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Commentary on the Childrens Act/Chapter 20 Enforcement of Act (ss 304-305)

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Chapter 20 Enforcement of Act (ss 304-305)

RS 7, 2015 ch20-p1

SYNOPSIS

Chapter 20: Enforcement of Act (ss 304-305)

- 304 Inspection of child and youth care centre, partial care facility, shelter and drop-in centre
- 305 Offences

RS 7, 2015 ch20-p2

304 Inspection of child and youth care centre, partial care facility, shelter and drop-in centre

(1) A person authorised by the Director-General, a provincial head of social development or a municipality may enter any child and youth care centre, partial care facility, shelter or drop-in centre or any place which on reasonable suspicion is being used as an unregistered child and youth care centre, partial care facility, shelter or drop-in centre, in order-

- (a) to inspect that centre, facility, shelter or place and its management; or
 - (b) to observe or interview any child, or cause a child to be examined or assessed by a medical officer, social worker, psychologist or psychiatrist.
- (2) (a) An identity card prescribed by regulation must be issued to each person authorised in terms of subsection (1).
- (b) When inspecting such a centre, facility, shelter or place, a person authorised in terms of subsection (1) must, on demand, produce such an identity card.
- (3) A person authorised in terms of subsection (1) may for the purposes of that subsection-
- (a) determine whether the centre, facility, shelter or place complies with-
 - (i) the prescribed national norms and standards referred to in section 79, 194 or 216 applicable to it;
[Sub-para (i) inserted by s 12 of Act 41 of 2007.]
 - (ii) other national norms and standards as may be prescribed by regulation;
[Sub-para (ii) inserted by s 12 of Act 41 of 2007.]
 - (iii) any structural, safety, health and other requirements as may be required by any law; and
 - (iv) the provisions of this Act;
 - (b) require a person to disclose information, either orally or in writing, and either alone or in the presence of a witness, about any act or omission which, on reasonable suspicion, may constitute an offence in terms of this Act, or a breach of a provision of this Act or of a condition of registration, and require that any disclosure be made under oath or affirmation;
 - (c) inspect, or question a person about any record or document that may be relevant for the purpose of paragraph (b);
 - (d) copy any record or document referred to in paragraph (c), or remove such record or document to make copies or extracts;
 - (e) require a person to produce or deliver to a place specified by the authorised person, any record or document referred to in paragraph (c) for inspection;
 - (f) inspect, question a person about and if necessary remove, any article or substance which, on reasonable suspicion, may have been used in the commission of an offence in terms of this Act or in breaching a provision of this Act or of a condition of registration;
 - (g) record information by any method, including by taking photographs or making videos; or
 - (h) exercise any other power or carry out any other duty that may be prescribed.
- (4) A person authorised in terms of subsection (1) must-
- (a) provide a receipt for any record, document, article or substance removed in terms of subsection (3)(d) or (f); and

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- (b) return anything removed within a reasonable period unless seized for the purpose of evidence.

(5) A person authorised in terms of subsection (1) must submit a report to the Director-General, the provincial head of social development or a municipality, as may be appropriate, on any inspection carried out by that person in terms of this section.

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305 Offences

- (1) A person is guilty of an offence if that person
- (a) commits an act in contravention of the prohibition set out in section 12(2), (3), (4), (6), (7), or (8);
 - (b) contravenes a provision of section 32(4), 74, 116(1), 123(1), (2) or (3), 127, 133(1), 249, 250(1), 252, 273, 301, 302 or 303;
[Date of commencement of para (b): 1 July 2007.]
 - (c) fails to comply with section 12(5), 12(9), 57(2), 89(1), 89(2), 110(1), 124, 126(1), 134(1), 138(1), 141(1), 167(2), 178(1), 178(2), 226(1), 226(2) or 232(6);
[Para (c) substituted by s 13(a) of Act 41 of 2007.]
[Date of commencement of para (c): 1 July 2007.]
 - (d) fails to comply with a request in terms of section 57(1);
 - (e) misappropriates money for which that person is accountable in terms of section 137(5)(b);
[Para (e) inserted by s 13(b) of Act 41 of 2007.]
 - (f) fails to comply with section 80(1), 95(1), 197(1) or 217(1) after that person has been instructed by way of a notice of enforcement in terms of section 85, 100, 204 or 222 to comply with the relevant section;
[Para (f) inserted by s 13(b) of Act 41 of 2007.]
 - (g) fails to stop operating an unregistered child and youth care centre, partial care facility or drop-in centre after that person has been instructed by way of a notice of enforcement in terms of section 85, 100, 204 or 222 to stop operating that child and youth care centre, partial care facility or drop-in centre;
[Para (g) inserted by s 13(b) of Act 41 of 2007.]
 - (h) fails to stop providing early childhood development programmes after that person has been instructed by way of a notice of enforcement in terms of section 100 to stop providing those programmes;
[Para (h) inserted by s 13(b) of Act 41 of 2007.]
 - (i) directly or indirectly counsels, induces or aids any child to whom leave of absence has been granted in terms of section 168 not to return to the child and youth care centre or person in whose care or temporary safe care that child has been placed, or prevents the child from returning to that centre or person after the expiration of the period of leave or after the cancellation of such leave;
[Para (i) inserted by s 13(b) of Act 41 of 2007.]
 - (j) removes a child in alternative care from the Republic without the prior written approval for such removal first being obtained in terms of section 169;
[Para (j) inserted by s 13(b) of Act 41 of 2007.]
 - (k) knowing that a child in alternative care has absconded from or failed to return to that care, directly or indirectly counsels, induces or aids that child not to return to such care, or harbours or prevents the child from returning to that care;
 - (l) hinders or obstruct-

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- (i) a police official or designated social worker in the execution of a warrant issued in terms of section 151(2);
- (ii) a police official, social worker or authorised officer when removing a child to temporary safe care in terms of section 152(1);
- (m) hinders or interferes with a person in the execution of official duties in terms of section 304;
- (n) fails to comply with a request of a person in the execution of his or her official duties in terms of section 50(4) or section 304 or furnishes false or misleading information to such a person when complying with such a request;
- (o) falsely professes to be a person authorised in terms of section 50(4) or 304 or an assistant of such a person;
- (p) has been issued with a written notice as contemplated in section 153(1) and
 - (i) refuses to leave the home or the place where the child resides; or
 - (ii) has contact with the child in contravention of the written notice;
- (q) contravenes or fails to comply with an order of a High Court, Divorce Court in a divorce case and children's court issued in terms of this Act, including section 153(6), or contravenes or fails to comply with any condition contained in such order;
- (r) and (s) . . .

[Paras (r) and (s) deleted by s 48 of Act 7 of 2013.]

- (2) A person unfit to work with children is guilty of an offence if that person
- (a) operates or assists in any way in operating a partial care facility, child and youth care centre, shelter or drop-in centre;
 - (b) assumes the foster care or temporary safe care of a child; or
 - (c) applies for the foster care, temporary safe care or adoption of a child.

(3) A parent, guardian, other person who has parental responsibilities and rights in respect of a child, care-giver or person who has no parental responsibilities and rights in respect of a child but who voluntarily cares for the child either indefinitely, temporarily or partially, is guilty of an offence if that parent or care-giver or other person

- (a) abuses or deliberately neglects the child; or
- (b) abandons the child.

[Date of commencement of sub-s (3): 1 July 2007.]

(4) A person who is legally liable to maintain a child is guilty of an offence if that person, while able to do so, fails to provide the child with adequate food, clothing, lodging and medical assistance.

[Date of commencement of sub-s (4): 1 July 2007.]

(5) A person who is the owner, lessor, manager, tenant or occupier of any premises on which the commercial sexual exploitation of a child has occurred is guilty of an offence if that person, on gaining information of that occurrence, fails to promptly take reasonable steps to report the occurrence to the South African Police Service.

[Date of commencement of sub-s (5): 1 July 2007.]

(6) A person convicted of an offence in terms of subsection (1), (2), (3), (4) or (5) is liable to a fine or to imprisonment for a period not exceeding ten years, or to both a fine and such imprisonment.

[Sub-s (6) substituted by s 48 of Act 7 of 2013.]

[Date of commencement of sub-s (6): 1 July 2007.]

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(7) A person convicted of an offence in terms of subsection (1), (2), (3), (4) or (5) more than once is liable to a fine or imprisonment for a period not exceeding 20 years or to both a fine and such imprisonment.

[Date of commencement of sub-s (7): 1 July 2007.]

(8) . . .

[Sub-s (8) repealed by s 48 of Act 7 of 2013.]