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# NGOs challenge constitutionality of law that criminalises all teenage sex

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THE Teddy Bear Clinic and Resources Aimed at the Prevention of Child Abuse and Neglect (Rapcan) are launching a court application to declare as unconstitutional a law that says sex between underage children is a crime.

Carina du Toit, an attorney representing the organisations, has launched a challenge to the constitutionality of sections 15 and 16 of the Sexual Offences Act.

An amendment to the Sexual Offences Act, in 2007, makes it possible for the National Prosecuting Authority to prosecute teenagers between the ages of 12 and 16 for

having consensual sex. If a nurse at a clinic is asked by a teenager for advice about their sexual activity, and the nurse does not report to the police that the teenager is having sex, that nurse can also be charged.

Du Toit said: "It was put in place to prevent the angry fathers of teenage girls from going to the police to report that their daughters had been raped in terms of statutory law under the old act. In terms of the new law, if the girl is between 12 and 16 she is capable of consent, but it is a criminal offence for her to consent in terms of the act."

Du Toit said the matter was still before the high court, but was yet to be heard.

Childline said the legislation was driving children away from the services they needed to make responsible decisions about their sexuality.

Following the recent decision by the NPA to prosecute six pupils from a school in Limpopo for having consensual sex, the case has been taken up by the organisations.

"To get help, the children have to admit that they have committed a criminal offence. And then the professional is obliged to report them to the police," said Childline's national manager for advocacy and training, Joan van Niekerk.

"It also affects their rights to make choices about their reproductive health," she said.