

# Amendments to the Children's Act 38 of 2005 and the Children's Amendment Act 41 of 2007

July 15

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This document is a summary of proposed amendments to the Children's Act 38 of 2005 and the Children's Amendment Act 41 of 2007 to be submitted by 15 July 2011.

NAME OF ORGANISATION/DIRECTORATE/DEPARTMENT/PROVINCE: JO'BURG CHILD WELFARE

DATE: 25 JULY 2011

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Section number	Section title	Proposed amendment/addition	Reasons	Decision by DSD: Proposal accepted Y/N	Reasons
1	Interpretation	<p>(a) The definition "social service professional" should be changed to "social service practitioner", and reworked.</p> <p>(b) The reference to a municipality in the definition "designated social worker" should specify that this applies to municipalities to which the relevant functions have been devolved.</p>	<p>The definition does not sufficiently address the categories of personnel in question. There is a need to incorporate not only professionals but also paraprofessionals and auxiliary workers of various kinds. Social workers should be included in the definition. Also, it seems necessary to require some form of basic training for social security workers to qualify them to be implementers of the relevant provisions of the Act.</p> <p>See s105(4) below.</p>		

Section number	Section title	Proposed amendment/addition	Reasons	Decision by DSD: Proposal accepted Y/N	Reasons
24	Assignment of guardianship by order of court	The children's court should be enabled to confer guardianship.	The High Court remains inaccessible to the vast majority of children. The children's court in any case already issues adoption orders, which include guardianship.		
105(4)	Provision of designated child protection services.	Add sub-clause (d): "a municipality to which these services have been delegated by the HOD for Social Development in terms of s311(b)".	There is a contradiction between this clause, which does not include municipalities as providers of designated child protection services, and the definition of a "designated social worker" in s1, which includes a municipal social worker. At the same time, not all municipalities have the capacity to undertake statutory child protection services; hence this should be decided according to local conditions. This should also be reflected in the reference to a municipality in the definition of a designated social worker.		



Section number	Section title	Proposed amendment/addition	Reasons	Decision by DSD: Proposal accepted Y/N	Reasons
167(3)	Manner and criteria for approval of person, facility, place or premises for temporary safe care	Approval of a Temporary Safe Care placement by the HOD of the Department of Social Development should only be required for facilities that regularly provide such care and for individuals assigned specifically to such services, such as "safe house" caregivers. Approval in these cases should be of a long-term nature.	Temporary safe care placements are made in emergencies, and are based on the social worker's professional opinion as to the best possible temporary arrangement for a specific child in a given situation. The requirement that all such placements be approved by the HOD is causing administrative chaos and unnecessary delays, including delays in payment of TSC fees to caregivers, which creates hardship and may threaten the continuation of the placement.		

Section number	Section title	Proposed amendment/addition	Reasons	Decision by DSD: Proposal accepted Y/N	Reasons
170(6)(c) and (8)	Child absconding from alternative care	A clause is needed requiring both the presiding officer and the provincial head of social development to inform the designated social worker managing the case, in writing, of any order made.	At present, social workers are taking cases of abscondment to court under this section, but are not told what has been decided, leaving them unable to proceed with services.		

Section number	Section title	Proposed amendment/addition	Reasons	Decision by DSD: Proposal accepted Y/N	Reasons
171(6)	Transfer of child in alternative care	Where decisions must be ratified by the court, an arrangement is needed whereby the transfer can be managed quickly and smoothly as a single process.	Where the provincial head of social development orders a transfer and this order is passed to the court for ratification, a time lapse occurs. Presiding officers are then requiring that a fresh report be drawn up by the social worker, creating a second, time-consuming leg to the process and preventing plans from being timeously implemented, thus prolonging problematic situations, and working against the best interests of the child.		
176(2)	Remaining in alternative care beyond age of 18 years	<p>(a) Provision is needed for support to be continued in a case where the young person is still undergoing education or training, but the care situation cannot continue, for example because a foster parent dies.</p> <p>(b) The scope of the terms</p>	<p>At present, vulnerable young people who have remained in care arrangements, with associated state financial support to allow them to complete their education or training, are being left destitute in situations such as the death of the caregiver. The same would apply with e.g. the closure of a child and youth care centre.</p> <p>It is not clear what activities will qualify a young person to remain</p>		

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		<p>“education” and “training” needs clarification.</p>	<p>in a state-funded care situation. Are all available skills development options included, and if not, what are the boundaries? We would favour these being set as broadly as possible.</p>		
180	Foster care	<p>Provision is needed for a special dispensation for children who are living in the stable, permanent care of relatives due to the death or long-term absence or incapacitation of their parents. This process could include a simple administrative procedure confirming the facts of the situation and granting a form of legal recognition to the caregiver, plus access to a grant and linkage to available community-based support programmes – always with the possibility of referral for protective services should the need arise.</p>	<p>The formal child protection system simply does not have the capacity to absorb the spiralling numbers of such children. This system is failing to respond to acute cases of child abuse, due to being bogged down in bureaucratic processes associated with foster care applications by relatives whose primary need is for financial assistance. The country’s scarce supply of social workers and social auxiliary workers is being disproportionately deployed in managing the associated administrative tasks.</p>		
230 (3)	Child who may be adopted	<p>Add point (f) to read: “ consent to the child’s adoption has been given by the biological</p>	<p>Points (a) to (e) do not cover the child who becomes adoptable because their parent or guardian</p>		



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		parent or parents, guardian and/or foster parent”.	has signed a legal adoption consent.		
232 (2)	Register on Adoptable Children and Prospective Adoptive Parents	Remove the apparent contradiction with Regulation 98(3). Although the Department’s legal advisers have stated that there is no contradiction, the wording remains confusing.	The Act says “the name and other identifying information of a child <b>may</b> be entered into RACAP if the child is adoptable as contemplated in S230 (3)”, whereas R98(3) states that “an adoption social worker who is satisfied that a child is adoptable as contemplated in Sect 230(3) of the Act <b>must</b> apply for such a child’s name to be registered on RACAP”.		
233(1)(a)	Consent to adoption	The requirement that a parent who is an unmarried child must be assisted by his or her guardian in giving consent to adoption, should be removed.	It is recognized that good practice normally requires the engagement of parents/guardians in such situations, and social workers follow this principle where feasible, but there are exceptions. Girls seeking help in a pregnancy crisis may specifically request that their parents not be informed. Some have left home due to abuse by the parents in question. Also, this clause creates all sorts of difficulty in practice, as so many birth-mothers are not in contact		

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			<p>with their parents or the parents are deceased. They often do not have an official guardian but are just staying with friends or are destitute and on the street. Further, an anomaly exists whereby a child of any age can have her pregnancy terminated without consulting her parents, but cannot give her child up for adoption without doing so. This requirement may in some cases lead to abandonment or abortion rather than the more positive option of adoption.</p>		
88, 102, 225	Assignment of functions to municipality: partial care, ECD and drop-in centres	All of these should be harmonized with the relevant sections of the Municipal Structures Act and the Municipal Systems Act.	There is at present no reference in the Children's Act to the processes required by these Acts before functions can be devolved to local government. This could cause obstacles to the devolution process.		
156 (1)	Orders when a child is found to be in need of care and protection	At present, points (a) to (k) make no provision for the child who has been abandoned directly after birth and was never in a parent's care, but is now being	We work with many birth-mothers who abandon their children in the hospital or elsewhere directly after giving birth, so the children were never in their care and were		

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		<p>returned to a parent's care. There should perhaps be a clause to the effect "that a previously abandoned child be returned to the care of the biological parent".</p>	<p>also not removed from their care. The birthmother returns after the adverts appear or she is arrested shortly after the abandonment and then says she wants her baby back. When it comes to writing the Sect 38 report, we find that there is no clause under Sect 156(1) to cover this situation and the magistrates agree that it an omission.</p>		