

# A Guide to the Children's Act for Child and Youth Care Workers: Part 2

## Compulsory Reporting Obligations and Removing a Child in Need of Care and Protection

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Child and youth care workers (CYCWs) should be able to identify children who are in need of care and protection, and they are obliged by law to report deaths in alternative care and cases of abuse, injury or deliberate neglect. This article describes what the child and youth care workers reporting obligations are in different circumstances, and also looks at the issue of removing a child who is found to be in need of care and protection.

### Identifying Children In Need Of Care And Protection

The Children's Act provides assistance in identifying such children by listing the kind of situations that would cause a child to be in need of care and protection. Section 150 (1) states that a child is in need of care and protection, if the child:

- (a) has been abandoned or orphaned and is without any visible means of support;
- (b) displays behaviour which cannot be controlled by the parent or care-giver;
- (c) lives or works on the streets or begs for a living;
- (d) is addicted to a dependence-producing substance and is without any support to obtain treatment for such dependency;
- (e) has been exploited or lives in circumstances that expose the child to exploitation;
- (f) lives in or is exposed to circumstances

- which may seriously harm that child's physical, mental or social well-being;
- (g) may be at risk if returned to the custody of the parent, guardian or caregiver of the child as there is reason to believe that he or she will live in or be exposed to circumstances which may seriously harm the physical, mental or social well-being of the child;
- (h) is in a state of physical or mental neglect; or
- (i) is being maltreated, abused, deliberately neglected or degraded by a parent, a care-giver, a person who has parental responsibilities and rights or a family member of the child or by a person under whose control the child is.

Section 150 (2) states that a child in a child headed household may be a child in need of care and protection.

### What Are The Reporting Obligations Of Child And Youth Care Workers?

If a child youth care worker (CYCW) finds a child in need of care and protection in any of the categories listed in section 150 (1) they should ensure that the child is referred properly. How they do this depends on the exact circumstances of the child. If a child is in a child headed household, the CYCW must refer the child to a social worker working for government or a child protection organisation.

Children who have been abused or neglected are also listed as children in need of care and protection. Section 110 of the Children's Act obliges a range of professionals including child and youth care workers to report cases of:

- sexual abuse ;
- physical abuse causing injury; and
- deliberate neglect.

If a child falls under any of the other categories listed in section 150 (1) for example they have been abandoned the CYCW can bring it to the attention of the children's court or could report the matter to a social worker.

**The full text of section 110 reads as follows:**

"(1) 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 (Form 22) to a designated child protection organisation, the provincial department of social development or a police official."

The obligation to report only applies when a conclusion of abuse or neglect is reached i.e. you cannot just suspect that a child has been abused you have to have some kind of evidence. If a child and youth care worker suspects the abuse or neglect of a child then they must investigate further. The Regulations set out guidelines and indicators to consider when coming to a conclusion on whether or not a child has been abused or neglected:

- Indicators of physical abuse: 'including bruises in any part of the body; grasp marks on the arms, chest or face; variations in bruising colour; black eyes; belt marks; tears around or behind the ears; cigarette or other burn marks; cuts; welts; fractures; head injuries; convulsions that are not due to epilepsy or high temperature; drowsiness; irregular breathing; vomiting; pain; fever or restlessness';
- Emotional and behavioral indicators of physical, psychological or sexual abuse: 'including aggression; physical withdrawal when approached by adults; anxiety; irritability; persistent fear of familiar people or situations; sadness; suicidal actions or behaviour; self-mutilation; obsessive behaviour; neglect of personal hygiene; age of child demonstrating socially inappropriate sexual behaviour or knowledge; active or passive bullying; unwillingness or fearfulness to undress or wearing layers of clothing'
- Developmental indicators of physical, psychological or sexual abuse: 'including failure to thrive; failure to meet physical and psychological developmental norms; withdrawal; stuttering; unwillingness to partake in group activities; clumsiness; lack of coordination or orientation or observable thriving of children away from their home environment'
- Indicators of deliberate neglect: 'including underweight; reddish scanty

hair; sores around the mouth; slight water retention on the palm or in the legs; extended or slightly hardened abdomen; thin and dry skin; dark pigmentation of skin. especially on extremities; abnormally thin muscles; developmental delay; lack of fatty tissue; disorientation; intellectual disability; irritability; lethargy, withdrawal, bedsores and contractures'

- 'a disclosure of abuse or deliberate neglect by the child'; or
- 'a statement relating to a pattern or history of abuse or deliberate neglect from a witness relating to the abuse of the child'.

The conclusion must be based on an assessment of the 'total context of the child's situation'. This means that focus must not only be given to one factor or indicator, but different things must be taken into account to formulate a conclusion of abuse or neglect.

The report should be made on Form 22 which is prescribed in the Regulation and the form must be sent to one of the three agencies (a designated child protection organisation like Child Welfare South Africa, the Department of Social Development, or the police). Failure to report is an offence with a penalty of a fine or imprisonment for 10 years or both. On the other hand people also worry about being prosecuted if it turns out there was no abuse. If the report was made in good faith and the conclusion substantiated then the person reporting will not be liable to civil action based on the report.

Once a report has been made to one of these three agencies, a social worker should be appointed to investigate the case and make recommendations on the kind of support needed by the child or her family.

Section 110 of the Act sets out general compulsory reporting obligations

for child and youth care workers or volunteers to report cases of child abuse or neglect. Section 178 describes the reporting obligations when a child is in alternative care. If a child is seriously injured or abused then the matter must be reported to the provincial head of social development. Serious injuries could be the result of an accident – for example a small child falls down some stairs and breaks several bones, (section 110 does not apply because the injury was not inflicted by another person). However, the manager of the child and youth care centre or the person or organisation in whose care the child was placed must make a report in terms of 178 (1). The report must be done on Form 40. An investigation must then be conducted into the circumstances of the injury or abuse, as the injury might have resulted from the facility not meeting the norms and standards on safety.

If a child dies in alternative care the child's death must be reported (by the manager of the CYCC or the person in whose care the child was placed) to the parents or guardians, if they can be traced. It must also be reported to a police official, the provincial head of social development as well as the social worker dealing with the matter. If the police official is satisfied that the child died of natural causes then there will be no further investigation. However if he or she is not satisfied that the child died of natural causes then the official must cause the SAPS to conduct a full investigation into the circumstances surrounding the child's death.

The Children's Act requires government departments to work together to provide a holistic range of services. Due to the high level of demand for protection and prevention services it can take a long time before children receive the help they need from a social service professional. This is why it is a good idea for child and youth care centres to employ their own social workers or to network with the nearest office of the Social

Development Department and local non-governmental organisations that provide child protection, prevention and early intervention services.

### What Happens In An Emergency: Can A Child And Youth Care Worker Remove A Child Without A Court Order?

No. The provisions of the Act make it clear that only a social worker or a police official can remove a child and put him or her into temporary safe care without a court order in instances where there are grounds to believe that:

- the child is in need of care and protection, and
- needs immediate emergency protection, and
- that any delay caused by waiting for a court order might result in harm to the child.

If a child and youth care worker finds a child in emergency circumstances and requires the immediate removal, the child and youth care worker must contact a social worker or a police official to remove the child to a place of safety. This is different to the old procedures in the Child Care Act. That Act allowed an 'authorised official' to make an emergency removal of a child without a warrant. That authorized official could have been any person 'authorized in writing by a commissioner of child welfare, social worker or policeman to perform that act'. The Children's Act now only authorizes the social worker and the police official to do an emergency removal, however, the CYCW can accompany the social or the police official.

After the child has been removed either the social worker or the police official who removed the child must inform the parent, guardian or care-giver of the child about the child's removal within 24 hours if they are traceable. If a social worker misuses his or her power

to remove a child to temporary safe care without a court order it constitutes unprofessional or improper conduct by that social worker. If a police official misuses his powers to remove a child without a court order, it constitutes grounds for disciplinary proceedings against that official.

Once the child has been placed into temporary safe care the child's relatives, the relevant health or legal professionals, the relevant child and youth care worker or other person authorised by the designated social worker, must be given access to the child at all reasonable times while the child is at a place of safety if it is in the child's best interest and in line with the terms of the court order.

### When Can A Child And Youth Care Worker Remove A Child Listed As Being In Need Of Care And Protection?

Only where a court order has been issued. If a child and youth care worker finds a child in need of care and protection and believes that he or she needs to be removed, the CYCW can go directly to the children's court. The presiding officer (PO) of the court (who is the magistrate) must then make an order that a designated social worker investigate the matter. The PO can at the same time order that the child is removed and placed in temporary safe care if this is necessary for the safety and well-being of the child. According to the Act the PO can (in a court order) authorise any person to remove the child. This means that the PO could also authorise the child and youth care worker who brought the matter to his/her attention to remove the child. The child and youth care worker authorised to remove the child through the court order can then go to the place where the child is and remove the child either alone or with a police official. Once the child is removed then the child and youth care worker who removed

the child must inform the parent, guardian or care-giver of the child about the child's removal within 24 hours, if they are traceable. The matter must also be referred to a social worker for investigation and must be reported to the relevant department of social development within 24 hours.

### Deciding whether a child is in need of care and protection

Only a children's court can decide ultimately whether a child is indeed in need of care and protection. After the designated social worker investigates the matter he or she must produce a report with findings and recommendations. If the social worker finds that the child is not in need of care and protection, the reasons must be set out in the report which must then be submitted to the children's court for review. If the social worker comes to a conclusion that the child is in need of care and protection then the child must be brought before the children's court to make the final decision.

### Conclusion

It is important that child and youth care workers know their reporting and referral obligations. If you find a child that is in need of care and protection you should ask yourself: what kind of danger is the child in? Does the child need to be removed, and is it so urgent that the child must be removed immediately or is there time to first get a court order? You have to ask whether section 110 applies in the situation and if so how do you report the matter and who do you report to? Also if something happens to a child in a child and youth care centre you need to know what is required as far as reporting is concerned. More information on these and other issues is included in the Guide to the Children's Act for Child and Youth Care Workers. ■