

DRAFT POLICY

SPECIALISATION OF SERVICES FOR VICTIMS OF SEXUAL OFFENCES

BRANCH: Court Services
Chief Directorate: Promotion of the Rights of
Vulnerable groups



the doj & cd

Department:
Justice and Constitutional Development
REPUBLIC OF SOUTH AFRICA

PREAMBLE

The introduction of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 (hereafter "the Act") has been the culmination of a process of attempting to respond to the concerns of victims of sexual violence in order to address the secondary victimisation encountered in the criminal justice process. This move to addressing the circumstances of both child and adult victims was the culmination of a series of processes following ratification of the Convention on the Rights of the Child (CRC) in June 1995 and the Convention on the Elimination of All forms of Discrimination Against Women (CEDAW) in December 1995 respectively, as well as Government's commitment to the Beijing Platform of Action.

The Act aims to achieve, among other objectives, the provision of services to certain victims of sexual offences and strives to eliminate secondary victimization, thus expanding on Constitutional guarantees of rights to privacy, dignity, freedom and security of the person, as well as the right to be free from all forms of public and private sources of violence.

With an expanded definition of sexual violence, the Act has placed a significant degree of responsibility on government departments to deliver services, based on human rights, which are responsive to challenges of socio-economic conditions of beneficiaries and using an approach to service delivery which is integrated and coordinated.

A unique and novel element of the Act is the entrenchment of the inter-sectoral coordination of services, which reflects a major departure from the fragmented service delivery that has been a feature of the political past. In terms of this philosophy all policies and programmes must be aligned with a view to developing effective monitoring and evaluation systems for measuring progress.

The objects of the Act emphasise, therefore, an effective, responsive and sensitive criminal justice system as it relates specifically to sexual offences. These are set out in section 2 of the Act and include the following:

- to afford complainants of sexual offences the maximum and least traumatizing protection that the law can provide;
- to give full effect to the provisions of the Act;
- to combat and ultimately eradicate the relatively high incidence of sexual offences committed in South Africa;

- to protect complainants of sexual offences and their families from secondary victimisation and trauma by establishing a co-operative response between all government departments involved in implementing an effective, responsive and sensitive criminal justice system relating to sexual offences;
- to promote the spirit of *batho pele* ("the people first") in respect of service delivery in the criminal justice system dealing with sexual offences by:
 - ensuring more effective and efficient investigation and prosecution of perpetrators of sexual offences by clearly defining existing offences, and creating new offences;
 - giving proper recognition to the needs of victims of sexual offences through timeous, effective and non-discriminatory investigation and prosecution;
 - facilitating a uniform and co-coordinated approach by relevant Government departments in dealing with sexual offences;
 - entrenching accountability of government officials;
 - minimizing disparities in the provision of services to victims of sexual offences;
 - providing certain services to victims of sexual offences, including affording victims of sexual offences the right to receive Post Exposure Prophylaxis in certain circumstances; and
 - establishing a National Register for Sex Offenders.

It is evident from the preamble and the objects of the Act that the underlying philosophy is one of a people-oriented service delivery. The Act requires effective and efficient investigation and prosecution of perpetrators of sexual offences as well as proper recognition of the needs of victims of sexual offences. In order to perform the functions related to the Act's objects, all role-players are required to undergo training, and departments are required, in terms of the Act, to table these training courses in Parliament and provide an annual report on the implementation thereof. In this way the Act has entrenched a concept of specialisation of services for victims of sexual violence.

VICTIMS' RIGHTS

The SA Victims' Charter of Rights has the purpose of according victims of crime certain rights to empower them in their journey through the criminal justice process. The Charter aims to eliminate secondary victimisation in the criminal justice process; ensure that victims remain central to the criminal justice process; clarify the service standards that can be expected by and are to be accorded to victims whenever they come into

contact with the criminal justice system; and to make provision for recourse for victims when standards are not met.

The Charter sets out 7 rights which victims of crime have, namely:

- the right to be treated with fairness and with respect for your dignity and privacy;
- the right to offer information;
- the right to receive information;
- the right to protection;
- the right to assistance;
- the right to compensation; and
- the right to restitution.

These rights are integral to the specialisation of services for victims of sexual violence. For instance, a victim has the right to receive information. Where that victim is hearing impaired, specialised services would be required in order to fulfill that right. In addition, victims have the right to assistance. Where the victim is mentally disabled or a child, specialised services would be required to implement this right.

The National Policy Guidelines for Victim Empowerment are also integral to the policy of specialisation. They were developed to protect and support victims of violence by ensuring that victim-friendly services and programmes are integrated and coordinated through well-established government structures to prevent re-victimisation within the criminal justice system and to maximise the impact of services rendered. They provide a framework to guide and inform the provision of integrated and multi-disciplinary services aimed at addressing the diverse needs of victims of crime and violence effectively and efficiently.

SPECIALISATION OF SERVICES

For the South African context, specialisation of services can be defined as the provision of services, infrastructure, resources and training for all role-players in order to achieve expertise in the field of sexual violence, with the purpose of reducing secondary traumatisation for victims and eradicating sexual offences. From the objects of the Act, it is clear that the legislative vision encompasses a holistic approach to victims of sexual violence which extends throughout the criminal justice process, and addresses the trauma of victims as well as the investigation and prosecution of these cases, including issues of prevention and protection.

Since police play a crucial role in the gathering of evidence, which is central to ensuring that offenders are convicted and sentenced, the quality of their work often determines whether a case will be prosecuted or not. Due to the difficulties encountered with investigating cases of sexual violence committed against children and other vulnerable groups, it is the experience of many countries that cases of violence against women and children are not investigated thoroughly and that there is under-reporting in this regard. There is evidence that specialised units are more responsive and effective in dealing with cases of sexual violence, and their establishment facilitates the development of expertise in the area which may result in an increase in the number of cases investigated, and thus a less traumatising and more efficient experience for the victim.

Effective prosecution of cases of sexual violence, especially those involving children and persons with a mental disability, also require specialist skills and knowledge. Specialisation increases the expertise of prosecutors, which has a flow-on effect on the quality of the State's case. Specialisation allows prosecutors to establish appropriate rapport with witnesses who are vulnerable, especially children, and builds up an environment of expertise. The creation of a culture of specialist knowledge is an outcome of a specialist group of peer prosecutors working together in the same field, and this contributes to greater awareness of the needs of vulnerable witnesses. Where specialist prosecution units exist, these often adopt a prosecutorial-driven approach to investigations, which has been found to improve the quality of investigations and services.

The creation of specialised courts has traditionally been based on two principles. Firstly, specialised courts are created because they have become necessary to uphold legislation relevant to the development of a particular area of law associated with a certain aspect of social transformation. Secondly, they are created in response to the need for specialised skills in a particular area in order to process cases more speedily and efficiently. Specialised courts take one of two forms, namely specialist courts proper and what is known as court dedication or reservation. The former refers to courts which have been created by legislation and which are designed to hear a narrow range of cases, while the latter relates to the mere dedication of ordinary courts and personnel to hearing particular cases. Specialised sexual offences courts exist in a number of countries, including Brazil, Spain, Uruguay, Venezuela, the United Kingdom, as well as certain states in the United States of America. Experience has shown that these courts have been effective in many instances as they provide a stronger possibility that court and judicial officials will be specialised and gender-sensitive

regarding violence against women, and often include procedures that expedite these cases.

One Stop Centres for victims of sexual violence have arisen in response to the many difficulties and frustrations that victims experience within the medico-legal system, which contributes to both the stress and trauma they experience. These Centres aim to provide responsive, holistic and effective person-centred and service-oriented health services for victims of sexual violence in order to ensure the prevention of secondary trauma, and thus improve health. These One Stop Centres have taken on various forms and offer different services, depending on where they are located, but generally they make provision for the following: medical personnel; an investigating officer; a victim-friendly interview and/or waiting room; ongoing training of personnel; improved protocols and policies for dealing with victims; collection of forensic evidence, enhanced communication with victims; and improved co-ordination between the different role-players in the system.

SPECIALISATION OF PERSONNEL

The desirability of specialised training in the context of vulnerable witnesses has been acknowledged internationally, and forms the core component of specialisation since the creation of special measures and infrastructure has been shown to be ineffective unless accompanied by knowledge and sensitivity on the part of role-players. Working with victims of sexual violence who belong to vulnerable groups is a very specialised field, requiring highly specialised skills. International instruments require law enforcement officers and officials responsible for working with victims of sexual violence to receive training to sensitise them to the needs of women. It is critical to ensure that those role-players who are required to implement legislation pertaining to violence against women and children have an in-depth knowledge and understanding of the legislation so that they are able to implement it in an appropriate and gender-sensitive manner. If comprehensive training does not take place, there is a serious risk that the law will not be implemented effectively or uniformly. Training should be provided to all persons who have a role to play with victims of sexual violence in the criminal justice system and include frontline staff, police, medical officers, social workers, interpreters, victim support officers, intermediaries, prosecutors, presiding officers, and correctional supervision personnel. Specialisation of role-players will not only contribute to obtaining the “best evidence” but will also assist in generating an overall attitudinal change within the criminal justice process.

BASELINE ANALYSIS OF THE ACT TO IDENTIFY SPECIALIST SERVICES AND SKILLS NECESSARY FOR IMPLEMENTATION

In conducting a baseline analysis of the provisions of the Act, the following specialist services were identified as being required for the effective implementation of the Act.

Services

- Services that will assist victims (medical, therapeutic, support, legal) (s2);
- Services that will respond to and reduce trauma of victims and their families (s2);
- Provision of PEP and related counselling (s2);
- Development of Sexual Offences Register (s2);
- Availability of information pamphlets on PEP, list of health establishments providing PEP and free medical advice for complainants (s28);
- Availability of information pamphlets on compulsory HIV testing and procedures to be followed, including issues of confidentiality (s28);
- Dedicated court clerks to process compulsory HIV applications (s30);
- Availability of information pamphlets on the National Sex Offender Register (s40 - s53);
- Specialisation of investigation of sexual offences cases (s66);
- Specialisation of prosecution of sexual offences cases (s66);
- Availability of the services of intermediaries (s66); and
- Development and introduction of treatment/rehabilitation programmes for sex offenders (amendment of s276A of CPA 1951).

Infrastructure

- Availability of medical personnel and medical facilities for performing HIV testing and forensic examinations;
- Availability of closed circuit television systems in court (s66); and
- Availability of a separate courtroom for children under the age of 18 and persons with a mental disability (s66).

Training

- Sensitisation training of all role-players on sexual offences and trauma (s2);
- Creation of specialised skills, knowledge and services to provide a responsive system (s2);
- Training of all role-players on gender, lesbian, gay, bisexual and transgender sensitivities and biases (s2);

- Training on provisions of the Act for all role-players (entire Act);
- Training for role-players on sexual development (s15);
- Training for all role-players on mental disabilities (s23);
- Training of personnel providing PEP services on procedures and sensitisation (s28);
- Training of the police on sensitisation regarding the disclosure of results of compulsory HIV testing (s28);
- Training of court clerks on compulsory HIV testing procedures (s31);
- Training for all role-players on secondary trauma and victim empowerment (s34);
- Training on the dynamics of child witnesses and the topic of credibility of child witnesses (s58);
- Training on the dynamics of child witnesses and the topics of trauma and disclosure of abuse (s59);
- Training on the dynamics of sexual violence and the applicable cautionary rule (s60);
- Social context training in respect of sexual offences (s66);
- Training on directives for members of each particular department (s66);
- Training on child language and communication for relevant role-players (amendment to s170A of the CPA 1951); and
- Training on the dynamics of sex offenders and rehabilitation programmes for presiding officers (amendment of s226A CPA 1951).

Research and monitoring and evaluation

- Research to determine what aspects of the criminal justice system create trauma for victims of sexual offences (s2);
- Development of a national policy framework that will identify what amounts to an effective, responsive and sensitive criminal justice system (s2);
- Interdepartmental monitoring of implementation (s2);
- Research to identify the causes of the high incidence of sexual offences in South Africa (s2);
- Development of a policy on introducing an inter-sectoral (multi-disciplinary) approach to sexual offences (s2);
- Research to determine what factors give rise to secondary traumatising of victims and their families (s2);
- Gap analysis of the assessment of the services available to children who interface with the criminal justice system (s2);

- Development of a policy on case-flow management for matters involving sexual offences (s2);
- Development of a set of minimum standards governing the investigation of sexual offences cases (s2);
- Set of minimum standards governing the prosecution of sexual offence cases (s2);
- Monitoring of provision of services to minimize disparities (s2);
- Development of guidelines for assessment of children to identify services required (s15);
- Development of guidelines for assessment of mental disability (s23); and
- Research-based investigation of the effectiveness of the competency test for children and the feasibility of introducing a more developmentally appropriate test (amendment of s164 of the CPA 1951).

A MODEL FOR SPECIALISATION OF SERVICES FOR SEXUAL OFFENCES

In order to achieve the objects of the Act, a model of specialisation of services for victims of sexual offences in South Africa has been developed. The following specialist services will be available to victims of sexual violence:

Specialist investigating units

Specialist investigating units must have the following features and offer the following services:

- a dedicated unit of specialist police officers responsible for investigating cases of sexual offences;
- victim support rooms at all police stations;
- sensitised frontline staff who have undergone specialised training;
- dedicated units located in victim-friendly facilities which promote privacy, safety and confidentiality;
- referral to other agencies for medical and psychological assistance;
- police officers appointed to dedicated units in terms of established criteria;
- specialist and on-going mentoring of members of the unit;
- all members must undergo training on the provisions of the Act;
- all members must undergo specialised accredited training on child development, the dynamics of sexual abuse and crime scene investigation and must be assessed for their competency to work in this field;

- availability of police officers that have undergone specialised training to work with persons who have a mental disability;
- effective resources to perform their functions, namely access to vehicles, computers, offices and telephones;
- availability of services for persons with physical disabilities, including persons with a hearing impairment;
- a multi-disciplinary inter-sectoral approach with other relevant government departments;
- outreach and awareness campaigns; and
- monitoring and evaluation of the quality of services provided to victims.

One Stop Centres

One Stop Centres, which are aimed at attending to the medical, emotional and psychological needs of victims, must offer the following services:

- designated centre dedicated to specialised and accessible health care on a 24 hour basis for victims of sexual violence;
- victim-friendly centre;
- policing services;
- counselling services;
- availability of medical officers to conduct forensic examinations;
- medical officers specially trained to deal with victims of sexual violence and sexual violence forensic investigations;
- a multi-disciplinary inter-sectoral approach with other relevant government departments;
- follow-up medical treatment; and
- monitoring and evaluation of services offered at the centre.

Courts offering specialised services to children and persons with mental disabilities

The adjudication of sexual offences involving children and persons with mental disabilities requires a specialised approach which includes the provision of facilities, programmes and trained personnel. Courts offering these services must have the following features:

- case-flow management and a screening process to identify cases that fall within the sex offences category;
- case management to reduce delays and arrange pre-trial matters;
- a designated courtroom equipped with closed-circuit television and sound equipment and/or one-way glass facilities;

- a special room from which the victim will testify, which must be informally arranged;
- a waiting room and/or play area for victims and their families which must be informally arranged;
- victim support services;
- designated social worker for assessments and referral;
- availability of intermediaries;
- designated court clerk;
- a core group of specialist presiding officers, who have experience in criminal matters and who have undergone specified training on child development, working with mental disabilities and the dynamics of sexual offences;
- a process of rotation of specialist presiding officers to minimise burnout;
- provision of vicarious trauma training and services to presiding officers to reduce stress and secondary trauma;
- specialist prosecutors who are experienced in prosecuting criminal matters and who have received specified training on child development, working with persons with mental disabilities and the dynamics of sexual abuse;
- provision of vicarious trauma training and services to prosecutors to reduce stress and secondary trauma;
- specialist interpreters who have received training on child development and working with persons with a mental disability;
- court preparation programme for witnesses to prepare them for court and to provide debriefing after they have testified;
- alternative models for sentencing offenders and the availability of rehabilitation programmes for sex offenders;
- the use of expert reports for:
 - assessment of the child victim;
 - assessment of the witness who has a mental disability;
 - impact of the crime;
 - prospect of rehabilitation of offender; and
- the establishment of a data collection method to allow for the monitoring and evaluation of the court's effectiveness.

Courts offering specialised services to victims of sexual violence

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- specialist interpreters who have received training on interpreting in sexual offences cases;
- alternative models for sentencing offenders and the availability of rehabilitation programmes for sex offenders;
- the use of expert reports for:
 - impact of the crime; and
 - prospect of rehabilitation of offender.
- court preparation programme for witnesses to prepare them for court and to provide debriefing after they have testified; and
- data collection method to allow for the monitoring and evaluation of the court's effectiveness.

Specialist prosecution units

Specialist prosecution units have been introduced in a number of jurisdictions to respond to the need for specialisation in cases involving sexual offences and domestic violence cases, both to reduce secondary victimisation and to improve the prosecution of these cases. Specialist prosecution units servicing cases of sexual violence will have the following features and offer the following services:

- a minimum of two specialist prosecutors per dedicated or specialist court;
- specially identified prosecutors who have been recruited based on their sensitivity, skill and knowledge of prosecuting sexual offences cases;

- specialist prosecutors must have undergone minimum required training on the prosecution of sexual offences, child development and the dynamics of sexual violence against children;
- identified prosecutors must also have undergone training on working with persons with mental disabilities;
- child-friendly environments must be available for consultation between the prosecutor and the victim;
- provision of vicarious trauma training and services to prosecutors to reduce stress and secondary trauma;
- use of victim impact statements;
- prosecutor-guided investigations; and
- data collection methods to allow for the monitoring and evaluation of the prosecution's effectiveness.

Other specialist services

In addition to the above specialist services, there are additional services that must be provided by the various departments in order to fulfil the mandate of the Act.

Counseling and Aftercare

Although the Act does not specifically make provision for the counseling and aftercare of victims, the objects of the Act seek to introduce measures which will enable the relevant organs of state to combat and, ultimately, eradicate the relatively high incidence of sexual offences committed in South Africa. To this end, it is recommended that the following services be made available to victims of sexual violence:

- trauma counselling;
- debriefing after testifying; and
- longer term rehabilitative counseling.

Sex offender rehabilitation programmes

Since there is sufficient evidence to show that conviction and sentencing, without the involvement of a sex offender treatment programme, have little effect on reducing the recidivism of offenders after release, it is essential that sex offenders be required to attend a treatment programme as part of their sentence. The following specialist services should thus be available:

- an expert assessment of the sex offender to determine the prospects of rehabilitation; and
- alternative models for the punishment of sex offenders which include mandatory treatment programmes.

National Register for Sex Offenders

Sex offender registers have been introduced in a number of jurisdictions, both for protection as well as prevention purposes. They serve to protect children by ensuring that sex offenders do not come into contact with children, and may also act as a deterrent to discourage sex offenders from engaging in further criminal conduct. A model for specialisation would then include:

- a national register for sex offenders;
- designated personnel to manage the register; and
- annual reporting on the effectiveness of the register.

Research

In order to ensure that specialist services are effective, it is necessary that ongoing research be conducted. To achieve this, the following should be in place:

- dedicated research team focused on conducting research on issues pertaining to sexual offences; and
- research strategy to identify key research issues.

Monitoring and evaluation

Monitoring and evaluation of the implementation of the Act is required by the Act itself in terms of s65. This would involve:

- assigning dedicated personnel to monitoring the implementation of the Act;
- development of a monitoring and evaluation plan for the Act; and
- the establishment of an ombudsman to investigate and respond to complaints of inadequate service to victims of sexual offences.