



Participation versus protection?

Competing notions of children in South African legislation

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Unified picture in international law

- International and regional child rights instruments cover the full spectrum of rights are incorporated civil, political, socio-economic etc.
- Understood to be interdependent and indivisible by child rights community
- Translating the principles into domestic legislation difficult to retain the coherence and can lead to contradictions.



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How South African law sees children



- A fifteen-year has been in a relationship with her boyfriend for a year.
- They both decide they want to have sexual intercourse.
- She wants to take contraception.
- The Children's Act and the Sexual Offences Act respond differently.



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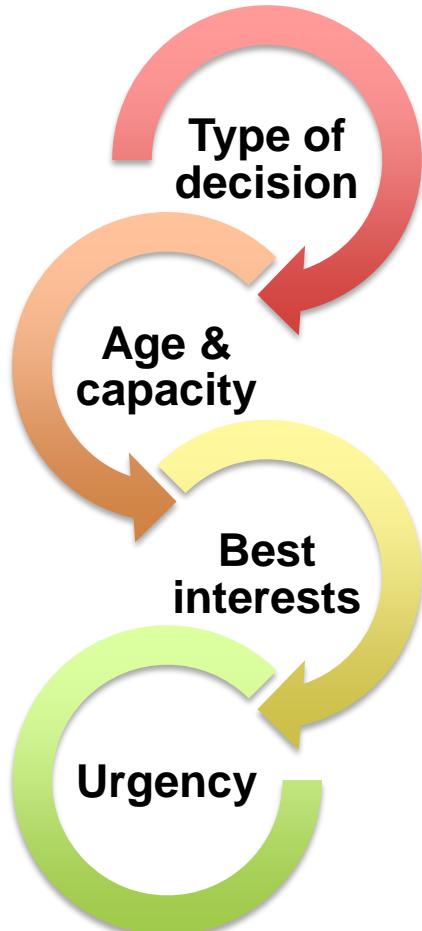


Objectives of the South Africa Children's Act

Respect and fulfill children's rights to:



Chapter on child protection includes factors considered when determining if a child can give consent to health services

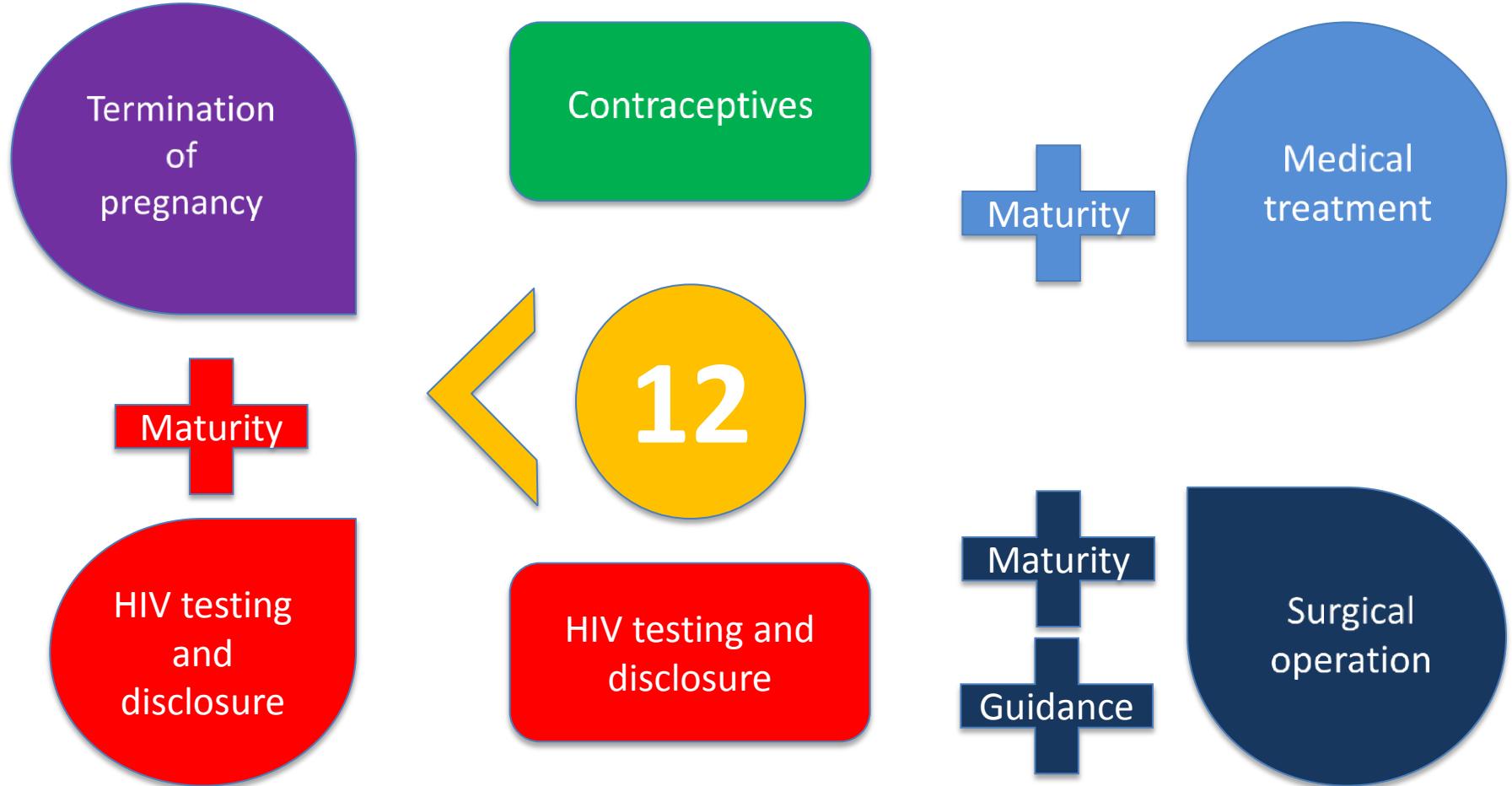


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Access to sexual and reproductive health services

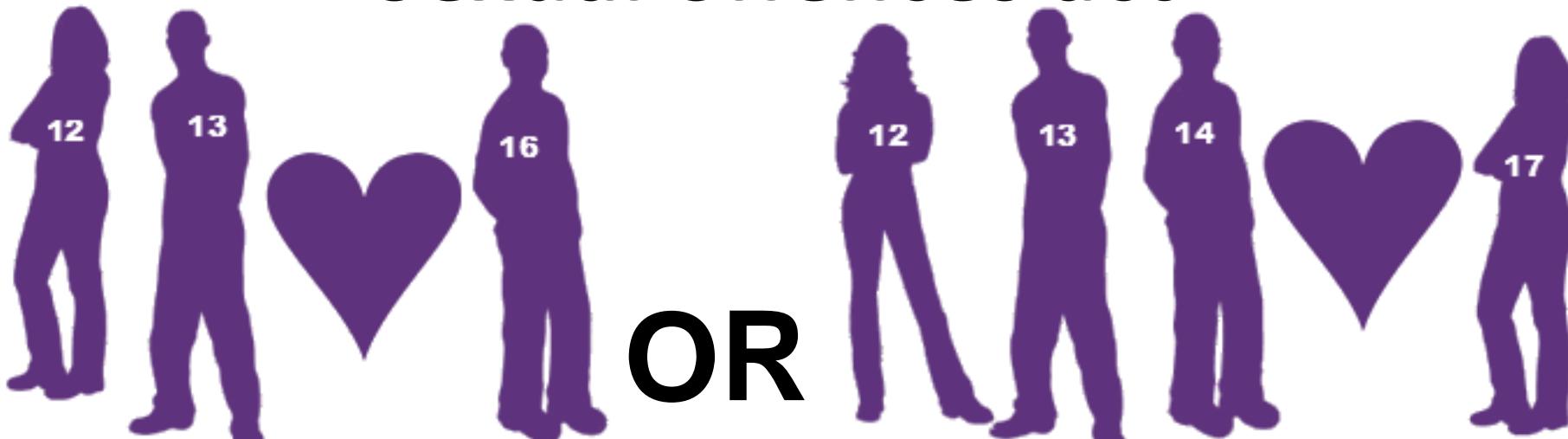


Objectives of the Sexual Offence Act

Respect and fulfill children's *rights* to:



Sexual offences act



OR

**WITH CONSENT IS a CRIME: Statutory Rape or
Statutory Sexual Assault**

- It is a criminal offence to have sex with a child below the age of 16 even if the child consents, until recently this applied to children.
- Health professionals had a legal obligation to report all sexual offences.



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Competing conceptualisations of children in law

Both laws claim to take a child rights approach, leading to competing constructs of children

- Children as competent individuals that need varying levels of support
- Children as innocent victims in need of adult protection
- Children as delinquent and in need of control

Resulting in different outcomes for children

- In practice the law is not a single or heterogeneous body
- Within one jurisdiction the law can have contradictory visions of children
- Law reflects the priorities of the stakeholders in the drafting process
- Implemented by individuals with their own values and perceptions



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Obligation to report

- If you “conclude on reasonable grounds” that a child has been:
 - abused in a manner causing physical injury,
 - **sexually abused** or
 - deliberately neglected
- Conclusion is based balance of probabilities following observation of signs and indicators pointing to **physical and/or emotional harm**