

A directory of the legal rights of child & adolescent research participants in South Africa

HIV AIDS VACCINES ETHICS GROUP

SECTION 3: SPECIAL OBLIGATIONS TO RESEARCH PARTICIPANTS

WHO ARE MINORS



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SECTION 3: SPECIAL OBLIGATIONS TO RESEARCH PARTICIPANTS WHO ARE MINORS

In this section, we look at the various provisions that exist within our law to ensure that children below the age of 18 years **receive adequate care** and **are protected from exploitation and harm**.

Researchers need to ensure that research involving children does not result in acts or omissions that may be harmful to, or exploitative of, children.

Of more relevance, however, is that researchers may become aware of children who are “**victims**” as they are being ill-treated/ abused, or children who may be “**offenders**” as they are committing illegal acts such as substance abuse.

It is important for researchers to be aware of special obligations in our law for children, so that researchers ensure that they respond appropriately, which we summarise as “RIP”:

- R Respond in a lawful and appropriate manner including **reporting** where required;
- I **Intervene** and assist or refer children for assistance where needed; and
- P Tell **parents** or guardians and children of their obligations at the outset, as reporting may result in breaches of confidentiality.

A BRIEF OVERVIEW OF LAWS

Children are a vulnerable group and require protection due to their youth and inexperience. Accordingly, in terms of our **CURRENT LAW** there are various provisions to ensure that children:

1. Are raised in a family or in appropriate alternative care;
2. Are able to grow and develop through having access to adequate nutrition, shelter and health care;
3. Are protected from abuse, neglect, maltreatment or degradation;
4. Do not work before the age of 15;
5. Are protected from sexual offences; and
6. Have access to education;
7. In addition we will deal with crimes committed by children.

In terms of **FUTURE LAW**, when the Children's Amendment Act (2007) comes into operation, there will be a few changes; these are spelled out in this chapter.

1 CHILDREN IN NEED OF FAMILY OR ALTERNATIVE CARE

When children are in situations where **they are living without adequate family care** (e.g., they have been abandoned by parents, are in a child-headed household or are living on the streets), the law makes provision for the identification and reporting of such situations, so that the children may be assisted to get the care and support that they need (e.g., placement in a foster family). The Child Care Act (1983) requires *certain individuals* working with children, who become aware that they are living without adequate family care, to ensure a child is taken to a place of safety until a children's court can investigate their circumstances and place them in appropriate care. There are only obligations to report children without families on *police officers, social workers and authorized officers*; however the Act says that any person may make a statement to a Commissioner of Child Welfare if they wish to notify the authorities of a child in need of care. Therefore, research staff are not under a legal duty to report inadequate family care unless they are a social worker or other designated officer.

2 CHILDREN IN NEED OF THE BASIC AMENITIES OF LIFE

Where their **families or care-givers are unable to adequately care for children**, e.g., children are getting insufficient nutrition or are living without adequate shelter, the Child Care Act (1983) requires certain individuals, namely *dentists, medical practitioners, nurses, social workers or teachers, or persons employed by or managing children's homes or places of care*, to identify and report such children to the Director General of Welfare. Therefore, research staff are not under a legal duty to report inadequate family care unless they are a member of one of these groups.

3 CHILDREN IN NEED OF PROTECTION FROM ABUSE/ NEGLECT/ MALTREATMENT/ EXPLOITATION

Where children are **being abused or ill-treated**, there are requirements to report any suspicions of ill-treatment or injuries that have been deliberately inflicted. The Prevention of Family Violence Act (1993) and the Domestic Violence Act (1998) also apply to children. In terms of the Prevention of Family Violence Act (1993) *any person* who attends to, advises, instructs or cares for a child and who has a reasonable suspicion that a child is being ill-treated or is suffering from an injury that was deliberately inflicted, must report this to a police official, a commissioner of child welfare or a social worker. The Domestic Violence Act (1998) allows a person with a "material interest" in the well-being of a child such as a *counsellor, a health service provider, member of South African Police Service (SAPS), social worker or teacher* to apply to court for a protection order which prohibits the abuser from committing any further acts of domestic violence against the child. These laws require research staff to report ill-treatment where it is suspected.

4 CHILDREN WHO ARE BEING SUBJECTED TO CHILD LABOUR OR INAPPROPRIATE WORK

The Basic Conditions of Employment Act (1997) says that it is illegal for children under the age of 15 to work, or those between the ages of 15 and 18 to perform unsuitable work (work that places their well-being, education, physical or mental health, or spiritual, moral or social development at risk); *any person may report* a child in such a situation to a Labour Inspector at the Department of Labour. So while there is no legal duty on research staff to report this, they may elect to do so.

5 CHILDREN INVOLVED IN SEXUAL OFFENCES

In terms of the Criminal Law, Sexual Offences and Related Matters Amendment Act, No. 32 of 2007, there is an obligation on any person who is aware of a sexual offence having been committed against a child to report this to the South African Police Service (SAPS).

The sexual offences that can be committed against children include:

- Having sex with a male or female under the age of 12, as they are incapable of consenting to a sexual act;
- Having non-consensual penetrative sex with a child, as this is the crime of rape;
- Having consensual penetrative sex and other related sexual activities with a child below the age of 16, as this is the crime of statutory rape;
- Engaging in consensual sexual activity which includes non-penetrative direct or indirect contact with the genital organs or mouth, with a child between the ages of 12 and 16, as this is the crime of statutory sexual assault;
- The sexual exploitation of children: This can occur when a person unlawfully uses a child as a sex worker (s 17(1)); facilitating the involvement of a child in sex work and living off the earnings of a child involved in sex work; exposing or involving a child in pornography; compelling children to witness various sexual acts; and flashing or exposing certain body parts to children.

6 CHILDREN BETWEEN THE AGES OF 7 – 15 WHO ARE NOT ATTENDING SCHOOL

The South African Schools Act (1996) requires all children between the ages of 7 – 15 to attend school. It places an obligation on parents to ensure that children actually attend school between these ages. There is no legal obligation to report to authorities.

7 CHILDREN INVOLVED IN OTHER OFFENSES

There is no legal obligation to report other crimes committed against children, such as a robbery. There is also no obligation to report crimes committed by children such as shop-lifting or substance abuse, unless there is reason to believe that children are being compelled to commit a crime by an adult, which amounts to ill-treatment (see issue 3).

B FREQUENTLY ASKED QUESTIONS ABOUT SPECIAL OBLIGATIONS

This section sets out some of the practical questions that researchers would face when considering how special protections for children will impact on their research. Under each of the 6 areas, we describe the legal obligation, including whether or not to report, the ethical obligations to intervene, and obligations to inform both parties in the consent process (RIP).

In addition, at the end of each FAQ, there is a brief table which summarises the reporting obligations.

1 During research, if it becomes clear that a child lacks family care, what are researchers' legal obligations?

Currently, research staff are not under a legal obligation to report children in such circumstances (e.g. they have been abandoned by parents, or are living on the streets) unless such research staff also fall into the designated categories, such as a social worker.

Research staff may however, depending on the circumstances, elect to make a statement under oath to a commissioner of child welfare in order to facilitate an investigation into the child's circumstances.

This issue may arise where researchers are studying particularly vulnerable groups such as street children or child-headed houses. Researchers may also be confronted with such issues in any study in which they are detailing the in-depth experiences of children.

Given that there is no direct legal obligation to report but there may be an ethical obligation to act in the child's best interests by electing to report the child's circumstances to a Commissioner of Child Welfare, this is a limit to confidentiality which should be explained in the consent process.

It should also be explained that researchers are not required by law to inform the parent, and therefore may not necessarily inform the parent, even while they may choose to report to authorities.

Adolescents and parents may refuse to consent on these grounds.

In the future, the Children's Amendment Act (2007) broadens the category of persons who are obliged or who may report children in need of care and protection. However, these changes will not substantively alter the responsibilities of research staff.

REPORTING CHILDREN IN NEED OF CARE: CURRENT LAW			
Which law?	What must be reported?	Who must report?	Who must they report to/What action must they take?
Child Care Act (1983)	Children who have no parent or guardian, or children who need to be placed in a place of safety.	These parties must report: Courts hearing cases involving children Commissioners of Child Welfare Police officers Social workers Authorized officers "Any person" who is aware of such a child <i>may</i> make a statement under oath to a Commissioner of Child Welfare.	Have the child placed in a place of safety and brought before the Children's Court.
FUTURE LAW			
Children's Amendment Act (2007)	Children who have been abandoned, orphaned, are without any visible means of support or children who live, work or beg on the streets.	Primarily nurses, medical practitioners, psychologists or social workers.	Designated child protection organization, the provincial Department of Social Development or a police official.

2 During research, if it becomes clear that a child is living without the basic amenities of life, what are researchers' legal obligations?

Currently, research staff have no legal obligation to report this issue (e.g. children without adequate nutrition or shelter) unless they fall into the designated parties required by law to report, such as medical practitioners, nurses, or social workers.

Given that many research staff may in fact be medical practitioners, or nurses, it is important that guidelines on identifying and reporting malnutrition are established.

This reporting requirement is a limit to confidentiality and should be explained in the consent process.

It should also be explained that research staff are not required by law to tell parents, and therefore may not necessarily inform the parent, even while they may need to inform authorities.

Adolescents and parents may refuse to consent on these grounds.

In the future, the Children's Amendment Act (2007) broadens the category of persons who are obliged or who may report children in need of care and protection. However, these changes will not substantively alter the obligations of research staff.

REPORTING CHILDREN WITHOUT AMENITIES: CURRENT LAW			
Which law?	What must be reported?	Who must report?	Who must they report to/What action must they take?
Child Care Act (1983)	Insufficient nutrition.	Dentists, medical practitioners, nurses, social workers or teachers, or persons employed by or managing children's homes or places of care.	Report to Commissioner of Child Welfare or Director General of Department of Welfare.
FUTURE LAW			
Children's Amendment Act (2007)	Children who are without any visible means of support, are without any support to obtain treatment, are in a state of physical or mental neglect.	Primarily nurses, medical practitioners, psychologists or social workers.	Designated child protection organizations, provincial Department of Social Development or a police official.

3 During research, if there is a suspicion of child abuse and ill-treatment, what are researchers' legal obligations?

Currently, research staff have a legal obligation to report **abuse and ill-treatment** of children. This would include an obligation to report physical abuse against children, the exploitation of children and neglect of children (such as failure to provide adequate care for the child's needs).

This means that when adolescents disclose various forms of failure by adults to provide adequate care, or physical or sexual abuse, this information will have to be reported to a social worker, police officer or commissioner of child welfare.

In addition, researchers will want to assist children by, for example, referring them to various forms of support.

This reporting requirement is a limit to confidentiality and should be explained in the consent process.

It should also be explained to parents that the researchers are not required by law, and therefore may not necessarily inform the parent, even while they may have to report to authorities.

Adolescents and parents may refuse to consent when they understand this issue.

In the future, the Children's Amendment Act (2007) broadens the category of persons who are obliged or who may report children in need of care and protection. However, these changes will not substantively alter the obligations of research staff to report abuse and ill-treatment.

REPORTING ABUSE & ILLTREATMENT: CURRENT LAW			
Which law?	What must be reported?	Who must report?	Who must they report to/What action must they take?
Family Violence Act (1983)	Suspicion of ill-treatment.	"Any person" who has a reasonable suspicion.	Police or a Commissioner of Child Welfare.
Domestic Violence Act (1998)	No duty to report. A person with a "material interest" in the well-being of a child may apply to court for a protection order which prohibits the abuser from committing any further acts of domestic violence against the child.	No duty to report. Counsellor, a health service provider, member of SAPS, social worker or teacher may act on child's behalf.	No duty to report. Assist child with an application for a protection order.
FUTURE LAW			
Children's Amendment Act (2007)	A child who is at risk of serious harm (physical, mental or social) if returned to the custody of a parent, guardian or caregiver, or is being maltreated, abused, deliberately neglected or degraded by a parent, a care-giver, a person who has control of the child.	Primarily nurses, medical practitioners, psychologists or social workers.	Designated child protection organizations, provincial Department of Social Development or a police official.

4 During research, if a child discloses details regarding child labour or inappropriate work, what are researchers' legal obligations?

Currently, a researcher is not under a legal obligation to report child labour or inappropriate work. They may however be under an ethical obligation to act in the best interests of the child by reporting such information to a labour inspector at the Department of Labour.

This ethical obligation may be a limit to confidentiality and should be explained in the consent process.

It should also be explained to parents that the researchers are not required by law, and therefore may not necessarily inform the parent, even while they may choose to report to authorities.

Adolescents and parents may refuse to consent on these grounds.

REPORTING CHILD LABOUR: CURRENT LAW			
Which law?	What must be reported?	Who must report?	Who must they report to/What action must they take?
Basic Conditions of Employment Act (1997)	No duty to report. May report child labour or inappropriate work by children between the ages of 15 – 18.	No duty to report. Any person may voluntarily report child labour or children between the ages of 15 – 18 who are engaged in inappropriate work.	No duty to report. Labour inspector at the Department of Labour.
FUTURE LAW			
No proposed law reform			

5 During research, if a child discloses a sexual offence (e.g., rape, sexual assault, being required to participate in sex work, or underage sex/sexual activity), what are the researcher's legal obligations?

Currently, in any instance in which a minor reports a sexual offence this must be reported to the South African Police Service (SAPS). These instances could be a) rape or indecent assault, b) sex work, c) underage sex or d) underage statutory sexual assault.

The issue of reporting under-age sex is very complex and poses many challenges, particularly for HIV prevention research. There are various categories of sexual offences committed against and by children.

- (i) *Non-consensual sexual acts* which may be committed against a child. This includes having sex with a child under the age of 12, the rape of a child and compelling children to witness sexual acts;
- (ii) *Various sexual acts committed with or without the consent of a child which are prohibited*. These include sexual exploitation of children, such as using them as sex workers, using or exposing children to pornography, and flashing or exposing certain body parts to children;
- (iii) *Consensual sexual acts*. These can be divided again into "consensual" sex but is abusive/ exploitative, for example a 15 year old having sex with a 35 year old man in exchange for gifts, or "consensual" and non-exploitative sex, for example, two 15 year-olds in a relationship; and
- (iv) *Consensual sexual activity*. These are consensual sexual acts that do not involve penetration such as kissing or mutual masturbation.

Researchers may elect to treat **consensual, non-exploitative under-age sex or sexual activity** differently from other categories, and not report these to the police.

Such an approach ought to only be adopted with caution as it requires researchers and RECs to agree to not apply one portion of the Sexual Offences Act (2007) and accordingly means that researchers, in failing to comply with the Act, have committed an offence. Nevertheless, given that reporting consensual underage sex/ activity appears to be in direct conflict with the principles articulated in the Children's Act (2005) which expressly allows children under the age of 16 to access services such as contraceptive advice and methods, HIV testing, and medical treatment, it may be possible to defend such an approach. This nuanced approach can also be defended on the ethical grounds that harmful activities (non-consensual or exploitative) are reported, but that non-harmful activities (consensual and non-exploitative) are not reported because this is unlikely to protect children, may erode trust in adult or authority figures and may decrease the veracity of disclosures children make to research staff – impeding the ability to steer them to appropriate services.

The need to report rape/ sexual assault, sex work and exploitative under-age sex should be explained to the minor and their parent in the **consent process**.

It should also be explained to parents that the researchers **may not necessarily inform the parent**, even while they will report to authorities.

Adolescents and parents may refuse to consent on these grounds.

In the future, there are no new or proposed laws that will change these obligations.

REPORTING OFFENCES: CURRENT LAW			
Which law?	What must be reported?	Who must report?	Who must they report to/What action must they take?
Criminal Law, Sexual Offences and Related Matters Amendment (2007)	Any sexual offence committed against a child. This includes: sex with a child under the age of 12; consensual penetrative sex and other related sexual activities with a child below the age of 16; non-consensual penetrative sex with a child; consensual sexual activity which includes non-penetrative direct or indirect contact with the genital organs or mouth, with a child between the ages of 12 and 16; sexual exploitation of children; exposing or involving a child in pornography; compelling children to witness various sexual acts; and flashing or exposing certain body parts to children.	Any person.	Generally a report must be made to the police. Research staff may elect not to report consensual, non-exploitative sex/ sexual activity (e.g. two 14 year-olds in a relationship) given that they will assist such children to reduce their risk, and give them access to a range of services.
FUTURE LAW			
There is no proposed law reform			

6 During research, if a researcher becomes aware that a child between the ages of 7 – 15 is not attending school, what are the researcher’s legal obligations?

Researchers are not under a legal obligation to report truancy or other reasons for children not attending school.

However given that parents are required to ensure their children (under 15) attend school and that they may be unaware that their child is not attending, there may be an ethical obligation on researchers to tell such parents so that parents can act to fulfil their duty.

This ethical obligation may be a limit to confidentiality and should be explained in the consent process.

It should also be explained to parents that the researchers may not inform them in all instances, e.g. where the child is older than 15.

Adolescents and parents may refuse to consent on these grounds.

REPORTING NON-ATTENDANCE AT SCHOOL: CURRENT LAW			
Which law?	What must be reported?	Who must report?	Who must they report to/What action must they take?
South African Schools Act (1996)	No obligation to report.	No obligation to report. Parents must ensure their children attend school.	No obligation to report. There may be an ethical obligation to inform parents if the adolescent is below 15 years old.
SUMMARY: FUTURE LAW			
No proposed law reform			

7 During research, if a child discloses that they have, or will commit an offence (e.g. abusing substances, committing theft, committing a sexual offence, truanting from school) what are a researcher’s legal obligations?

Currently, a researcher is under no general legal obligation to report information regarding a child who has committed, or is committing, criminal offences. However, a researcher should feel under an ethical obligation to intervene because this would be in the best interests of the child.

However, where a child, involved in a criminal offence, is being exploited (e.g. being required to engage in sex work by an adult for example), this should be reported to the police or other relevant authorities as this would amount to ill-treatment. As before, reporting ill-treatment should be explained in the consent process. It should also be explained to parents that the researchers may not necessarily inform the parent if their child has been ill-treated, even while they will report to authorities. Nevertheless the child will receive assistance, support and appropriate referrals.

It should also be explained to parents that trial site staff may not necessarily divulge to them when their child is engaged in an offence like drug-taking or theft but that steps will be taken to see that children get appropriate assistance.

Adolescents and parents may refuse to consent when these issues are explained to them.

In the future, there are no new or proposed laws that will change these obligations.

Also, if a researcher becomes aware of **a third party** who has been the “victim” of a crime or has “committed” a crime they are not under a legal duty to take any further action. However they may be under an ethical duty if another child is in clear and imminent danger, for example from a violent boyfriend. In such a case they should assist the child research participant to report this information to the local police or social workers for further investigation. In the future, there are no new or proposed laws that will change these obligations.

C THE IMPLICATIONS OF LAWS FOR RESEARCH

This section below gives more detail on laws about the 7 key areas of special protection for children, they are: a lack of adequate care; access to adequate nutrition; shelter and health care; abuse, neglect and maltreatment; child labour; crimes by and against children; and attending school. The table below contains additional information on each of the laws which deal with these issues described above. It can be used as a reference point for finding the specific sections referred to in the various acts.

	LEGAL PRINCIPLE	SOURCES OF LAW: CURRENT	SOURCES OF LAW: FUTURE	RESEARCH IMPLICATIONS
1	The law protects children in need of family care or alternative care and will require reporting of children in such instances by some persons.	<p>The Child Care Act (1983) outlines that during any court proceedings if the court becomes aware that a child has no parent or guardian, or that it is in the interests of the safety and welfare of that child that they be taken to a place of safety, they may order that the child be removed to a place of safety and ensure that the child thereafter appears before the Children’s Court.</p> <p>Also, it says that if a commissioner of child welfare becomes aware through information on oath given by “any person” that a child has no parent or guardian, or that it is in the interests of the safety and welfare of that child that they be taken to place of safety, the commissioner may issue a warrant ordering any police officer, social worker or other person to search for the child and take them to a place of safety. The child should be kept at the place of safety until they are brought before the Children’s Court.</p> <p>In addition, it says that a police officer, social worker or authorised officer may remove a child and take them to a place of safety without a warrant, if they have reason to believe that the delay in obtaining the warrant will be seriously prejudicial to the safety and welfare of the child.</p>	<p>Children’s Amendment Act (2007) includes the following as situations in which children would need care and protection, they are when children are: abandoned, orphaned, without any visible means of support; displaying uncontrollable behaviour; live, work or beg on the streets; addicted to a dependence producing substance without any support to obtain treatment; or living in a child-headed household.</p> <p>Children’s Amendment Act (2007) provides that certain persons who find children in such circumstances must report this information to a designated child protection organisation, the provincial Department of Social Development or a police official. Such persons are: a correctional official, dentist, homeopath, immigration official, labour inspector, legal practitioner, medial practitioner, midwife, minister of religion, nurse,</p>	<p>Researchers are not required to report children without family care unless the research staff member falls into one of the designated categories.</p> <p>However, they may be under an ethical obligation to inform authorities, or to act to assist the child.</p> <p>Research staff are not legally obliged to tell parents if a report will be made.</p> <p>These issues should be explained in the consent process.</p>

	LEGAL PRINCIPLE	SOURCES OF LAW: CURRENT	SOURCES OF LAW: FUTURE	RESEARCH IMPLICATIONS
			occupational therapist, physiotherapist, psychologist, religious leader, social service professional, social worker, speech therapist, teacher, traditional health practitioner, traditional leader, and member of staff or volunteer worker at a partial care facility, drop-in centre or child and youth care centre.	
2	The law protects children living without adequate nutrition, shelter or medical care and requires reporting in some instances.	The Child Care Act (1983) states any dentist, medical practitioner, nurse, social worker or teacher, or persons employed by or managing children's homes or places of care who examines, attends or deals with a child who appears to have been ill-treated or malnourished must report this to the Director General of the Department of Social Development (s 42, Child Care Act, 1983).	Children's Amendment Act (2007) lists the following as situations in which children would need care and protection: when children are abandoned, orphaned, without any visible means of support; live, work or beg on the streets or live in a child-headed household. It provides that certain persons who find children in such circumstances must report this information to a designated child protection organisation, the provincial Department of Social Development or a police official. Such persons are: a correctional official, dentist, homeopath, immigration official, labour inspector, legal practitioner, medical practitioner, midwife, minister of religion, nurse, occupational therapist, physiotherapist, psychologist, religious leader, social service professional, social worker, speech therapist, teacher,	Research staff may comprise of medical practitioners, or nurses or other designated categories. In such instances, they must report inadequate nutrition or shelter. Such research staff are not obliged by law to tell parents that a report must be made. This reporting obligation must be explained to both parties in the consent process.

	LEGAL PRINCIPLE	SOURCES OF LAW: CURRENT	SOURCES OF LAW: FUTURE	RESEARCH IMPLICATIONS
			traditional health practitioner, traditional leader, and member of staff or volunteer worker at a partial care facility, drop-in centre or child and youth care centre.	
3	The law protects children from abuse, maltreatment, neglect and degradation , and current and future law requires the reporting of children in such circumstances.	<p>The Constitution of the Republic of South Africa Act No 108 of 1996 s28 protects children from maltreatment, abuse, neglect and degradation. It also specifically protects children from exploitative labour practices.</p> <p>The Prevention of Family Violence Act No 113 of 1993 protects children from violence within the family.</p> <p>The Domestic Violence Act No 116 of 1998 protects children from various forms of domestic violence (violence taking place within their home) including physical, sexual, emotional, verbal, psychological and economic abuse. The Act defines “domestic violence” in section (1)(viii) as physical abuse, sexual abuse, emotional, verbal and psychological abuse, economic abuse, intimidation, harassment, stalking, damage to property, entry into the complainant’s residence without consent, where the parties do not share the same residence, and any other controlling or abusive behaviour towards the complainant.</p> <p>Section 4(3) of the Domestic Violence Act allows the complainant to apply for a protection order against domestic violence. If the complainant is a minor, they can apply without the assistance of a parent or guardian. Also, any person with a material interest in the well being of the complainant (such as a counsellor or health service provider) can apply for a protection order on behalf of a minor, without the minor’s consent.</p> <p>The Child Care Act No 74 of 1983 s42 and s50 protects children who have been ill-treated, injured, abandoned or who suffer from a nutritional deficiency disease.</p>	<p>Children’s Amendment Act (2007) lists the following as situations in which children would need care and protection: When children are being exploited or exposed to exploitative situations; exposed to or at risk of serious harm (physical, mental or social) if returned to the custody of a parent, guardian or caregiver; in a state of physical or mental neglect; <u>being maltreated, abused, deliberately neglected or degraded by a parent</u>, a caregiver, a person who has control of the child; a victim of child labour.</p> <p>It provides that certain persons who find children in such circumstances must report this information to a designated child protection organisation, the provincial Department of Social Development or a police official. Such persons are: a correctional official, dentist, homeopath, immigration official, labour inspector, legal practitioner, medical practitioner, midwife, minister of religion, nurse, occupational therapist,</p>	<p>Researchers must ensure that the research interventions do not amount to, or result in, maltreatment of children.</p> <p>Research staff who suspect that a child research participant is being maltreated are under an obligation to report this to a police officer, Commissioner for Child Welfare or social worker.</p> <p>Researchers should disclose this obligation in the consent process.</p> <p>The parent should be informed that researchers may not necessarily inform them directly.</p>

	LEGAL PRINCIPLE	SOURCES OF LAW: CURRENT	SOURCES OF LAW: FUTURE	RESEARCH IMPLICATIONS
		<p>Section 52 of the Child Care Act No 74 of 1983 and s43 of the Basic Conditions of Employment Act No 75 of 1997 prohibit the employment of children below 15 years of age, as well as the employment of children in situations that jeopardize their well being.</p> <p>The Prevention of Family Violence Act s4 requires any person caring for a child who suspects that the child is being ill-treated or deliberately injured to report this to a police officer, Commissioner for Child Welfare or social worker.</p> <p>The Child Care Act s42 (1) requires any dentist, nurse, medical practitioner, teacher and social worker attending to a child, who suspects the child is being maltreated, to report this to a designated officer. Section 42(2) states that this may result in the removal of the child to a place of safety or hospital. Section 42(5) makes failure to report, an offence.</p>	<p>physiotherapist, psychologist, religious leader, social service professional, social worker, speech therapist, teacher, traditional health practitioner, traditional leader, and member of staff or volunteer worker at a partial care facility, drop-in centre or child and youth care centre.</p> <p>The Children's Amendment Act also provides that "any person who on reasonable grounds believes that a child is in need of care and protection" <u>may</u> report such a belief to the provincial Department of Social Welfare, a designated child protection agency, or the police.</p>	
4	The law protects children from child labour and inappropriate labour.	<p>Any person who is aware of a child being engaged in child labour or inappropriate work may report this to the Labour Inspectors at the Department of Labour who will investigate the matter (section 64(1), Basic Conditions of Employment Act).</p> <p>If the employer is successfully prosecuted they could be given a fine or a minimum of 3 years imprisonment (section 93, Basic Conditions of Employment Act).</p>		<p>Researchers who discover that a child under 15 is working, are not required to report but they may elect to report this to the Department of Labour.</p> <p>Research staff are not obliged to inform parents if they make a report.</p> <p>This issue should be explained in the consent process.</p>
5	<p>The law protects children from sexual offences, such as:</p> <ul style="list-style-type: none"> • Rape • Sexual assault 	The Criminal Law, Sexual Offences, and Related Matters Amendment Act, No 32 of 2007 requires any person with knowledge of a sexual offence against a child to report this to the police. Sexual offences are rape, sexual		<p>Researchers need to be aware that sex below 16 is an offence.</p> <p>Research staff who learn that</p>

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	<ul style="list-style-type: none"> Commercial sex work Under-age sex or sexual activity <p>The law requires reporting of sexual offences against children.</p>	<p>assault, sex work and underage sex and sexual activity. The Criminal Law, Sexual Offences and Related Matters Amendment Act, No. 32 of 2007 introduces new offences to protect children from a range of acts relating to sexual abuse and exploitation. There are new offences relating to the sexual exploitation and grooming of children, the exposure and display of pornography to children and the use of children in pornography.</p> <p>Section 14 sets the age of consent to sexual activity at 16 for boys and girls and criminalizes consensual sex with a child below the age of 16 years. However, the Act also protects children who engage in consensual sex with other children from criminal prosecution by:</p> <ul style="list-style-type: none"> Requiring the written permission of the National Director of Public Prosecutions for bringing a charge where consensual sex between children takes place Requiring prosecution to be instituted against both parties in this case. <p>This ensures that prosecutions of consensual underage sex will generally only occur where exploitative sexual relations are taking place.</p> <p>The Criminal Law, Sexual Offences and Related Matters Amendment Act, No. 32 of 2007 requires sexual offences to be reported to SAPS.</p>		<p>children under the age of 16 are engaged in sex are obliged to report it to SAPS.</p> <p>However, we advise that researchers <i>do not</i> report consensual, non-exploitative under-age sex while they <i>do</i> report non-consensual or exploitative sex.</p> <p>Researchers must report rape, assault and sex work in full to SAPS.</p> <p>Obligations to report rape, assault, sex work and underage sex that is exploitative, must be understood by both parties in the consent process.</p>
6	The law protects children's right to education.	<p>The South African Schools Act No. 84 of 1996 says in s3 that every learner between the ages of 7 and 15 must attend school. An obligation is placed on their parents to ensure that this obligation is fulfilled. OR The South African Schools Act (No. 84 of 1996) states in section 31(1) that all children must attend school until the end of the school year in which they turn 15.</p> <p>No person may employ a child under the age of 15 who is still required to go to school (s 43(1), Basic Conditions of</p>		<p>Researchers generally do not have to report to authorities when children are playing truant from school.</p> <p>Nevertheless researchers should ensure that research takes place out of school hours. It would be against public policy for parents to consent to research which will</p>

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		Employment Act No. 75 of 1997). OR It is an offence for an employer to employ a child who must attend to school.		<p>require their children to miss school, if they are under the age of 15.</p> <p>When children are under 15, researchers may wish to disclose to parents, so that parents can fulfil their legal obligation.</p> <p>This should be explained in the consent process.</p>
7	<p>Certain acts are defined by our law as crimes, and are punishable offences, even when carried out by minors.</p> <p>However, there is no legal obligation to report offences committed by a child, unless it amounts to "maltreatment".</p>	<p>Criminal Law, Sexual Offences and Related Matters Amendment Act, No. 32 of 2007 criminalises rape, (unlawful sexual penetration without consent), as well as sexual assault and violation.</p> <p>Criminal Law, Sexual Offences and Related Matters Amendment Act, No. 32 of 2007 makes it an offence for any person (including a child) to live off the earnings of prostitution.</p> <p>The Drugs and Drug Trafficking Act, No 140 of 1992, s4 makes it an offence to use or have in their possession any dependence producing substance. Section 5 also states that it is an offence to deal in drugs. Section 10 places an obligation on the owner, occupier or manager of any place of entertainment to report to the police any suspicion that they have, that someone is using or dealing in drugs.</p>		<p>Generally, researchers are not under a legal obligation to report knowledge of a crime committed by a child.</p> <p>However researchers are under ethical obligations to assist children in need of care, for example, children who are abusing substances may need to be referred to appropriate social services.</p> <p>Researchers would, however, be obliged to report offences where children are being maltreated, for example where children are being encouraged by or being used by an adult to commit a crime.</p> <p>Researchers should inform parents that a range of referrals may be made for their child, where required to assist them, in the event that children are engaged in offences like drug-taking. Parents should be</p>

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				informed that researchers may not necessarily tell them if their child is engaged in such offences.
8	<p>In the consent process, researchers must ensure that parents and children are aware of the limits to confidentiality posed by reporting requirements.</p> <p>Parents must also be made aware that researchers may not necessarily inform them directly if a report is made.</p> <p>Both parties must be aware that some disclosures will trigger interventions and referrals for children.</p>	None.	None.	<p>Parents and children have a right to know what disclosures will trigger reporting to the authorities.</p> <p>Parents and children have a right to know what information will (or will not) be fed back to parents.</p> <p>Children, or their parent, may refuse to take part once they understand these issues.</p>