

MANDATORY REPORTING OF CASES OF CHILD ABUSE IN TERMS OF THE CHILDREN’S ACT NO. 38 of 2005 “Reporting of child abuse is everyone’s business”



22 MAY 2026

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OUTLINE OF THE PRESENTATION

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10. Consequences of not Reporting the suspicion
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1. INTRODUCTION

- Violence against children remains a widespread and deeply entrenched challenge in South Africa.
- It includes all forms of physical, sexual, emotional and psychological harm inflicted by caregivers, family members, peers, community members or strangers.
- Sexual violence against children remains a huge challenge in South Africa and some of the victims fall pregnant at a tender age.

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1. INTRODUCTION (cont.)

- Statistics show that the number of child pregnancies is steadily increasing.
- In some cases, children as young as 10 give birth, as a result of statutory rape.
- Statutory rape often goes unreported due to fear, family pressure, dependency on the perpetrator, or lack of awareness.
- To effectively prevent and respond to this violence, interventions must target risk and protective factors across individual, relationship, community and societal levels.
- A coordinated response is therefore essential to ensure justice, safety, and therapeutic support for the victim.

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2. PURPOSE

- In response to the alarming figures of children falling pregnant, DSD is making a call to sensitize all officials about 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.
- Statutory rape remains a serious child protection violation in South Africa.
- In terms of Section 15 & 16 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007, any sexual activity involving a child under 16 years is illegal, regardless of consent.
- The Act places mandatory responsibilities on social workers, SAPS, educators, health professionals, and caregivers to report and respond to such cases.

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3. LEGISLATIVE FRAMEWORK

- 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.**
- 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**

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3. LEGISLATIVE FRAMEWORK (cont..)

- The high rate of child abuse is a clear demonstration of the extent of abuse inflicted upon children and thus warrants the National and Provincial DSD to sensitize all officials mentioned in **section 110(1) and (2)** of the Children's Act about reporting of abused and neglected child.
- 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.
- In cases of pregnant children; teachers, Health Care Workers, social 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 **police or social workers** if **parents and caregivers** have taken no action.

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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 such as sexual intimidation and incest.
 - 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.
 - **Films and Publications Act (65 of 1996)**
 - It provides for an obligation to report offences involving child sexual abuse material.
 - It enforces penalties for offences involving child sexual abuse material.
 - **Domestic Violence Act (116 of 1998)**
 - The Act provides for restriction orders on perpetrators of domestic violence in Section 7(6).

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4. REPORTING OF CHILD ABUSE IN TERMS OF THE CHILD PROTECTION ACT



- 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)**) .

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



- 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 DCPO

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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.**

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

- 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 centre 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 organisation, the provincial department of social development or a police official.”

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

- **section 110(2)** of the Children's Act further stipulates that

“Any person who on reasonable grounds believes that a child is in need of care and protection may report that belief to the provincial department of social development, a designated child protection organisation or a police official.”

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5. 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.

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6. 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.

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6. SEXUAL ABUSE AS A CATEGORY CHILD ABUSE



- 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.

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6. SEXUAL ABUSE AS A CATEGORY CHILD ABUSE



- 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.
- Statutory rape often goes unreported due to fear, family pressure, dependency on the perpetrator, or lack of awareness.
- A coordinated response is therefore essential to ensure justice, safety, and therapeutic support for the victim.

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7. 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 :	

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8. 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.

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8. 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.

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9. 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

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10. 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.

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10. CONSEQUENCES OF NOT REPORTING THE SUSPICION

- 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.

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11. CONCLUSION

- 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, social 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.

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