

MANDATORY REPORTING OF CHILD ABUSE IN TERMS OF THE CHILDREN'S ACT NO. 38 of 2005

Child Protection Register - Part A

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1. Introduction

- The Bill of Rights in the Constitution of the Republic of South Africa specifically states that every child has the right to be protected from maltreatment, neglect, abuse or degradation.
- The **Children's Act** (No 38 of 2005) brings South Africa's legislative framework for child care and protection in line with the Constitution and International Law.
- Regardless of the constitutional right and legislative provisions, thousands of children around the country are still victims and/or witnesses of physical, sexual and emotional violence.
- The high rate of violence against children; child abuse; neglect and exploitation as well as the recent statistics of children as young as 10 years old falling pregnant is a clear demonstration of the extend of abuse and neglect inflicted upon children and thus warrants the National DSD to sensitize all officials mentioned in **section 110(1)** of the Children's Act about mandatory reporting.

1. Introduction (cont..)

- The Children's Act advocates for a coordinated and integrated approach by all government departments and civil society organizations to maximize efficient utilization of resources and enhance an effective response system for child victims and those at risk of abuse.
- The objectives of the Act include protecting children from maltreatment, neglect, abuse or degradation and provision of care and protection services to children who are in need of care and protection.
- Department of Social Development as the custodian of children is tasked with a responsibility to care and protect children whilst ensuring their well-being is concerned about the shocking statistics of teenage pregnancies and that some mothers are as young as ten years.
- Pregnancy particularly at the tender age of 10 years is a serious concern to the country as it is a manifestation of the high levels of vulnerability of children; unmitigated risk factors and harm children are exposed to in communities including home environment.

1. Introduction (cont.)

- In response to the alarming figures of teenage pregnancy, DSD made a call to sensitize Health Care Workers about the mandatory reporting as required by the Children's Act because the Department does not have such reported cases owing to its responsibility and mandate to care and protect children and ensuring their well-being.
- The Children's Act makes provision for reporting of suspected cases of abuse for purposes of triggering immediate response and measures to assist a child whose life is at risk.
- For a 10 year old child to engage in sexual acts is a criminal offence in terms of Chapter 3 of Criminal Law (Sexual Offences and Related Matters) Amendment Act.
- In addition such deeds are considered to be child abuse in that the Children's Act defines abuse in relation to a child as any form of harm or ill-treatment deliberately inflicted on a child and includes sexually abusing a child or allowing a child to be sexually abused.
- Consequently, such forms should be reported to DSD.

3. Child Protection Legislation

- Reporting on the register is also required in terms of other key legislative mandates include:
 - The Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007).
 - Prevention and Combating of Trafficking in Persons Act, 2013 (Act No. 7 of 2013).
 - Criminal Procedure Act, 1977 (Act No. 51 of 1977).
 - Child Justice Act (75 of 2008).
 - Domestic Violence Act (Act No. 116 of 1998).

2. Reporting of child abuse in terms of the Children's Act

- The Act recognises the fact that management of children's health is one of the main priorities of Department of Health.
- Therefore, this department play a crucial role
 - in the identification of abuse,
 - provision of care for the child victim of abuse both sexual; physical and psychological;
 - the collection of medico-legal evidence for the successful prosecution of perpetrators in the criminal justice system; and
 - the provision of primary care services which focus on preventative services and make services available for vulnerable groups.
- Reporting of all cases of abuse and neglect and the assessment of children who may have been abused; these assessments include medical, forensic and psychological assessments of the child, and psychiatric assessments.

2. Reporting of child abuse in terms of the Children's Act

- A report by a person contemplated in section 110(1) of the Act, must be made to the relevant authority in a form substantially corresponding with **Form 22** by completing the form to the best of that person's ability and by including in the form such particulars as are available to him or her.
- The stipulated report incidences including physical injury, sexually abused or deliberate neglected.
- In all matters concerning the care, protection and well-being of a child the standard that **the child's best interest is of paramount importance**, must be applied including the need to protect the child from any physical or psychological harm (s11 and 7(1)(l) **of the Children's Act** .
- Where there is a risk to the life of a child or likelihood of serious injury the state/Designated Child Protection Organisations need to ensure the immediate safety of the child.

4. Persons contemplated in section 110(1) of the Act

- According to the **Children's Act (No. 38 of 2005)** the following professional persons are obliged to report child abuse cases.
- Such persons are listed under section 110(1) as follows:

“Any correctional official; **dentist; homeopath;** immigration official; labour inspector; legal practitioner; **medical practitioner; midwife;** minister of religion; **nurse; occupational therapist; physiotherapist; psychologist;** religious leader; social service professional; social worker; **speech therapist;** teacher; traditional health practitioner; traditional leader or member of staff or volunteer worker at a partial care facility; drop-in centre or child and youth care center who on reasonable grounds concludes that a child has been abused in a manner causing physical injury; sexually abused or deliberately neglected, must report that conclusion in the prescribed form to a Designated Child Protection Organization (DCPO); the provincial DSD or a police official”.

5. Form 22

- Form 22 to be displayed.

6. Where to submit Form 22?

A person referred to in section 110 (1) -

(a) must substantiate that conclusion or belief to the provincial DSD, a DCPO or police official; and

(b) who makes a report in good faith is not liable to civil action on the basis of the report.

A police official to whom a report has been made in terms of section 110 (1) must-

(a) ensure the safety and well-being of the child concerned if the child's safety or well-being is at risk and

(b) within 24 hours notify the provincial DSD or a DCPO of the report and any steps that have been taken with regard to the child.

6. Where to submit form 22? cont..

The provincial DSD or DCPO to whom a report has been made in terms of section 110(1) must-

- (a) ensure the safety and well-being of the child concerned, if the child's safety or well-being is at risk;
- (b) make an initial assessment of the report;
- (c) unless the report is frivolous or obviously unfounded, investigate the truthfulness of the report or cause it to be investigated;
- (d) if the report is substantiated by such investigation, without delay initiate proceedings in terms of this Act for the protection of the child; and
- (e) submit such particulars as may be prescribed to the Director-General for inclusion in Part A of the National Child Protection Register.

6. Where to submit form 22? cont..

- The provincial DSD or DCPO which has conducted an investigation may-
 - (a) take measures to assist the child, including counselling, mediation, prevention and early intervention services, family reconstruction and rehabilitation, behaviour modification, problem solving and referral to another suitably qualified person or organisation;
 - (b) if he or she is satisfied that it is in the best interest of the child not to be removed from his or her home or place where he or she resides, but that the removal of the alleged offender from such home or place would secure the safety and well-being of the child, request a police official in the prescribed manner; or
 - (c) deal with the child in the manner contemplated in sections 151, 152 or 155 of the Children’s Act.
- The provincial DSD or CSPO which has conducted an investigation must report the possible commission of an offence to a police official.

7. Conclusion

- After reporting to the DSD, necessary measures to care and protect the child will be undertaken by the department.
- The department is responsible for provision of targeted quality Prevention and Early Intervention Programmes to children. These programmes include responsive protective services for children in need of care and protection, including protection against abuse.
- The reporting of sexual abuse cases which results in teenage pregnancies will contribute towards addressing the challenges within the South African child protection system relating to coordination and integration of services as a result of poor intersectoral collaboration on child protection.

7. Conclusion (cont..)

- Government departments within their respective mandates have a responsibility to activate their child protection response when a child is at risk.
- The Children's Act, 38 of 2005 makes provision for reporting of suspected cases of abuse for purposes of triggering an immediate response and measures to assist a child whose life is at risk.
- In the case of these pregnant children; Health Care Workers have an obligation to care and protect these children by reporting their suspicion of neglect or abuse to SAPS or local DSD if parents and caregivers have taken no action.

THANKS

