

PROTECTION OF CHILDREN IN NEED OF CARE

The Child Care Act No 74 of 1983

WHO IS A CHILD IN NEED OF CARE?

A child is in need of care if:

- The child has no parent or guardian;
- The child has a parent or guardian but they cannot be found;
- The child has been abandoned;
- The child does not have any support/maintenance;
- The child behaves in a way that the parents, or the person looking after the child, cannot control;
- The child lives in conditions that may lead to the child being sexually abused, sexually exploited/used, or abducted;
- The child lives in conditions that may lead to serious harm to the child's physical, mental or social wellbeing;
- The child is physically or mentally neglected; or
- The child has been physically, emotionally or sexually abused/ill-treated by his/her parents, guardian or the person looking after the child.



What does a child in need of care have a right to?

A child in need of care has the right to be given a home, food clothing, an education and medical treatment.

What can be done about a child in need of care?

A child in need of care can be taken away from any place, to a place of safety.

Who can take a child in need of care to a place of safety?

Any policeman, social worker or authorised officer (an officer who has been given the power to do this), can take the child away, without a warrant, if they believe that the child is in need of care.



What shall be done for a child in need of care, who has been taken to a place of safety?

The child shall be taken to the children's court in the area where the child lives, or, in the area where the child happens to be, by any policeman, social worker or authorised officer.

What shall the children's court do for the protection of a child in need of care?

The children's court shall hold an inquiry to find out if the child is in need of care. If the court decides that the child is in need of care, the court can make an order for the care of the child.

WHAT ORDERS CAN THE COURT MAKE FOR THE PROTECTION OF THE CHILD?

The children's court can order that the child must:



- Stay with his/her parents, or, go back to the parents, under the supervision of a social worker (the court will make rules for the way in which the parents have to look after the child); OR
- Stay with the parent chosen by the court (if the parents are divorced or they do not live together), under the supervision of a social worker. The court will make rules for the way in which the parent has to look after the child; OR
- Stay with his/her guardian, under the supervision of a social worker. The court will make rules for the way in which the guardian has to look after the child; OR
- Stay with the person who had custody of the child immediately before the inquiry, under the supervision of a social worker (the court will make rules for the way in which the person has to look after the child); OR
- Stay with a suitable foster parent chosen by the court, under the supervision of a social worker; OR
- Go to a children's home chosen by the Director General; OR
- Go to a school of industries chosen by the Director General.

Who has to pay maintenance for a child in need of care?

The State out of money set aside by Parliament;
AND

Any person who, in law has to pay maintenance for a child, or who has to make a contribution towards (give some money for) the maintenance of a child.



HOW IS A CHILD PROTECTED AFTER A CHILDREN'S COURT HAS MADE AN ORDER FOR THE CARE OF THAT CHILD?

If the social worker who is supervising the care of the child finds that the child is not being looked after according to the rules that the court has made:

The social worker may take the child to the children's court in the area where the child lives. It does not have to be the same court that made the order for the care of the child.

And, the court shall:

Hold an inquiry to find out if the child is not being cared for properly. The court may then change the order for the care of the child, or, the court may make a new order for the care of the child; for example, the court may order that the child shall be cared for by a different foster parent, or be sent to a children's home or school of industries.

CRIMES AGAINST CHILDREN FOR WHICH A PERSON WILL BE PUNISHED

The Offence of Ill-treating or Abandoning a child

Any parent or guardian or any person who has custody of a child and who ill-treats a child or who abandons a child shall be guilty of an offence, AND

Any other person who ill-treats a child shall be guilty of an offence.

The Offence of Not Paying Maintenance for a Child

Any person who has to maintain a child by law and is able to (has money to) maintain that child, but does not give the child adequate/enough, food, clothing, a home and medical aid, shall be guilty of an offence.

The Offence of Commercial Sexual Exploitation of Children (Using children for sex in order to make money)

Any person who participates in/ joins in, or, is involved in/ takes part in the commercial sexual exploitation of a child shall be guilty of an offence; AND ANY

- Owner of property, where commercial exploitation of children is taking place;
- Lessor (landlord) of property where commercial exploitation of children is taking place;
- Manager of property where commercial exploitation of children is taking place;
- Tenant of property where commercial exploitation of children is taking place;
- Occupier (person who lives there), of property where commercial exploitation of children is taking place; AND



Who knows that this is happening, shall be guilty of an offence, if that person does not report it at a police station, within a reasonable time of finding out that a child/children are being commercially sexually exploited on the premises.

The Offence of Unlawful Removal of Children or Pupils from any Institution, Place of Safety or Custody where they have Lawfully been Placed

It is an offence for any person:

- To abduct (kidnap), or remove any child or pupil from any institution, place of safety or custody where the child or pupil has lawfully been placed;
- To directly or indirectly counsel (advise), any child or pupil to abscond/run away from, any institution, place of safety or custody where the child or pupil has lawfully been placed;
- To directly or indirectly induce (cause/persuade) any child or pupil to abscond/run away from, any institution, place of safety or custody where the child or pupil has lawfully been placed;
- To knowingly harbour (keep in your home), or hide, a child or pupil who has been abducted/kidnapped, removed or who has run away, from any institution, place of safety or custody where the child or pupil has lawfully been placed; AND
- To prevent any child or pupil from going back to the institution, place of safety or custody from which the child or pupil was abducted/kidnapped, removed or has run away from.



The Offence of Unlawfully Removing a Foster Child or Pupil from the Republic

Any person who removes foster child or pupil from the Republic without the Minister's permission shall be guilty of an offence.

The Offence of Employing Certain Children

No person may employ or give work to any child under the age of 15 years, but, the Minister may give permission:

- For children to do certain kinds of work; the Minister does this by notice in the Government Gazette and makes conditions/rules for the employment of children; AND



- For a particular person, or, persons generally, to employ children; the Minister makes conditions/rules for the employment of children.

The Offence of Not Reporting Injured Children and Children who Suffer from Nutritional Deficiency Disease (sickness caused by hunger)

No matter what any other law says, every:



Dentist / Medical practitioner/doctor / Nurse / Social worker / Teacher / Manager of a children’s home, place of care or shelter / Staff member/employee of a children’s home, place of care or shelter;

Who examines, attends to, or deals with any child in circumstances/conditions that makes them suspect that the child has been ill treated/abused, OR

That the child has an injury or many injuries that might have been done on purpose; OR

That the child has a disease/sickness that has been caused by hunger (not getting proper food e.g. kwashiorkor);

Shall immediately report the condition of the child to:

The Director General, or, an officer designated/appointed by Him/ Her and, the child can be taken away from the place where the child has been abused, injured or starved and taken to a place of safety or to a hospital.

Do you want to know more about the protection of children?

For example:

- Legal representation for children in civil and criminal courts
- The maintenance of children who do not live with their parents (Contribution orders)
- The adoption of a child
- The rights of natural fathers of children born out of wedlock
- Places of safety and children’s homes, and, inspection of these places
- Leave of absence for children and pupils from an institution or custody
- Working out the age of a child when this is not known
- Appeals against children’s court orders

Then contact the Centre for Criminal Justice to obtain a copy of *Child Care, a CCJ Legal Series*.

The Child Care Act No 74 of 1983 has been rewritten in simple language so that you can understand and know your rights and obligations.