

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

HEALTH CARE WORKERS
08 OCTOBER 2024

OUTLINE OF THE PRESENTATION



1. Introduction

2. Purpose

3. Legislative Framework

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

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

6. Form 22

7. Where to submit form 22?

8. Conclusion

1. INTRODUCTION



- Department of Social Development (DSD) as a guardian of children is tasked with a responsibility to care and protect children whilst ensuring their well-being is concerned about high recorded statistics of teenage pregnancies and that some mothers are as young as ten years old.
- Teenage pregnancy particularly 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.
- In response to the alarming figures of teenage pregnancies DSD made a call to sensitize Health Care Workers about the mandatory reporting as required by the Children's Act 38 of 2005 because the Department does not have statistics pertaining such reported cases owing to its responsibility and mandate to care and protect children, ensuring their well-being.
- The Children's Act 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.

BUILDING A CARING SOCIETY. TOGETHER.

1. INTRODUCTION – Cont.....



- In cases of these pregnant children; teachers, **Health Care Workers** and neighbours have an obligation to care and protect these children by raising alarm through reporting of their suspicion of neglect or abuse to the **police or social workers** if parents and caregivers have taken no action.
- The Children’s Act also makes provision for access to information on health promotion and the prevention and treatment of ill-health and disease, sexuality reproduction; access to contraceptives **for children over 12 years of age as there is an acknowledgement that during this adolescent stage children experiment by engaging in sexual abuse** however; they need to be guided and empowered with information to make right decision and choices.
- The Children’s Act further advocates for **promotion and provision of prevention and early intervention programmes** intended to prevent problems before they occur and also address risk factors when children are exposed to harm.

2. PURPOSE



- Given that the DSD does not have such reports, it clearly indicates that Health Care Workers might not be familiar with the reporting obligations as required by the Children's Act No 38 of 2005.
- Therefore, the purpose of the training is to sensitise HCW about mandatory reporting by taking them through **Form 22** which should be completed when reporting such cases and be submitted the Designated Child Protection Organisation or local of DSD for further investigation; assessment; intervention and monitoring of services rendered to the child and the family were required.

3. LEGISLATIVE FRAMEWORK



- 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.
- 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 and be protected from exploitative labour practices.**
- 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 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.
- Just over 90 000 girls aged between **10 - 19** gave birth between March 2021 and April 2022 "Stats SA, (2022) - General Household Survey 2021".
- The highest reported cases of sexual abuse confirm that GBV is a challenge in the country, hence it is also referred to as the second pandemic after COVID-19.

3. LEGISLATIVE FRAMEWORK - 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.
- In its preamble, the Act emphasises that the protection of children's rights leads to a corresponding improvement in the lives of other sections of the community because it is neither desirable nor possible to protect children's rights in isolation from their families and communities.
- 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.
- 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, ensuring their well-being.

4. REPORTING OF CHILD ABUSE IN TERMS OF THE CHILDREN'S ACT



- The Children's Act 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.
- 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 that A person who commits an act of sexual penetration with a child is, despite the consent of such a child to the commission of such an act, is guilty of the offence of having committed an act of consensual sexual penetration with a child (statutory rape) (**s15 (1)**) .
- 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 either DSD; SAPS or Designated Child Protection Organisation.

4. REPORTING OF CHILD ABUSE IN TERMS OF THE CHILDREN'S ACT – Cont.....



- 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.

4. REPORTING OF CHILD ABUSE IN TERMS OF THE CHILDREN'S ACT - CONT.....



- A report by a person contemplated in section 110(1) of the Act, who on reasonable grounds concludes that a child has been abused in a manner causing physical injury, sexually abused or deliberate neglected, 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.
- 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 (s7(1) **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.

5. PERSON CONTEMPLATED IN SECTION 110(1) OF THE ACT



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

“Any officer of the court, correctional official, dentist, **homeopath**, immigration official or an official in the employ of the Department of Home Affairs, labour inspector, legal practitioner, **medical practitioner**, **midwife**, minister of religion, **nurse**, **occupational therapist**, **physiotherapist**, **psychologist**, religious leader, social service practitioner, **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 centre, any person working with children, or a ward councillor who on reasonable grounds, **suspects** that a child has been abused must report that **suspicion** in the prescribed form to a designated child protection organisation, the provincial department of social development or a police official.”

6. FORM 22

- Form 22 to be displayed.



7. 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.

7. 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.

7. WHERE TO SUBMIT FORM 22? Cont..



- The provincial DSD or DCPO which has conducted an investigation
 - (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.
- (8) The provincial DSD or CSPO which has conducted an investigation must report the possible commission of an offence to a police official.

8. 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.
- 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





Child Protection Register: Part B

Establishment of Information on the National Child Protection Register

BUILDING A CARING SOCIETY. TOGETHER.

Building a Caring Society Together.

www.dsd.gov.za





OUTLINE OF THE PRESENTATION

1. Introduction
2. Purpose of Part B: Child Protection Register (CPR)
3. Findings of unsuitability
4. Establishment of Information (Inquiries)
5. Consequences of entry of Name on the Register (Section 123)
6. Disclosure of Entry of Names on the Register.
7. Removal of names from the Register

1. INTRODUCTION



- The preamble of the **Children's Act** (No. 38 of 2005) states that every child has the rights set out in **section 28** of the Constitution and the State must respect, protect, promote and fulfill those rights.
- The **Act** 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.

2. PURPOSE OF PART B OF CPR



- The Children's Act requires that the National Department of Social Development keep and maintain the National CPR.
- National Child Protection Register (CPR) is a protection measure, ensuring that reported cases of child abuse are recorded and interventions provided to children whilst also keeping a register of persons unsuitable to work with children for purposes of screening of all persons who want to work with children, adopt or foster a child/ren.
- The National CPR consists of Part A and Part B as provided for by s111 of the Children's Act.
- Both Parts of the Register are linked through the reporting of child abuse.
- The abused child is linked with the person who is unsuitable to work with children.

2. PURPOSE OF PART B OF CPR (CONT.)



- Purpose of **Part B** is to keep record of persons found unsuitable to work with children to protect them (children) from abuse.
- The Register prohibits the unsuitable person from working with children anywhere in the country (Section 123(1)(a)).
- The Children's Act requires that service providers offering services to children must adhere to the requirements of the Registers (Section 123(1)) in that **before a person is allowed to work with or have access to children at an institution providing services to children, must establish whether or not that person's name appears in Part B of the Register.**
- Courts and forums submit names of persons found **unsuitable** to work with children to National DSD (Section 122)(1)).
- Persons who want to work with children, adopt or foster a child/ren complete **Form 30** for their individual screening whilst employers submit **Form 29** for screening of prospective or current employees.

3. FINDINGS OF UNSUITABILITY



A finding that a person is unsuitable to work with children may be made by-

- a children's court;
- any other court in any criminal or civil proceedings in which that person is involved; or
- any forum established or recognised by law in any disciplinary proceedings concerning the conduct of that person relating to a child.

A finding may be made by a court or a forum in its own volition or on application by-

- an organ of state involved in the implementation of this Act;
- a prosecutor, if the finding is sought in criminal proceedings; or
- a person having a sufficient interest in the protection of children.

3. FINDINGS OF UNSUITABILITY (CONT.)



- A finding that a person is unsuitable to work with children is not dependent upon a finding of **guilty or innocent** in the criminal trial of that person.
- Forums are also required to submit information of unsuitability following disciplinary proceedings.
- The information regarding a person unsuitable to work with children must be forwarded to the Director-General of DSD within 21 working days of a finding that a person is unsuitable to work with children. It must be forwarded in a prescribed **Form 28**.

4. ESTABLISHMENT OF INFORMATION (Inquiries)



- **Inquiry by employer (Form 29):** Any person managing an institution, or school, must establish whether the name of any person who works with or has access to children at the institution or school appears in Part B of the Register.
- **Inquiry by Individual (Form 30):** Any person who intent to provide services to children, e.g. a foster or adoptive parent, supervisor of a child-headed household must establish whether the name of any person who works with or has access to children at the institution or school appears in Part B of the Register.

5. CONSEQUENCES OF ENTRY OF NAME ON THE REGISTER (Section 123)



No person whose name appears in Part B of the Register may-

- **manage or operate**, or participate or assist in managing or operating, an institution providing services to children;
- **work with or have access** to children at an institution providing welfare services to children, including a school or association providing services to children, either as an employee, volunteer or in any other capacity;
- be **permitted** to work or have access to children, either as a foster parent; adoptive parent of a child; an employee or volunteer.

6. DISCLOSURE OF ENTRY OF NAMES ON THE REGISTER.



- The Director-General must inform a person found unsuitable to work with children when that person's name and particulars are entered in Part B of the Register.
- A person who **fails** to disclose the fact that his or her name is entered in Part B of the Register **is guilty** of misconduct and his or her services may be terminated as a result thereof.

7. REMOVAL OF NAME FROM THE REGISTER



- A person whose name appears in Part B of the Register may apply for the removal of his or her name and any information relating to that person from the Register.
- Application for the removal of a name and particulars from the Register may be made:
 - to any court, including a children's court;
 - to the Director-General, if the entry was made in error; or
 - to the High Court if the Director-General refuses an application.
- An application to remove a person's name and particulars from Part B of the Register on the ground that the affected person has been rehabilitated, may only be made after at least five years have lapsed since the entry was made and after considering the prescribed criteria.
- The name and particulars of a person convicted more than once of an offence with regard to a child must not be removed from Part B of the Register.

THANKS

