 van 2007

3. Artikel 16 van die Hoofwet word hierby deur die volgende artikel vervang:

“Handelinge van instemmende seksuele skending met sekere kinders (statutêre seksuele aanranding)

16. (1) Iemand (‘A’) wat ’n handeling van seksuele skending met ’n kind (‘B’) wat 12 jaar of ouer, maar onder die ouderdom van 16 jaar is, pleeg, is, ondanks die toestemming van B tot die pleeg van sodanige handeling, skuldig aan die misdryf van die pleeg van ’n handeling van instemmende seksuele skending met ’n kind, tensy A, ten tyde van die beweerde pleeg van sodanige handeling—

(a) 12 jaar of ouer, maar onder die ouderdom van 16 jaar was; of

(b) 16 of 17 jaar oud was en die ouderdomsverskil tussen A en B nie meer as twee jaar was nie.

(2) (a) Die instelling van ’n vervolging van ’n misdryf in subartikel (1) bedoel, moet skriftelik deur die betrokke Direkteur van Openbare Vervolgings gemagtig word indien [beide] A [en B kinders] 16 of 17 jaar oud was ten tyde van die beweerde pleeg van die misdryf en die

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.” 5

Amendment of section 46 of Act 32 of 2007

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

(a) by the substitution for subsection (1) of the following subsection: 10

“(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 15 20

(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 or are to be included in the Register, disclose such conviction or finding when applying for employment.”. 25 30

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.”. 35 40

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.”. 45 50

Amendment of section 50 of Act 32 of 2007

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

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

ouderdomsverskil tussen A en B was meer as twee jaar[: **Met dien verstande dat, in die geval waar die Direkteur van Openbare Vervolgings die instel van 'n vervolging magtig, beide A en B van die oortreding van subartikel (1) aangekla moet word**].

(b) Die betrokke Direkteur van Openbare Vervolgings mag [nie] sy of haar bevoegdheid om te besluit of 'n vervolging ingevolge hierdie artikel ingestel behoort te word al dan nie, delegeer [nie].”.

Wysiging van artikel 46 van Wet 32 van 2007

4. Artikel 46 van die Hoofwet word hierby gewysig—

(a) deur die vervanging van subartikel (1) deur die volgende subartikel: 10

“(1) 'n Werknemer wat by die inwerkingtreding van hierdie Hoofstuk in diens van 'n werkgewer is en wat aan 'n seksuele misdryf teenoor 'n kind of 'n persoon wat verstandelik gestremd is, skuldig bevind is of wat na bewering 'n seksuele misdryf teenoor 'n kind of 'n persoon wat verstandelik gestremd is, gepleeg het en met wie ingevolge artikel 77(6) of 78(6) van die Strafproseswet, 1977, gehandel is, ongeag of sodanige misdryf gedurende die loop van sy of haar diens gepleeg of na bewering gepleeg is al dan nie, en wie se besonderhede in die Register opgeneem is of opgeneem staan te word, moet sodanige skuldigbevinding of bevinding onverwyld aan sy of haar werkgewer openbaar.”; en 15 20

(b) deur die vervanging van subartikel (2) deur die volgende subartikel:

“(2) 'n Werknemer wat na die inwerkingtreding van hierdie Hoofstuk aansoek doen om in diens geneem te word, moet, indien hy of sy aan 'n seksuele misdryf teenoor 'n kind of 'n persoon wat verstandelik gestremd is, skuldig bevind is of na bewering 'n seksuele misdryf teenoor 'n kind of 'n persoon wat verstandelik gestremd is, gepleeg het en ingevolge artikel 77(6) of 78(6) van die Strafproseswet, 1977, mee gehandel is, en wie se besonderhede in die Register opgeneem is of opgeneem staan te word, sodanige skuldigbevinding of bevinding openbaar wanneer die aansoek om indiensneming gedoen word.”. 25 30

Wysiging van artikel 47 van Wet 32 van 2007

5. Artikel 47 van die Hoofwet word hierby gewysig deur die vervanging van subartikel (2) deur die volgende subartikel:

“(2) Iemand wat na die inwerkingtreding van hierdie Hoofstuk by 'n lisensiëringsowerheid aansoek doen om 'n lisensie in subartikel (1) beoog, en wie se besonderhede in die Register opgeneem is of opgeneem staan te word, moet openbaar dat hy of sy aan 'n seksuele misdryf teenoor 'n kind of 'n persoon wat verstandelik gestremd is, skuldig bevind is of na bewering 'n seksuele misdryf teenoor 'n kind of 'n persoon wat verstandelik gestremd is, gepleeg het en ingevolge artikel 77(6) of 78(6) van die Strafproseswet, 1977, mee gehandel is.”. 35 40

Wysiging van artikel 48 van Wet 32 van 2007

6. Artikel 48 van die Hoofwet word hierby gewysig deur die vervanging van subartikel (2) deur die volgende subartikel:

“(2) Iemand wat na die inwerkingtreding van hierdie Hoofstuk aansoek doen om 'n pleegouer, familieverwante versorger, tydelike veiligheidsorg-versorger, aannemende ouer of kurator te word, en wie se besonderhede in die Register opgeneem is of opgeneem staan te word, moet openbaar dat hy of sy aan 'n seksuele misdryf teenoor 'n kind of 'n persoon wat verstandelik gestremd is, skuldig bevind is of na bewering 'n seksuele misdryf teenoor 'n kind of 'n persoon wat verstandelik gestremd is, gepleeg het en ingevolge artikel 77(6) of 78(6) van die Strafproseswet, 1977, mee gehandel is.”. 45 50

Wysiging van artikel 50 van Wet 32 van 2007

7. Artikel 50 van die Hoofwet word hierby gewysig—

(a) deur die vervanging van paragraaf (a) van subartikel (2) deur die volgende paragraaf: 55

- “(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) by the insertion after paragraph (b) of subsection (2) of the following paragraphs:
- “(c) If a court has, in terms of this Act or any other law, convicted a person (‘A’) of a sexual offence referred to in paragraph (a)(i) and A 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 paragraph (a)(ii) in respect of A who was a child at the time of the alleged commission of the offence, the court may not make an order as contemplated in paragraph (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) A 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 paragraph (a), the court must enter such circumstances on the record of the proceedings.”; and
- (c) 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 subsection (2)(c), 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—

- (a) by 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) by 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 and who was convicted of such offence or a person who was a child at the time of the alleged commission of the offence and in respect of whom a court has made a finding and given a direction in terms of section 77(6) or 78(6) of the Criminal Procedure Act, 1977—

- “(a) ’n Hof wat ingevolge hierdie Wet of enige ander wet—
- (i) iemand skuldig bevind het aan ’n seksuele misdryf teenoor ’n kind of ’n persoon wat verstandelik gestremd is, moet in die teenwoordigheid van die veroordeelde persoon en nadat vonnis deur daardie hof vir die misdryf opgelê is; of 5
- (ii) ’n bevinding ingevolge artikel 77(6) of 78(6) van die Strafproseswet, 1977, gemaak of ’n lasgewing uitgereik het dat die persoon vanweë geestesongesteldheid of geestesgebrek nie oor die vermoë beskik om die verrigtinge dermate te begryp dat hy of sy sy of haar verdediging na behore kan voer nie, of vanweë geestesongesteldheid of geestesgebrek nie strafregtelik toerekenbaar was vir die handeling wat ’n seksuele misdryf teenoor ’n kind of ’n persoon wat verstandelik gestremd is, uitmaak nie, moet in die teenwoordigheid van daardie persoon, 10
- ’n bevel, behoudens paragraaf (c), maak dat die besonderhede van die persoon in die Register opgeneem word.”; 15
- (b) deur die invoeging na paragraaf (b) van subartikel (2) van die volgende paragrawe:
- “(c) Indien ’n hof ’n persoon (‘A’), ingevolge hierdie Wet of enige ander wet aan ’n seksuele misdryf in paragraaf (a)(i) bedoel, skuldig bevind en A was ’n kind ten tyde van die pleeg van sodanige misdryf, of indien ’n hof ’n in paragraaf (a)(ii) bedoelde bevinding gemaak het en ’n lasgewing ten opsigte van A wat ’n kind was ten tyde van die beweerde pleeg van die misdryf, uitgereik het, kan die hof nie ’n bevel ingevolge paragraaf (a), uitreik nie, tensy— 20
- (i) die aanklaer ’n aansoek tot die hof bring om die uitreiking van sodanige bevel; 25
- (ii) die hof ’n verslag oorweeg het deur ’n proefbeampte bedoel in artikel 71 van die Child Justice Act, 2008, wat handel met die moontlikheid dat A in die toekoms ’n ander seksuele misdryf teen ’n kind of ’n persoon wat verstandelik gestremd is, na gelang van die geval, sal pleeg; 30
- (iii) A die geleentheid gegun is om die hof toe te spreek oor waarom sy of haar besonderhede nie in die Register opgeneem moet word nie; en 35
- (iv) die hof oortuig is dat wesenlike en dwingende omstandighede, op grond van sodanige verslag en enige ander getuienis, bestaan wat die uitreik van die bevel regverdig.
- (d) Indien die hof bevind dat daar wesenlike en dwingende omstandighede bestaan wat die uitreik van die bevel soos by paragraaf (a) beoog, regverdig, moet die hof sodanige omstandighede in die notule van die verrigtinge aanteken.”; en 40
- (c) die vervanging van subartikel (4) deur die volgende subartikel:
- “(4) Waar ’n hof, om welke rede ookal, versuim om ’n bevel kragtens subartikel (2)(a), ten opsigte van enige ander persoon as die persoon in subartikel (2)(c) bedoel, te maak, moet die vervolgingsgesag of enigiemand onmiddellik of te geleger tyd hierdie oorsig onder die aandag van die hof bring en moet die hof sodanige bevel maak.”. 45

Wysiging van artikel 51 van Wet 32 van 2007

8. Artikel 51 van die Hoofwet word hierby gewysig— 50
- (a) deur die vervanging in subartikel (1) van die woorde wat paragraaf (a) voorafgaan deur die volgende woorde:
- “(1) Behoudens subartikels (2), (2A) en (3) kan die besonderhede van iemand—”; en
- (b) deur die invoeging na subartikel (2) van die volgende subartikel: 55
- “(2A) Iemand wat in die kategorieë beoog by subartikel (1) val, wat ’n kind was ten tyde van die pleeg van die betrokke misdryf en wat skuldig bevind is aan sodanige misdryf of ’n persoon wat ’n kind was ten tyde van die beweerde pleeg van die misdryf ten opsigte van wie ’n hof ’n bevinding gemaak en ’n lasgewing ingevolge artikel 77(6) of 78(6) van die Strafproseswet, 1977, uitgereik het— 60

- (a) before the implementation of this Chapter, may, at any time before the expiration of the periods referred to in subsection (1), apply to a court for an order that his or her particulars must be removed from the Register by—
- (i) addressing the court on the reasons for such application and showing good cause why it is unlikely that he or she will commit another sexual offence against a child or a person who is mentally disabled, as the case may be; and
 - (ii) 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; or
- (b) after the implementation of this Chapter, 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—
- (i) addressing the court on the reasons for such application and showing good cause why it is unlikely that he or she will commit another sexual offence against a child or a person who is mentally disabled, as the case may be; and
 - (ii) 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).

Substitution of section 67 of Act 32 of 2007

10. The following section is hereby substituted for section 67 of the principal Act:

“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.”.

Insertion of section 69A in Act 32 of 2007

11. The following section is hereby inserted in the principal Act after section 69:

- (a) voor die inwerkingtreding van hierdie Hoofstuk, kan, te eniger tyd voor die verstryking van die tydperke in subartikel (1) bedoel, by 'n hof aansoek doen om 'n bevel dat sy of haar besonderhede vanuit die Register verwyder moet word deur—
- (i) die hof toe te spreek oor die redes vir sodanige aansoek en grondige redes aan te voer waarom dit onwaarskynlik is dat hy of sy 'n verdere seksuele misdryf teen 'n kind of 'n persoon wat verstandelik gestremd is, na gelang van die geval, sal pleeg;
 - (ii) 'n beëdigde verklaring deur hom of haar aan die hof voor te lê waarin vermeld word dat geen klag met betrekking tot 'n seksuele misdryf teen 'n kind of 'n persoon wat verstandelik gestremd is, na gelang van die geval, teen hom of haar hangend is nie; of
- (b) na die inwerkingtreding van hierdie Hoofstuk, kan, te eniger tyd voor die verstryking van die tydperke in subartikel (1) bedoel, by die hof in artikel 50(2)(c) vermeld aansoek doen om 'n bevel dat sy of haar besonderhede vanuit die Register verwyder moet word deur—
- (i) die hof toe te spreek oor die redes vir sodanige aansoek en grondige redes aan te voer waarom dit onwaarskynlik is dat hy of sy 'n verdere seksuele misdryf teen 'n kind of 'n persoon wat verstandelik gestremd is, na gelang van die geval, sal pleeg; en
 - (ii) 'n beëdigde verklaring deur hom of haar aan die hof voor te lê wat vermeld dat geen klag met betrekking tot 'n seksuele misdryf teen 'n kind of 'n persoon wat verstandelik gestremd is, na gelang van die geval, teen hom of haar hangend is nie.’’.

Wysiging van artikel 56 van Wet 32 van 2007

9. Artikel 56 van die Hoofwet word hierby gewysig deur paragraaf (b) in subartikel (2) te skrap.

Vervanging van artikel 67 van Wet 32 van 2007

10. Artikel 67 van die Hoofwet word hierby deur die volgende artikel vervang:

“Regulasies

67. (1) Die Minister kan, na oorlegpleging met die kabinetslede wat vir veiligheid en sekuriteit, korrektiewe dienste, maatskaplike ontwikkeling en gesondheid verantwoordelik is, en die Nasionale Direkteur van Openbare Vervolgings, regulasies uitvaardig met betrekking tot—

- (a) enige aangeleentheid wat deur hierdie Wet vereis of toegelaat word om by regulasie voorgeskryf te word;
- (b) die inter-sektorale implementering van hierdie Wet; en
- (c) enige ander aangeleentheid wat nodig of gerieflik is om voor te skryf ten einde die oogmerke van hierdie Wet te bereik of te bevorder.

(2) Die Minister kan regulasies uitvaardig met betrekking tot die prosedure wat ten opsigte van die aansoeke in artikel 51(2A) van hierdie Wet bedoel, gevolg moet word.’’.

Invoeging van artikel 69A in Wet 32 van 2007

11. Die volgende artikel word hierby na artikel 69 in die Hoofwet ingevoeg:

“Removal of particulars from Register and expungement of certain criminal records under the Sexual Offences Act, 1957, and this Act

- 69A.** (1) (a) Where a court has convicted a person of any of the offences referred to in paragraph (b), the—
- (i) particulars of that person in respect of that offence must be removed automatically from the Register by the Registrar; and
 - (ii) criminal record, containing the conviction and sentence in question, of that person in respect of that offence must be expunged automatically by the Criminal Record Centre of the South African Police Service, as provided for in subsection (2).
- (b) The offences contemplated in paragraph (a) are the following:
- (i) A contravention of section 14(1)(a) or 14(3)(a) of the Sexual Offences Act, 1957 (Act No. 23 of 1957), if the convicted person was 16 years or younger at the time of the commission of the offence;
 - (ii) a contravention of section 14(1)(b), 14(1)(c), 14(3)(b) or 14(3)(c) of the Sexual Offences Act, 1957, if the convicted person was 19 years or younger at the time of the commission of the offence; and
 - (iii) a contravention of section 15 or 16 of this Act if the convicted person was 12 years or older, but under the age of 16 years at the time of the commission of the offence.
- (2) (a) The—
- (i) Registrar must remove the particulars from the Register; and
 - (ii) head of the Criminal Record Centre of the South African Police Service or a senior person or persons at the rank of Director or above, employed at the Centre, who has or have been authorised, in writing, by the head of the Centre to do so, must expunge the criminal record of a person,
- if that person qualifies for the automatic removal of his or her particulars from the Register, and the automatic expungement of his or her criminal record, as provided for in subsection (1).
- (b) The—
- (i) Registrar must, on the written request of a person who qualifies to have his or her particulars removed automatically in terms of subsection (1), in writing, confirm that the particulars in question have been removed; and
 - (ii) head of the Criminal Record Centre of the South African Police Service must, on the written request of a person who qualifies to have his or her criminal record expunged automatically in terms of subsection (1), in writing, confirm that the criminal record in question has been expunged.”.

Amendment of long title of Act 32 of 2007

12. The long title of the principal Act is hereby amended by the substitution for the seventh bullet of the following bullet:

- “* eliminating the differentiation drawn between the age of consent for different consensual sexual acts [**and providing for special provisions relating to the prosecution and adjudication of consensual sexual acts between children older than 12 years but younger than 16 years**];”.

Amendment of Index to Act 32 of 2007

13. The index of the principal Act is hereby amended by the insertion after item 69 of the following item:

- “69A. Removal of particulars from Register and expungement of certain criminal records under the Sexual Offences Act, 1957, and this Act.”.

Short title

14. This Act is called the Criminal Law (Sexual Offences and Related Matters) Amendment Act Amendment Act, 2015.

“Verwydering van besonderhede uit Register en skrapping van sekere kriminele rekords kragtens die Wet op Seksuele Misdrywe, 1957, en hierdie Wet

- 69A.** (1) (a) Waar ’n hof ’n persoon aan enige van die misdrywe in paragraaf (b) bedoel, skuldig bevind het, moet die— 5
- (i) besonderhede van daardie persoon ten opsigte van daardie misdryf outomaties deur die Registrateur uit die Register verwyder word; en
 - (ii) kriminele rekord, wat die tersaaklike veroordeling en vonnis van daardie persoon ten opsigte van daardie misdryf bevat, outomaties deur die Kriminele Rekordsentrum van die Suid-Afrikaanse Polisie diens geskrap word, 10
- soos in subartikel (2) bepaal.
- (b) Die misdrywe in paragraaf (a) beoog, is die volgende:
- (i) ’n Oortreding van artikel 14(1)(a) of 14(3)(a) van die Wet op Seksuele Misdrywe, 1957 (Wet No. 23 van 1957), indien die veroordeelde persoon 16 jaar of jonger was ten tyde van die pleeg van die misdryf; 15
 - (ii) ’n oortreding van artikel 14(1)(b), 14(1)(c), 14(3)(b) of 14(3)(c) van die Wet op Seksuele Misdrywe, 1957, indien die veroordeelde persoon 19 jaar of jonger was ten tyde van die pleeg van die misdryf; en
 - (iii) ’n oortreding van artikel 15 of 16 van hierdie Wet indien die veroordeelde persoon 12 jaar of ouer, maar onder die ouderdom van 16 was ten tyde van die pleeg van die misdryf. 20
- (2) (a) Die—
- (i) Registrateur moet die besonderhede uit die Register verwyder; en
 - (ii) hoof van die Kriminele Rekordsentrum van die Suid-Afrikaanse Polisie diens of ’n senior persoon of persone met die rang van Direkteur of hoër, wat by die Sentrum in diens is, en wat skriftelik deur die hoof van die Sentrum daartoe gemagtig is om dit te doen, moet die kriminele rekord van ’n persoon skrap, 25
- indien daardie persoon kwalifiseer vir die outomatiese verwydering van sy of haar besonderhede uit die Register, en die outomatiese skrapping van sy of haar kriminele rekord soos in subartikel (1) bepaal. 30
- (b) Die—
- (i) Registrateur moet, op die skriftelike versoek van die persoon wat kwalifiseer om sy of haar besonderhede outomaties ingevolge subartikel (1) te laat verwyder, skriftelik bevestig dat die betrokke besonderhede verwyder is; en 35
 - (ii) hoof van die Kriminele Rekordsentrum van die Suid-Afrikaanse Polisie diens moet, op die skriftelike versoek van ’n persoon wat kwalifiseer om sy of haar kriminele rekord outomaties ingevolge subartikel (1) te laat skrap, skriftelik bevestig dat die betrokke kriminele rekord geskrap is.” 40

Wysiging van lang titel van Wet 32 van 2007

12. Die lang titel van die Hoofwet word hierby gewysig deur die vervanging van die sewende item deur die volgende item: 45
- “* die onderskeid wat tussen die ouderdom vir toestemming tot verskillende instemmende seksuele handeling getref word, uit te skakel [**en voorsiening te maak vir spesiale bepalings met betrekking tot die vervolging en beregting van instemmende seksuele handeling tussen kinders ouer as 12 jaar, maar jonger as 16 jaar**];” 50

Wysiging van Inhoudsopgawe van Wet 32 van 2007

13. Die inhoudsopgawe van die Hoofwet word hierby gewysig deur die volgende item na item 69 in te voeg: 55
- “69A. Verwydering van besonderhede uit Register en skrapping van sekere kriminele rekords kragtens die Wet op Seksuele Misdrywe, 1957, en hierdie Wet.”**

Kort titel

14. Hierdie Wet heet die Wysigingswet op Wysigingswet op die Strafreg (Seksuele Misdrywe en Verwante Aangeleenthede), 2015.

