

Opinion piece

**3 July 2015**

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**A new law protecting adolescents from being arrested and tried for consensual sexual activity was signed by President Jacob Zuma on 3 July 2015.**

The Sexual Offences and Related Matters Act 32 of 2007 made it a crime for adolescents between the ages of 12 and 16 to kiss, fondle or engage in sexual activity. According to Professor Ann Skelton, Director of the Centre for Child Law at the University of Pretoria, a successful challenge to that law was brought to the Constitutional Court by child rights organisations Teddy Bear Clinic and RAPCAN (Resources Aimed at the Prevention of Child Abuse and Neglect), with legal assistance from the University of Pretoria’s Centre for Child Law. The Constitutional Court directed that the law be amended to ensure that the criminal process would not be used in such cases.

The amendment states that while the age of consent to sexual activity remains 16 years, cases where both consenting parties are between 12 and 16 will not be taken to court. There will also be no prosecution if one party is older than 16 and the other is younger than 16, but there is less than two years’ age difference between them.

The original intention of the law, namely regulating the age of consent to stop adults from engaging in sexual activity with children, remains intact; however, the amendment ensures that adolescents are not drawn into the net of criminality if they consensually engage in sexual activity with one another. Non-consensual sexual acts remain a criminal offence, regardless of the age of the parties, and sexual intercourse with a child below the age of 12 is always considered rape, regardless of whether he or she factually consented.

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