

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

“Mandatory Reporting is everyone’s business”

HEALTH CARE WORKERS

11 MARCH 2025

OUTLINE OF THE PRESENTATION



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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 children falling pregnant and that some mothers are as young as ten years old.
- For a child to be pregnant 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.
- In response to the alarming figures of children falling pregnant, DSD is making a call to sensitize Health Care Workers about the mandatory reporting as required by the Children's Act 38 of 2005 because 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 of children against abuse.
- 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.

1. INTRODUCTION – Cont.....



- In cases of 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 (**s137**) also makes provision for access to information on health promotion and prevention as well as 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 activities** however; they need to be guided and empowered with information to make right decision and choices.
- The Children's Act (Chapter 8) 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



- To sensitise and familiarise Health Care Workers about their reporting obligations as required by **section 110(1) of the Children's Act No 38 of 2005**
- Further to go through **Form 22** which should be completed when reporting cases of child abuse and be submitted at a Designated Child Protection Organisation or local DSD office for assessment; investigation; 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, it is deemed necessary to sensitize **Health Care Workers about the mandatory reporting as required by the Children's Act.**

3. LEGISLATIVE FRAMEWORK - cont.....



- Reporting of cases of child abuse is also required in terms of other key legislative mandates include:
 - **The Criminal Law (Sexual Offences and Related Matters) Amendment Act (32 of 2007)**
 - which covers some specific aspects and forms of sexual offences against children.
 - The Act also criminalises procurement of children for child prostitution and exposing children to pornography.
 - **Prevention and Combating of Trafficking in Persons Act (7 of 2013)**
 - It provides for an offence of trafficking in persons and other offences associated with trafficking in persons.
 - **Domestic Violence Act (116 of 1998)**
 - The Act provides for restriction orders on perpetrators of domestic violence in Section 7(6).

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)**) .
- **It is illegal for any person younger than 16 years to consent to or to be involved in any sexual act** because they are perceived not to have the ability to make an informed decision about their actions.
- 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 SAPS; DSD 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 plays 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. WHAT IS CHILD ABUSE?



- Refers to any form of harm or ill treatment that has been deliberately inflicted on a child, including exposing or subjecting a child to behaviour that may harm him/her physically, psychologically or emotionally.
- The Children’s Act 35 of 2005 indicates that abuse in relation to a child means any form of harm or ill-treatment deliberately inflicted on a child and includes:
 - Assaulting a child or inflicting any other form of deliberate injury to a child;
 - **Sexually abusing a child or allowing a child to be sexually abused;**
 - Bullying by another child;
 - A labour practice that exploits a child; or
 - Exposing or subjecting a child to behaviour that may harm the child psychologically or emotionally.

7. SEXUAL ABUSE AS A CATEGORY CHILD ABUSE



- Sexual abuse is when a developmentally immature child or adolescent is sexually exploited, involved or allowed to be directly or indirectly involved in unwanted sexual activities that they do not fully comprehend by force, intimidation or deception
- In such a case the child is unable to give consent and even where the perpetrator claims consent, the child would not be able to understand the full consequences of giving consent regarding the violation of his or her rights.
- The Children's Act and the Criminal Law (Sexual Offences and Related Matters) Amendment Act describe sexual abuse as:
 - Sexually molesting or assaulting a child or allowing a child to be sexually molested or assaulted;
 - Encouraging, inducing or forcing a child to be used for the sexual gratification of another person;
 - Using a child in or deliberately exposing a child to sexual activities like pornography;
 - Procuring or allowing a child to be procured for commercial sexual exploitation or in any way participating or assisting in the commercial sexual exploitation.
- Sexual abuse implies that when children are sexually abused, their natural capacity of being children is taken away from them as they were introduced to sexual behaviour according to an adult's developmental level and needs.

8. FORM 22 (Prescribed Form – Reg 33)

- Form 22 to be displayed.



FORM 22

REPORTING OF ABUSE OR DELIBERATE NEGLECT OF CHILD
(Regulation 33)
[SECTION 110 OF THE CHILDREN'S ACT 38 OF 2005]

REPORTING OF ABUSE TO PROVINCIAL DEPARTMENT OF SOCIAL DEVELOPMENT, DESIGNATED CHILD PROTECTION ORGANISATION OR POLICE OFFICIAL

NOTE: A SEPARATE FORM MUST BE COMPLETED FOR EACH CHILD

TO: The Head of the Department

.....

.....

Pursuant to section 110 of the Children's Act, 2005, and for purposes of section 114(1)(a) of the Act, you are hereby advised that a child has been abused in a manner causing physical injury/ sexually abused/ deliberately neglected or is in need of care and protection.

Source of report (do not identify person) Victim Relative Parent
 Neighbour friend Professional (specify)

Other (specify)

Date Reported to child protection organisation: DD MM CCYY

| | |
|---------------------------------------|-----------------------------|
| 1. CHILD: (COMPLETE PER CHILD) | |
| Surname | Full name(s) |
| Gender: M F | Date of Birth: DD MM CCYY |
| School Name: | Grade: Age / Estimated Age: |
| * ID no: | * Passport no: |
| Contact no: | |

| | |
|--|---|
| 2. CATEGORY OF CHILD IN NEED OF CARE AND PROTECTION | |
| <input type="checkbox"/> Child abuse | <input type="checkbox"/> Child labour |
| <input type="checkbox"/> Commercial sexual exploitation | <input type="checkbox"/> Exploited children |
| <input type="checkbox"/> Child trafficking | <input type="checkbox"/> Street child |
| <input type="checkbox"/> Child abduction | |

| | |
|---|-------------------|
| 3. OTHER INTERVENTION – CONTACT PERSON TRUSTED BY CHILD | |
| Surname: | Name: |
| Physical address: | Telephone number: |
| Other children interviewed: <input type="checkbox"/> Yes <input type="checkbox"/> No Number : | |

9. 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.

9. 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 the Children's Act for 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.



10. INITIAL ASSESSMENT OF THE REPORT

In the field of child protection, assessment involves two main types of assessment, namely :

1. Safety assessment has to do with concerns over the possibility of immediate harm or danger to the child.
 - Safety assessment focuses on the child's present conditions, danger that results from those conditions, as well as on interventions that may be needed to protect the child at a specific point of time.
2. Risk assessment on the other hand deals with the likelihood or probability that child maltreatment will occur or reoccur at some time in the future.
 - Focuses more on potential future harm to the child due to the characteristics, behaviours and functioning of the family.
 - It involves evaluation of risk factors that contribute to the occurrence of harm, but should also include the identification of protective factors that can minimise or prevent the harmful effects of risk factors.

11. 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 by removing the child to Temporary Safe Care by court order; without a court order or decide whether or not the child is in need of care and protection.
- (d) the provincial DSD or CSPO which has conducted an investigation must report the possible commission of an offence to a police official.

12. CONSEQUENCES OF NOT REPORTING THE SUSPICION



- You can be imprisoned for up to five years if you fail to report suspicions of a child being abused to the SAPS; DSD or DCPO.
- There is no room to use your discretion as it is dependent upon SAPS; DSD or DCPO to investigate all allegations.
- Failure to adhere to the legislation is punishable with between three to five years imprisonment, depending on the kind of abuse that is not reported.
- For instance, in a case of Poppie Koekemoer who was three years old when she died in October 2016, the Judge ruled that everyone involved had to be investigated for their failure to report the abuse to the police.
- In sentencing Poppie's mother and the stepfather in 2018 to life imprisonment, Gauteng High Court Judge had strong words for the authorities in Orania, where the family had lived for a while.
- The judge noted that no one - from **teachers, doctors to social workers** - had lifted a finger when they suspected the child was being abused. He had strong words for them for not acting when they saw the bruises on the child's body over months because they had failed to protect the child and shifted the blame.
- A pathologist counted at least 25 new and old wounds on Poppie's body when the stepfather rushed her to the emergency unit of a hospital in Brits after she stopped breathing at home.



13. CONCLUSION

- The Constitution protects the rights of children, but the reality is that majority of children suffer abuse from those responsible to care for them in their own homes.
- Child abuse is not just a social ill, it is a pervasive crisis that affects the very foundation of our communities, families and most importantly children.
- It is our collective responsibility to act, intervene and protect those who cannot protect themselves.
- Children represent the future, they are our hope, our potential and our tomorrow.
- When a child is abused, it is not just the present that is shattered but his/her future is also jeopardized.
- 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.
- By reporting child abuse, we take the first crucial step in breaking this cycle, offering victims a chance to heal and lead healthy, productive lives.
- 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

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1. 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.

1. 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.

2. 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.



2. 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**.

3. 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.

4. 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.

5. 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.

6. 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.

7. CONCLUSION



“The children must, at last, play in the open veld, no longer tortured by the pangs of hunger or ravaged by the disease or threatened with the scourge of ignorance, molestation and abuse, and no longer required to engage in deeds whose gravity exceeds the demands of their tender years. (10 December 1993)”

“Whoever causes one of these little ones who believe in me to sin, it would be better for him to have a great millstone fastened around his neck and to be drowned in the depth of the sea. Woe to the world because of scandals! For it is necessary that scandals come, but woe to the man by whom the scandal comes! (Mt 18:6-7).

The primary goal of every measure must be to protect the little ones and prevent them from falling victim to any form of psychological and physical abuse

THANKS

