



**Western Cape  
Government**

Social Development

**WESTERN CAPE DEPARTMENT OF SOCIAL  
DEVELOPMENT STANDARD OPERATING  
PROCEDURE FOR THE REMOVAL OF A  
CHILD IN TERMS OF SECTION 151(1) OF THE  
CHILDREN'S ACT, 38 OF 2005, AS AMENDED**

29 MAY 2020



**STANDARD OPERATING PROCEDURE FOR THE REMOVAL OF A CHILD IN TERMS OF SECTION 151(1)  
OF THE CHILDREN'S ACT 38 OF 2005, AS AMENDED**

**PREAMBLE**

The purpose of this standard operating procedure (SOP) is to provide designated social service practitioners in the Western Cape with a uniform and standardised process for the removal of a child, when the process is initiated by the court in terms of sections 47, 50, 62, 68 or 151(1) of the Children's Act 38 of 2005.

**Approval**

Mr Charles Jordan

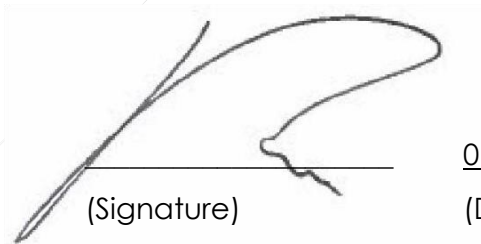
Chief Director: Social Welfare Services

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(Signature)

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(Date)

Dr Robert Macdonald

Head of Department

  
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(Signature)

01-06-2020

(Date)

## **1. BACKGROUND**

The Children's Act provides for two ways in which a child can be removed to temporary safe care, namely:

- with previous authorisation from a court – in terms of sections 47, 50, 68 or 151(1) of the Act; and
- without previous authorisation from a court – emergency removal in terms of section 152(1) of the Act.

## **2. PURPOSE**

The purpose of this document is to provide a detailed outline of the process to be followed when a court refers a matter to a designated social worker for a proper investigation.

## **3. INTENDED AUDIENCE**

This document is intended for all designated social workers (DSD and NGOs), adoption social workers accredited and designated to render the service, supervisors, social work managers and authorised Canalisation officers in the Western Cape.

## **4. LINKS TO OTHER STANDARD OPERATING PROCEDURES AND PROTOCOLS**

This standard operating procedure must be read together with:

- the Canalisation standard operating procedure signed 8 March 2019;
- the standard operating procedure for the removal of a child in terms of section 152(1) of the Children's Act;
- the standard operating procedure for the claim of safety parent fees and child escort fees; and
- the standard operating procedure for recruitment, screening, validation and training of safety and foster care parents, dated November 2018.

## 5. DEFINITIONS

- **Temporary safe care** in relation to a child, means care of a child in an approved child and youth care centre, shelter or private home or any other place where the child can safely be accommodated, pending a decision or court order concerning the placement of the child, but excludes care of a child in a prison or police cell.

## 6. SCOPE OF APPLICABILITY

The scope of this SOP **includes:**

- referrals made by the court in terms of sections 47, 50, 62, 68 or 151(1) of the Act; and
- when the information available to the court indicates that the child is in danger and in need of emergency care and protection.

## 7. PROCESS

### 7.1 Referral from the court

Any person can approach a children's court in terms of section 151 of the Children's Act for the purpose of providing information to support an allegation that a child in the court's area of jurisdiction is in need of a temporary safe care order. This may apply to cases where a child's situation will most probably not be worsened by taking several hours to approach the court.

If it appears to the presiding officer that the information is reliable enough to indicate a *prima facie* case, he/she is provided with three options in section 151:

- order an investigation in terms of section 151(2) within 90 days; or
- issue a temporary safe care order in terms of section 151(2); or
- order the removal of the child and refer the matter for investigation in terms of section 151(2)(a).

Other options available to the court include:

- Issuing a temporary safe care order in terms of section 46(1)(a)(iii) where a report by a designated social worker is not prescribed.

- The presiding officer, if uncertain whether a child is in immediate physical danger, may in terms of section 50(3) order an urgent preliminary investigation into the child's circumstances to establish whether there is a *prima facie* case that warrants a full investigation by a designated social worker. Because this investigation is limited (as it is to establish whether an emergency removal of the child concerned is indeed necessary) it must be submitted to the court within ten (10) days after the conclusion of the investigation (DoJ&CD Regulation 11).  
On receipt of the social work report indicating the need to remove the child to temporary safe care, the presiding officer will issue an order to investigate in terms of section 155(2).
- Where a child is referred to a designated social worker by a court other than a children's court acting in terms of section 47: Referral mechanisms mentioned in section 47(2) only apply to those instances where a child is thought to be in need of care and protection that relates to abuse and neglect, as opposed to the broader provision in section 47(1).
- On receipt of the designated social worker's report indicating the need to remove the child to temporary safe care, the presiding officer may issue an order to investigate in terms of section 155(2).

## **7.2 Social work investigation**

A children's court may order a designated social worker in terms of sections 47, 50, 62, 68, 151(1) and/or 155(2) to carry out an investigation and to furnish the court with a report. Section 151 makes provision for a matter to be investigated and where there are no placement options, for the child to remain in the care of the person currently caring for him/her. See section 63(1–3) of the Act – the report by the social worker is considered as *prima facie* evidence. The designated social worker needs to bring sensitive information that should not be disclosed to the attention of the court before the hearing.

In the event that the court orders an preliminary investigation in terms of section 50(3) (e.g. within two weeks), the expectation is not a full investigation (as would be done in 90 days), but a safety assessment MUST be done and a report submitted to the court on the child's circumstances to ascertain whether there is a *prima facie* case that warrants a full investigation by a designated social worker.

Consider using a Form 36 or approaching the court in terms of section 151 even before the allocated court date if the child requires emergency protection.

### **7.3 Removing a child to temporary safe care with a court order**

If the presiding officer is satisfied that it is necessary for the safety and well-being of the child issue a temporary safe care order.

**BEFORE** a child is removed, section 153 of the Act **MUST** be considered.

The authorised person, who need not be a designated social worker, may secure the assistance of the police. Any accompanying police officials are expressly empowered in terms of section 151(6) to use the minimum force reasonably necessary to gain entry to the premises.

Within 24 hours the authorised person must (in terms of section 151(7)):

1. inform the parent, guardian or care-giver;
2. refer the matter to a designated social worker for a care and protection investigation;
3. report the matter to the relevant provincial department of social development (this is best practice); and
4. inform the court that the order was successfully implemented (this is best practice).
5. provide the court with the Form 39.

When removing the child, the designated social worker must complete a Form 36 only when the court made an order to that effect in terms of section 151, place the matter before the children's court having jurisdiction for the next court day for review and inform the parents with a Form 37.

### **7.4 A temporary safe care order issued by the court**

The order in terms of section 151(2) must:

- identify the child who is to be subjected to an emergency removal, and
- authorise and identify a specific person to implement the order and issue a Form 36.

### **7.5 Visitation contact with family members**

In terms of Regulation 53(2)(a) the designated social worker may decide on '*access to the child at all reasonable times subject to the terms of the court order and provided that such access is in the best interest of the child*'.

## **7.6 Findings and placement options**

The presiding officer may make a provisional finding that the child is in need of care and protection in terms of section 150(1), but upon finalisation find in terms of either section 155(7) that the child is in need of care and protection; or in terms of section 155(8) that he/she is not/no longer in need of care and protection. The report must contain a finding as well as a recommendation in terms of section 155(8); section 156 or 46 as the case may be. Please note that section 46 contains several provisions for the protection of the child and intervention by the court that should be considered in your recommendation.

## **7.7 COVID-19 Regulations**

The movement of children into and out of the alternative care system needs to comply with the Protocol between the Western Cape Departments of Health and Social Development as contained in the Provincial Maternal and Child Health Response Plan.



**Investigation** by the designated social worker into the question of whether the child is in need of care and protection in terms of s150 read with section 155(2) . Report must be in the format of a Form 38 report. Once the report is presented to court, the court will give the parties an opportunity to challenge the content of the report.

**Child not in need of care and protection.** If court agrees that child is not in need of care and protection, s155(8) becomes applicable. Social worker to take necessary measures to assist the child in terms of s155(4)(b).

**Child in need of care and protection.** See s155(7). Court may make an appropriate order in terms of s156.

**An order in terms of section 46.**  
This section can also be used in cases where a child is found to be not in need of care and protection.

## **7.8 Adoptable child**

If it appears during any proceedings that a child is adoptable in terms of section 157(1)(b)(iv), a suitable recommendation may be made in terms of either section 46(1) or section 156(1)(e)(iii). It is **NOT** advised that a child be placed in temporary safe care with prospective adoptive parents for the 90-day period pending the finalisation of the children's court investigations in terms of section 155(2).

## **7.9 Safety parent fees**

The processing of claims for safety parent fees is provided for in the relevant standard operating procedure, as per recommendation in the designated social worker's report.

## **7.10 Child participation**

When a child cannot be present at proceedings (e.g. ill-health, infancy, child may be traumatised by taking part in the proceedings or other sufficient cause) the social worker's report must contain such information for the court to consider excusing the child from the court beforehand.

## **8. MONITORING THE IMPLEMENTATION OF THIS STANDARD OPERATING PROCEDURE**

Training on this standard operating procedure and monitoring of implementation will be coordinated by the Directorate: Children and Families. The Department of Justice and Constitutional Development may form part of a joint training event.

Monitoring implementation in the DCPOs will form part of the quarterly performance information process and the annual monitoring and evaluation plan in the Child Protection Programme.

The Directorate: Facility Management will monitor the placement of children in CYCCs against the norms and standards of the Children's Act.

Monitoring and auditing of the implementation of this standard operating procedure in the Department of Social Development will be managed by the head of the Department of Social Development in collaboration with the Regions, together with Internal Audit and the Special Investigations Unit.

The Canalisation Unit in the Region will capacitate staff regarding statutory processes, particularly when new members are appointed.

## **9. REVIEW OF THIS STANDARD OPERATING PROCEDURE**

This standard operating procedure will be reviewed 1 (one) year after it has been signed off, and thereafter every three years, subject to amendments to the legal framework.

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