

“It were better for him [her/it] that a millstone were hanged about his [her/its] neck, and he [she/it] cast into the sea, than that he [she/it] should offend one of these little ones.”

Jesus Christ, Luke 17:2

SEXUAL ABUSE AND OR OTHER MOLESTATION OF CHILDREN – WESKUS PEDIATRIE

SEKSUELE OF ANDER MOLESTASIE VAN KINDERS – WESKUS PEDIATRIE

Die toename in gevalle waar kinders wat deur die Praktyk gesien word seksueel of andersins gemolesteer of mishandel is of waar Dr Van der Walt in haar professionele hoedanigheid ‘n redelike vermoede uit of die ondersoek van die kind of inligting verskaf aan haar deur ‘n ander persoon tot die gevolgtrekking kan kom dat daar molestasie, seksueel of andersins, plaasvind of plaasgevind het plaas haar onder ‘n wetlike verpligting om die saak by die SA Polisiediens aan te meld – met of sonder die ouer se wete of toestemming al na gelang van omstandighede.

‘n Onlangse regsopinie onderskryf hierdie situasie:

We confirm that you are indeed legally obligated to report the matter [alleged sexual molestation] in terms of the following statutes:

Section 110 (1) of the Children’s Act (No. 38 of 2005);

Section 54 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act (No.32 of 2007); and

Section 2B of the Domestic Violence Act (No. 116 of 1998).

The Domestic Violence Act:

In terms of section 2B of the Domestic Violence Act (No. 116 of 1998), in circumstances where an adult person who **knows, or believes or suspects on reasonable grounds**, that an act of domestic violence has been committed against a child, **he or she must report such knowledge, belief or suspicion as soon as possible, to a social worker or the South African Police Service.** The term “domestic violence” is defined very widely in section 1 of the Act and includes sexual abuse.

In order to report the matter, you should, at minimum, have a **suspicion of domestic violence that is based on reasonable grounds.** Although courts have not yet had the opportunity to interpret the meaning of “reasonable grounds” in the context of the Domestic Violence Act, the phrase has been interpreted in several judgments relating to the Criminal Procedure Act (No. 51 of 1977) and the Prevention of Organised Crime Act (No. 121 of 1998). In this regard, **“reasonable grounds” is interpreted objectively, and the grounds must be those that would induce a reasonable person to form the**

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same suspicion, belief or knowledge. The suspicion, belief or knowledge should be objectively justifiable, meaning that it should be based on reason, and a factual base for the reason should exist. *Proof is not required*, but the suspicion, belief or knowledge has to be founded upon grounds that might reasonably support it.

A person who makes the report in good faith, is not liable to civil, criminal or disciplinary action on the basis of the report, despite any law, policy or code of conduct prohibiting the disclosure of personal information; and is entitled to have their identity kept confidential, unless the interests of justice require otherwise.

However, a person who fails to report their knowledge, suspicion or belief that domestic violence is being committed against a child is guilty of a statutory offence under the Domestic Violence Act.

The Children’s Act:

Similarly, section 110(1) of the Children’s Act (No. 38 of 2005) provides that there is a **statutory duty on certain professionals, including medical practitioners, who on reasonable grounds conclude that a child has been abused in a manner causing physical injury, sexually abused or deliberately neglected, to report that conclusion**, using the prescribed form, to a designated child-protection organisation, the provincial Department of Social Development or a police official.

In terms of the Children’s Act, “sexual abuse”, in relation to a child, means:

- 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 or pornography; or
- procuring or allowing a child to be procured for commercial sexual exploitation or in any way, participating or assisting in the commercial sexual exploitation of a child.

The reporting duty is triggered by a conclusion (of abuse) that is based on reasonable grounds.

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Regulation 35(2) to the Act provides some guidance as to the factors that may support a conclusion based on reasonable grounds. **The possible indicators listed in regulation 35(2) are extensive, but do not constitute a closed list.** The broad risk-assessment framework, amongst others, **includes a statement from a witness relating to a history of abuse. The statement from a patient indicating any deviant behaviour as included in the Act would qualify as a “statement from a witness” as envisioned under the Regulation.**

Failure to report a conclusion of abuse of a child [by anybody!] is an offence in terms of the Children’s Act, which is liable to a fine or to imprisonment for a period not exceeding 10 years, or both. **Failure to report abuse may also result in civil liability for damages if the child suffers further harm as a result of the failure.** The Act provides that someone who makes a report in good faith will not be liable to civil action on the basis of the report, even if it is subsequently determined that there was no abuse.

The Criminal Law (Sexual Offences and Related Matters) Amendment Act:

Lastly (and **most importantly**) **sexual offences are reportable in terms of the Criminal Law (Sexual Offences and Related Matters) Amendment Act (No. 32 of 2007).** Section 54 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act provides that **a person who has knowledge, reasonable belief or suspicion that a sexual offence has been committed against a person who is vulnerable (as defined in section 40 of the Act) must report such knowledge, reasonable belief or suspicion immediately to a Police Official.**

A “vulnerable person” is defined in section 40 of the Act to include children.

The Criminal Law (Sexual Offences and Related Matters) Amendment Act defines “sexual offence” to include any offence referred to in Chapter 2, 3 and 4 of the Act. These offences include sexual exploitation, molestation and sexual grooming [aantasting!] of children.

A person who fails to report such knowledge, reasonable belief or suspicion is guilty of an offence under the Act and is liable on conviction to a fine or to imprisonment for a period not exceeding five years or to both a fine and such imprisonment.

Again, a person who in good faith reports such reasonable belief or suspicion shall not be liable to any civil or criminal proceedings by reason of making such report.

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As noted above, a “reasonable belief” or suspicion must be interpreted objectively, and the grounds must be those that would induce a reasonable person to form the same belief or suspicion.

In our [legal opinion] view, the child’s disclosure is sufficient reason to suspect that he/she has been abused.

The mere fact that a physical examination did not show evidence of physical trauma does not exclude the possibility of abuse. In such circumstances, the person having knowledge or suspicion on reasonable grounds, has an obligation to immediately report the alleged offence to the South African Police in terms of section 54 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act.

Whilst the Criminal Law (Sexual Offences and Related Matters) Amendment Act, Children’s Act and Domestic Violence Act appear to create overlapping and duplicate reporting duties, the Criminal Law (Sexual Offences and Related Matters) ***Amendment Act specifically requires that one immediately report the alleged offence directly to the Police. As such, one does not have a discretion to report the matter to a designated child protection organization or to the provincial department of social development or a medical professional.***

This statutory reporting obligation is also unconditional. In other words, any person must immediately report the matter to the Police, **irrespective of the fact that the any other person has allegedly reported the matter to a Social Worker, and regardless of whether or not the child’s mother/father/caregiver intends to report the matter to the Police.**

We thus recommend that you immediately report cases of suspected child sexual abuse directly to the Police, regardless of whether or not the child’s parent (or even the referring Primary Care Provider) has, or intends to also open a case with the Police or Social Services.

Whilst such a disclosure will indeed constitute a breach of the patient’s confidentiality [see POPI Act], the breach will be lawful and, in fact, mandatory, also in terms of Rule 13(1) of the Ethical and Professional Rules of the Health Professions Council of South Africa, a healthcare practitioner must divulge confidential patient

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information if obligated to do so in terms of a statutory provision (for example, the Criminal Law (Sexual Offences and Related Matters) Act).

Healthcare practitioners should always consider informing a parent/guardian of their intention to report the suspected sexual abuse of their child (the patient) to the Police. In this regard.

Booklet 5 of the Guidelines for Good Practice in the Healthcare Professions (Confidentiality: Protecting and Providing Information) provides that where child abuse is suspected, the law requires the healthcare provider to report the alleged abuse to the relevant authorities. Where appropriate, healthcare practitioners should inform those with parental responsibility about the disclosure. **If, for any reason, practitioners believe that disclosure of information to the parents or guardians is not in the best interests of an abused or neglected minor patient, they must be prepared to justify their decision** (e.g. where the parent/guardian him- or herself is suspected of abusing the minor patient).

In view of the fact that the Act requires that one “immediately” report the alleged sexual offence to the Police, we are of the view that it would probably be acceptable to first report the offence, and to thereafter inform a parent or guardian that the report has indeed been made. It would, however, be preferable to inform the parent or guardian before disclosing the information, if practicable.

Dr Hester S van der Walt-Smit

Weskus Pediatrie, +27 22 7135149, Vredenburg

www.pediater.co.za , dat 21052024

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Some Links:

Kindersorg/beskerming Organisasies SA

Childwelfare/protection Organisations SA

SA Police Service: Family Violence, Child Protection and Sexual Offences Investigations

Head Office +2712 393 2107

Head.fcs@saps.gov.za

Western Cape

+27 21 467 8390

+27 82 850 9674

wc.fcscommander@saps.gov.za

Northern Cape

+27 53 839 2824

+27 79 695 1719

ncprov.fcs.co-or@saps.gov.za

LubidlaM@saps.gov.za

<https://www.saps.gov.za/contacts/keydetail.php?id=121>

Child Welfare South Africa

national@welfaresa.org.za

national@childwelfaresa.org.za

<https://childwelfaresa.org.za/about-us/>

+27 87 822 1516

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Badisa West Coast & National

admin@badisawk.org.za

<https://www.facebook.com/profile.php?id=100064701284139>

+27 22 713 1723

+27 65 617 6897

+27 21 957 7130

info@badisa.org.za

Cape Town Child Welfare Society

<https://helpkids.org.za/>

info@helpkids.org.za

+27 21 638 3127

Department of Social Development Western Cape

childknysna@cyberpark.co.za

+27 44 382 1177

Department of Social Development (DSD)/ Children’s Services Directory (CSD)

BuyiM@ursa.za.com

MosesRa@dsd.gov.za

0800 428 428

The Directory for the Western Cape:

<https://www.csd.dsd.gov.za/CsdDirectories/Western%20cape.pdf>

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