



# CHILDREN IN NEED OF PROTECTION

## Definition

The draft Child Care and Protection Act defines “a child in need of protection” as a child who:

- ④ is abandoned or orphaned, where insufficient provision has been made for the care of the child
- ④ is in a state of physical or mental neglect
- ④ is engaged in behaviour likely to be harmful, where the parent, guardian or care-giver is unable or unwilling to control that behaviour
- ④ lives or works on the streets or begs for a living
- ④ is exposed to circumstances which may seriously harm the child’s physical, mental or social welfare
- ④ may be at risk of such harm if returned to the custody of the parent, guardian or care-giver
- ④ is likely to be maltreated or abused.

More than 400 children each year are found to be in need of protection and placed in alternative care in Windhoek alone.

**ISSUES FOR DISCUSSION:** What kinds of problems endanger children in their home environments?

## Mandatory reporting

Child abuse and neglect usually take place privately, in a home, with no witnesses other than the parents and children. Reporting laws are designed to bring cases of possible wrongdoing to the attention of public authorities who are in a position to help. **Mandatory reporting laws** are laws that *require* people to report cases if they suspect that a child is being mistreated. **Voluntary reporting laws** are laws that *encourage* people to report cases if they suspect that a child is being mistreated.

The draft Child Care and Protection Act says that there should be mandatory reporting by all persons who have a “reasonable belief” that a child “may be in need of protection”. This requirement supersedes all rules about professional confidentiality except for confidential discussions between lawyers and their clients. The penalty for failing to make a report is a fine of up to N\$20 000 or imprisonment for up to 5 years, or both.

Arguments FOR mandatory reporting	Arguments AGAINST mandatory reporting
Children need special protection because they are less able than adults to help themselves. Mandatory reporting will help protect children.	Parents and care-givers may be reluctant to seek help, especially medical attention, if they know that this will lead to a report of the abuse or neglect. Children themselves may be reluctant to seek help if they know the case must be reported.
Mandatory reporting will increase the number of cases of child abuse and neglect which are reported to authorities.	Mandatory reporting may lead to further abuse as a reaction to a report, or the withdrawal of the family from people who may otherwise have provided assistance.
Namibia has a commitment to protect children. All people should be involved in achieving this goal.	Compulsory reporting is virtually unenforceable. If a charge were laid, it would have to be proved beyond reasonable doubt. The accused person could argue that he or she did not actually suspect that abuse had occurred.
Mandatory reporting raises awareness of the need for everyone in society to work together to protect children.	Mandatory reporting may deny the children and families the opportunity of finding other ways to deal with the abuse. It may further endanger the child by disempowering the family.

## What do other countries do?

South Africa’s Children’s Act 2005 says that there must be mandatory reporting by persons who work with children professionally, and voluntary reporting for everyone else. In the USA, all 50 states require mandatory reporting by a range of professionals. In contrast, Kenya and New Zealand allow for voluntary reporting by all people.

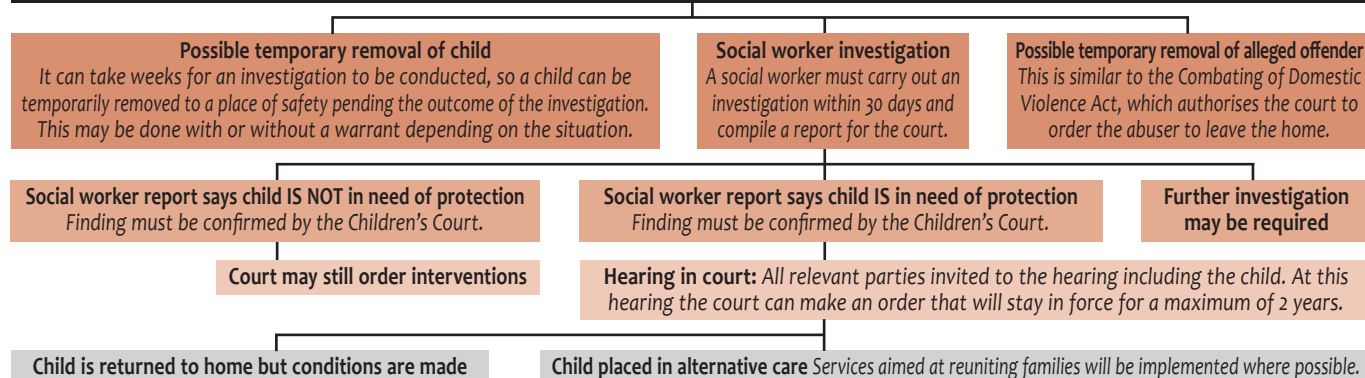
## ISSUES FOR DISCUSSION

- Should reporting of children in need of protection be mandatory or voluntary?
- Should there be different rules about reporting for different people, such as mandatory reporting for professionals who work with children and voluntary reporting for the general public?
- Is there a danger that ill or injured children will not get the medical care that they need if doctors and nurses are required to violate doctor-patient confidentiality and make reports?
- If mandatory reporting is required, this would mean that a parent must report abuse committed by the other parent. Failure to report the abuse could be punished. Would it be fair to punish this parent? What if this parent was also being abused by the other parent?
- Is a criminal charge the best punishment for a failure to report, or is there a better sanction that can be applied?

## Helping a child who is in need of protection

Under the proposed law, if a social worker investigation raises cause for concern, a Children's Court will hold a hearing to decide if a child is in need of protection. A child who is in danger can be placed in a temporary place of safety until the court hearing is completed. Children who are mature enough will have a chance to express their opinions at the hearing. If the court finds that the child is at risk of harm, it can make an order saying how to protect the child. The child might be sent back to the usual home with an order for social work supervision or family counselling. Or the child might be removed from the usual home and placed in alternative care, such as with a foster family or in a children's home. The court might also order a particular person to stop abusing the child or having contact with the child. There are many options. The order will depend on the situation.

### REPORT OF CHILD IN NEED OF PROTECTION MADE TO A SOCIAL WORKER OR TO THE POLICE



## ISSUES FOR DISCUSSION

- What can be done to avoid having to remove children from their homes while still keeping them safe?
- If a child is removed from his or her home, where should the child be placed?
- If a child has to be removed from the usual home, what can be done to resolve the underlying problems so that the family can be reunited?
- Should there be mandatory monitoring by social workers as a follow-up to all court cases about children in need of protection?

### WHAT DO YOU THINK?

Send your comments to:

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For more information on the draft Child Care and Protection Act, contact Monalisa Zatjirua (061-2833116) or Celeste Feris (061-2833179) at the Ministry of Gender Equality and Child Welfare, or Rachel Coomer at the Legal Assistance Centre (061-223356).