



**TEDDY BEAR CLINIC**  
FOR ABUSED CHILDREN

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Submission

**Children's Amendment Bill (B13-2015)**

**Children's Second Amendment Bill (B14-2015)**

Date : 19 August 2015

Attention:

Ms. Lindiwe Ntsabo

Portfolio Committee on Social Development

Parliament of the Republic of South Africa

Tel: (021) 403-8230 – Email : [lintsabo@parliament.gov.za](mailto:lintsabo@parliament.gov.za)

By:

The Teddy Bear Clinic for Abused Children

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Shaheda Omar [omars@ttbc.org.za](mailto:omars@ttbc.org.za)

Dear Madam,

Thank you for the opportunity of presenting ourselves to you. Here is a brief overview of our Clinic which has been in operation for 29 years.

### **Introduction**

The Teddy Bear Clinic for Abused Children, originated in 1989 in response to an urgent need for medical examinations for sexually abused children. From there it has grown into a fully-fledged service for abused children which includes: Forensic medical examinations, forensic assessments, counseling, psychological testing and more recently a diversion programme for youth sexual offenders.

### **Project Information**

In South Africa, child abuse is and has been an ongoing problem. As an NGO, our concern is not only to support children and families affected by abuse but also to promote: "CHILD ABUSE NO MORE". To do this we at The Teddy Bear Clinic have a two-pronged approach.

We historically have supported the abused child through the Criminal Justice System to ensure psychological healing takes place and the child is able to fulfil their place as a valuable member in society without the scarring that may perpetuate child abuse in the future. We have done this through forensic medical examinations, supportive therapy, forensic evaluations, psychological testing and a court preparation programme for children and parents, for cases that go to court.

The second prong of The Teddy Bear Clinic approach is offering a diversion programme in partnership with the courts for young sex offenders. This programme is designed to redirect the child offender away from the criminal justice system in order to rehabilitate the child into more constructive behaviours. We hereby prevent the child from developing into an adult offender which in turn will help us achieve our aim of "Child Abuse no more"

### **Mission**

To minimize the secondary harm to children and their families when entering the child protection system by providing expertise, information and support in order to make their journey a healing one

### **Vision**

To have a society free of Child Abuse – "CHILD ABUSE NO MORE"

## **SUBMISSIONS: The Children's Amendment Bill (B13-2015)**

The Teddy Bear Clinic, (TTBC) supports the amendments to the Children's Act 2005 with the Sexual Offences Amendment Act as related to certain definitions, persons deemed unsuitable to work with children, removal of names from the National Register of Sex Offenders, removal of children without a court order is granted, and related matters.

Shaheda Omar carefully considered these proposed amendments and have the following comments and additions:

### **1 Section 1(b) of Act 38 of 2005**

TTBC agrees with the insertion of the definition of "sexual offence" as defined by the Criminal Law (Sexual Offences and Related Matters) amendment Act, 2007 (Act 32 of 2007).

With the TIP Act coming into effect on 07 August 2015 of the Prevention and Combatting Trafficking in Persons Act 2013 (Act 7 of 2013);

TTBC proposes that the definition of Sexual Offences must include offences relating to the Section 10 of Tip Act concerning;

"Involvement in Offences

1. Any person who :
  - a. Attempts to commit or performs any act aimed at participating in the commission of ;
  - b. Incites, instigates, commands, directs, aids, promotes, advises, recruits, encourages or procures any other person to commit; or
  - c. Conspires with any other person to commit, an offence under this Chapter is guilty of an offence.
2. A person who is found guilty of an offence referred to in subsection (1) is liable, on conviction, to the penalties for the offence in question, as provided for in section 13."

### **2. Section 1(b) of Act 38 of 2005**

-(a) (a)

We propose that the following be included ...

- (a) On conviction of murder, any sexual offence contemplated in the Criminal Law (Sexual Offences and Related Matters) Amended Act, 2007 (Act 32 of 2007), **and section 10 of the Prevention and Combatting of Trafficking in Persons Act 2013 (Act 7 of 2013) concerning involvement in offences**, assault where the intention is to commit grievous bodily harm;
- (b) Explicit or intentional use of children relating to **the Film and Publications Act 1996 (ACT 65 of 1996) regarding section 24A(5), concerning the distribution or exhibition of classified material to children and 24B concerning child pornography and sexual exploitation of children.**

-(a) (b)

TTBC strongly feels that children who have been convicted of sexual offences should not automatically be placed on the same National Sex Offenders Register (NSOR), as adults.

We understand that the National Child Protection Register (NCPR) is more comprehensive. The NCPR needs to be reviewed and revised, where all (child and adult) offenders go onto the register.

We propose therefore that the NCPR and the NSOR be combined and that child and adult Sex Offenders be placed in different categories under the joint register. This in an effort to pool resources, reduce costs and have a centralised comprehensive information system.

In relation to the proposed amendments to this Bill with regard to:

**(b)**

The opportunity for a child that has been convicted of an offence, be afforded the opportunity to make representation for the removal of their name from the register in subsection (b)

TTBC proposes an insertion in this section so that the Court must ensure that the resources and adequate representation is made available to all child sex offenders to make representation to Court.

(c) By the insertion after subsection (4) of the following subsection:

“(4A) Before making an order contemplated in Subsection (1), in the respect of a child who was under the age of 18 years when he or she committed the offence, the court must **ensure that adequate resources and representation is available to-**

- (a) Each child offender should be given an opportunity to make representation as to why their name should not appear on the Register.
- (b) The best interests of the child are always to be considered despite the crime that they have been convicted of
- (c) Provided that the application is found to have just reason, the child’s name should not be included

-(c)

We feel there is a need for two separate categories, there cannot be a trickle down phenomenon of one size fits all. Children cannot be treated in the same manner as adults.

We propose the following insertion:

**Any inclusions are to be reviewed on an annual basis, especially with regard to offenders who are being screened as suitable to work with children.**

Concerning subsection (c) we further propose that the time period in which an adult who committed an offence preceding the commencement of this Chapter is deemed unsuitable to work with children, be extended.

We propose :

- 5 years for a First Time Offender
- 10 years for a Repeat Offender

#### 4 Section 128 of Act 38 of 2005

(1)

Concerning persons under the age of 18 years; we propose the following insertion

- (1) A person whose name appears in Part B of the register, for findings whilst they were under the age of 18, **or parties acting on their behalf**, may in terms of subsection (2) apply for the removal of his or her name and any information relating to that person from the Register.

#### 5. Section 150 of Act 38 of 2005

(b)

In this section, wording is found to be very broad and vague, which may not pursue the best interests of the child

#### 6. Section 152A of Act 38 of 2005

- (1)

We propose that the word may be deleted and replaced by the word **should**.

- (2) (b)

We propose that the word may be deleted and replaced by the word **should**.

We further proposed that the court must set a timeframe in relation to the return of a child to parents or caregivers or for an investigation to determine if a child is deemed a child in need of care and protection.

Thus propose the following additions;

(b) subsection (1)(b) the presiding officer should make an order, in addition, order that the child be returned to its parent, guardian or care giver, within 48 hours of the order as the case may be, or order that the question of whether the child is in need of care and protection be referred to a designated social worker for an investigation contemplated in section 155(2); and report back to court within 48 hours'.

Appendix 1

Comments on the National Sex Offender Register

TTBC strongly opposes that children who have been convicted of a sexual offence be placed on the same register as adult Sexual Offenders. The severity of the offence can be vetted at the annual review of the name retention on the Register. The Common Law Sexual Offences Amendment prescribes that the children and Adults be treated in the same manner for the purpose of recording offences.

It is the aim of NRSO is to protect children and persons with mental disabilities, against Sex Offenders by developing and recording a database of persons who

- Have any prior convictions of a sexual offence against a child or a person who has a mental disability – locally or internationally
- There has been an allegation of a sexual offence against a child or person who has a mental disability and it has been legally found that the accused is unfit to stand trial.

The NSOR records the names, contact details and offence committed by adult as well as child offenders; such as

- Rape
- Compelled rape
- Sexual assault
- Compelled sexual assault;
- Compelled self-sexual assault
- Acts of consensual sexual penetration with certain children (statutory rape)
- Acts of consensual sexual violation with certain children (statutory sexual assault)
- Compelling or causing children to witness sexual offences, sexual acts or self-masturbation
- Exposure or display or causing of exposure or display of genital organs, anus or female breasts to children
- Sexual exploitation of children and persons who are mentally disabled;
- Sexual grooming of children and persons who are mentally disabled;
- Exposure or display of or causing exposure or display of child pornography or pornography to children or persons who are mentally disabled;
- Using children or persons who are mentally disabled for pornographic purposes or benefiting there from.

As well as offences related to

- the Film and Publications Act, Act 65 of 1996 – Section 24A and 24 B
- Section 10 of the Prevention and Combating of Trafficking in Persons Act, Act 7 of 2013

### **Individuation**

Children require specialised and individualised Intervention and cannot be treated as equals in the eyes of the law.

All children convicted of a sexual offence are presently treated equally regardless of the enormity of the sexual offence committed.

According to the Constitution, children are different to adults.

Children lack the reasonable maturity to appreciate right from wrong.

We believe that placing children on the same NSOR is counterproductive and will be harmful;

- This places children in the same category as paedophiles and serial rapists
- They are subjected to shame humiliation and stigmatisation
- It robs them of their childhood and opportunities in the long term
- Children are resilient and can respond positively to intervention, rehabilitation and reintegration

Most sexual offences committed by children and adolescents are more often less aggressive than those committed by adults. In many cases it is more 'experimental' due to developmental curiosity. They are also often easily influenced by peers and social media to engage in

Some adolescent boys and girls, who are curious about sex and act experimentally, are sometimes irresponsible, impulsive and even violent in their modus operandi and unaware of the potential legal consequences of their actions.

Sexual Violence in Schools 2015 Baseline Study – Limpopo and Gauteng, conducted by Action Aid South Africa through the Sexual Violence Initiative Project - has revealed that:

- 15% of Learners have access to pornographic material via cell phones
- 27% of learners have watched pornographic material
- 56% of learners have used cell phones to record sexual activity

Research on the Impact of the Teddy Bear Clinic Diversion Study has shown a 95% success rate. Children who have been in a Diversion Program at the Teddy Bear Clinic have not reoffended. This longitudinal study clearly shows the rehabilitative value and benefits of treating young sex offenders

### **Restorative and diversion approach**

It is therefore imperative that Children be seen in a different light to adult Sex Offenders.

Without due consideration of the above these children will not be given a chance to become valuable members of Society.

Restorative Justice recognises that it is a crime committed against the victim and the community, however it also proposed that the offender should also be provided intervention and assistance in preventing future reoffending .

### **The Children's Second Amendment Bill (B14-2015)**

TTBC is not commenting on the Amendments relating to safe care and adoption or learnerships, as this is not our core business.

This submission was drafted by Shaheda Omar on behalf of The Teddy Bear Clinic for Abused Children.





