

PROPOSED CHANGE TO DURATION OF FOSTER CARE ORDERS IS A VIOLATION OF CHILDREN'S RIGHTS

DELETING THE WORD "FOSTER" FROM SECTION 186(1) OF THE CHILDREN'S ACT WILL ALLOW NON-RELATIVES TO BY-PASS STRICT RULES ON ADOPTION AND GUARDIANSHIP. THIS PROPOSED CHANGE TO THE CHILDREN'S ACT VIOLATES CHILDREN'S RIGHT TO REVIEW, CHILDREN'S RIGHT TO BE PROTECTED FROM ABUSE, AND COMPROMISES CHILDREN'S BEST INTERESTS. WE THEREFORE CALL ON MEMBERS OF THE PORTFOLIO COMMITTEE TO REJECT THE AMENDMENT TO SECTION 186(1) OF THE CHILDREN'S ACT.

BACKGROUND

According to the Children's Act foster care aims to –

- protect and nurture children by providing a safe, healthy environment;
- respect the individual and family by demonstrating respect for cultural, ethnic and community diversity; and
- work towards a permanent care plan that will provide children with safe and nurturing family relationships that are intended to last a lifetime (section 181 of the Children's Act).

In other words, foster care is intended to provide short-term care while the social worker develops a long-term solution. The goal is to keep the child safe while the child receives counselling, and the social worker assists the family to work out problems. The social worker will then assess whether the child can be reunified with his or her biological parents or whether an alternative long-term solution, such as guardianship or adoption, is better for the child.

A foster care placement normally lasts for no more than two years. After this period, the children's court must reassess the situation of the child, and establish whether the child can be reunited with his or her biological parents or whether the child should remain in foster care. If the court extends the foster care placement, the new court order is generally for another two years (section 159(1)(b) of the Children's Act).

The Children's Act does, however, allow a foster care order to last for longer than two years under certain circumstances. Section 186 of the Children's Act which deals with long-term foster care placements distinguishes between: (1) children in foster care with a non-family member; and (2) children in foster care with a family member. The Children's Second Amendment Bill proposes to amend section 186(1) of the Children's Act which relates to a child who is in foster care with a non-family member.

At present, section 186(1) of the Children's Act can be summarised as follows:

When a child has been with a foster parent who is not a family member for more than two years the court may, after considering the need for stability in the child's life, make an order that the foster care placement continues until the child is 18 and that no further social work supervision or social work reports are required.

If such an order is made, a social auxiliary worker or child and youth care worker must visit the child once every two years (section 186(3) of the Children's Act). The aim of section 186(1) of the Children's Act is to allow courts to grant long-term foster care orders in cases where the court is satisfied that the child is well cared for and that the placement will create stability in the child's life. In its current form, the clause only applies to the extension of court-ordered foster care placements, i.e. where a child has been a non-family member for more than two years. In these cases the placement of the child has been assessed by both the social worker and the children's court. The social worker investigated the case and made a report; the court examined the case and made an initial foster care order for two years; and the placement was then supervised on an ongoing basis by the social worker. If there had been any problems with the placement affecting the well-being of the child, the court would be aware of these problems when deciding to extend the foster care placement.

THE PROPOSED AMENDMENT

The Children's Second Amendment Bill proposes to delete the word "foster" in section 186(1) of the Children's Act. What does this mean?

If we remove the word "foster" from section 186(1) of the Children's Act, then the courts will be able to grant long-term foster care placements in cases where children have been informally cared for by non-family members, i.e. in cases without an initial court order and formal foster care placement. Yet the care of children in these cases has not been supervised or assessed by a social worker, and there is no evidence on which to assess the current care arrangements and determine whether the long-term placement would be in the child's best interests. The long-term placement would simply be based on the fact that the child has been living with someone (who is not a family member) for more than two years.

According to the proposed amendment, children could then be placed in foster care up to the age of 18 years without the placement being reviewed by a social worker or court in future. The only supervision of the long-term placement would be a visit every two years by a social auxiliary worker or child and youth care worker both of whom do not have any authority to make decisions regarding the child. The lack of supervision would put children at risk for abuse, neglect and exploitation and is a violation of the child's right to review of alternative care guaranteed under the United Nations Convention on the Rights of the Child (article 25 of the Convention). It is also a violation of the best interest of the child principle which is guaranteed under the UN Convention and our Constitution.

How does this compare with long-term foster care by a family member?

It is possible to place a child in long-term foster care with a family member, if:

- The child has been orphaned or abandoned by the biological parents; or
- Reunification between the child and the child's biological parents is impossible; and
- It is in the best interest of the child (section 186(2) of the Children's Act).

These conditions are not applied in the case of non-relatives. Therefore the proposed change to the Children's Act means that there will be less protection for children being placed with non-relatives than there is for children being placed with relatives. There should be more safeguards for children placed with non-relatives not less. If implemented, the change will violate the children's right to have their best interest taken into consideration, their right to family care, and their right to review of alternative care.

Proposals by civil society and the Department of Social Development

During the public hearings on the Children's Second Amendment Bill, the Children's Institute, University of Cape Town, and Johannesburg Child Welfare called on the Portfolio Committee to reject the proposed amendment to section 186(1). In their response to the hearings, the Department of Social Development supported the suggestion to reject the proposed amendment (see p. 69 of DSD's Matrix on Consolidated Inputs and Proposals).

We therefore call on the members of the Portfolio Committee to follow the Department's suggestion to reject the amendment to section 186(1) of the Children's Act.

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