

# Children's Amendment Bill

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Presentation to the Portfolio Committee  
on Social Development

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# Background



# Children's Institute

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- One of the leaders in child policy research and advocacy in South Africa
- **Mission:** Realise children's rights through laws, policies, programmes and service interventions
- **Focus:** Poverty, inequality, HIV/AIDS, infant & child mortality & morbidity, violence & abuse



# Our work relating to foster care

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- Focus on foster care for over a decade
  - Analysis of evidence to find a solution for the challenges in the foster care system
  - In 2011, commissioned by Social Security Directorate in the DSD to investigate challenges in the foster care system and make recommendations for reform
  - Child deaths



# Presentation

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Amendment to  
s150(1)(a):  
child in need of  
care and  
protection

Amendment  
regarding National  
Child Protection  
Register



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# Amendment to s150(1)(a) of the Children's Act

"A child in need of care and protection"



# Proposed wording of s150(1)(a)

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“A child is in need of care and protection if such a child -

has been abandoned or orphaned and *does not ostensibly have the ability to support himself or herself.*”



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# Crisis in the foster care system





# Death due to severe neglect

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- 8 year old died of severe dehydration and malnutrition
  - In foster care since the age of 1 month
  - Presented at RxH in December
  - Definite abuse case – admitted for a week
  - **DSD involved in the investigation of home circumstances and placed the child back in foster parent's care**
  - 2 months later child was dead
  - At autopsy child un-kept and severely underweight
    - 9 kg
    - Cerebral palsy – no evidence of medical care



# Fatal Abuse

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- ❑ 4 year old presented at RXH with severe head injury and other injuries at various ages
- ❑ Presented with a history – child found unconscious in the play ground by mom’s boyfriend
- ❑ History - case was known by DSD Bellville since 2012 after allegations of abuse by mom
- ❑ Mom alleged to use harsh discipline, leave the child without food, and physically abusive
- ❑ Child died in 2014



# Monitoring of children's care

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- ❑ An 8 month old baby died of gastro-enteritis
- ❑ In the care of mom – put to sleep after bottle fed - unresponsive a few hours later.
- ❑ Post-mortem exam - foetal alcohol syndrome, under weight
- ❑ A concern was that Mom did not seek medical attention prior to his death in 2014

→ *Referred to local child protection agency for an investigation of the home circumstances in 2008*

- ❑ Family known to CWS since 2008 referred due to mom's alcohol abuse and questionable care of children
- ❑ A previous child death in 2009 and another child death in 2011 both while under the care of CWS

Three deaths could have been prevented if we had a functional system

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Why is the foster care system in crisis?

What are the implications of the proposed amendment?



# Not a comprehensive solution

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- ❑ Amendment will **not** provide family members taking care of orphans with access to timeous and adequate social grants
- ❑ Amendment will further clog the child protection system thereby preventing abused children from accessing state protection
- ❑ Amendment is **not a comprehensive solution** as required by the 2011 ruling of the High Court\* to address the crisis in the foster care system



# Amendment to s150(1)(a)

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- Amendment is not in the best interest of orphaned children and abused and neglected children because:
  - Department of Social Development will be **unable to implement** the proposed amendment
  - Amendment is **legally flawed** and will lead to an inconsistent application of the law



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# Implementation challenges

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# Implementation challenges

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Amendment is  
**not**  
**implementable**  
due to:

- shortage of social workers
- insufficient financial resources








# Crisis in the foster care system

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- ❑ Approx. 500,000 children in the foster care system
  - 90% of them orphans in the care of relatives
- ❑ Foster parents wait up to **3 years** to find out about their application for a foster child grant
- ❑ By comparison: the process of obtaining a Child Support Grant (administered by SASSA) takes around **3 days**

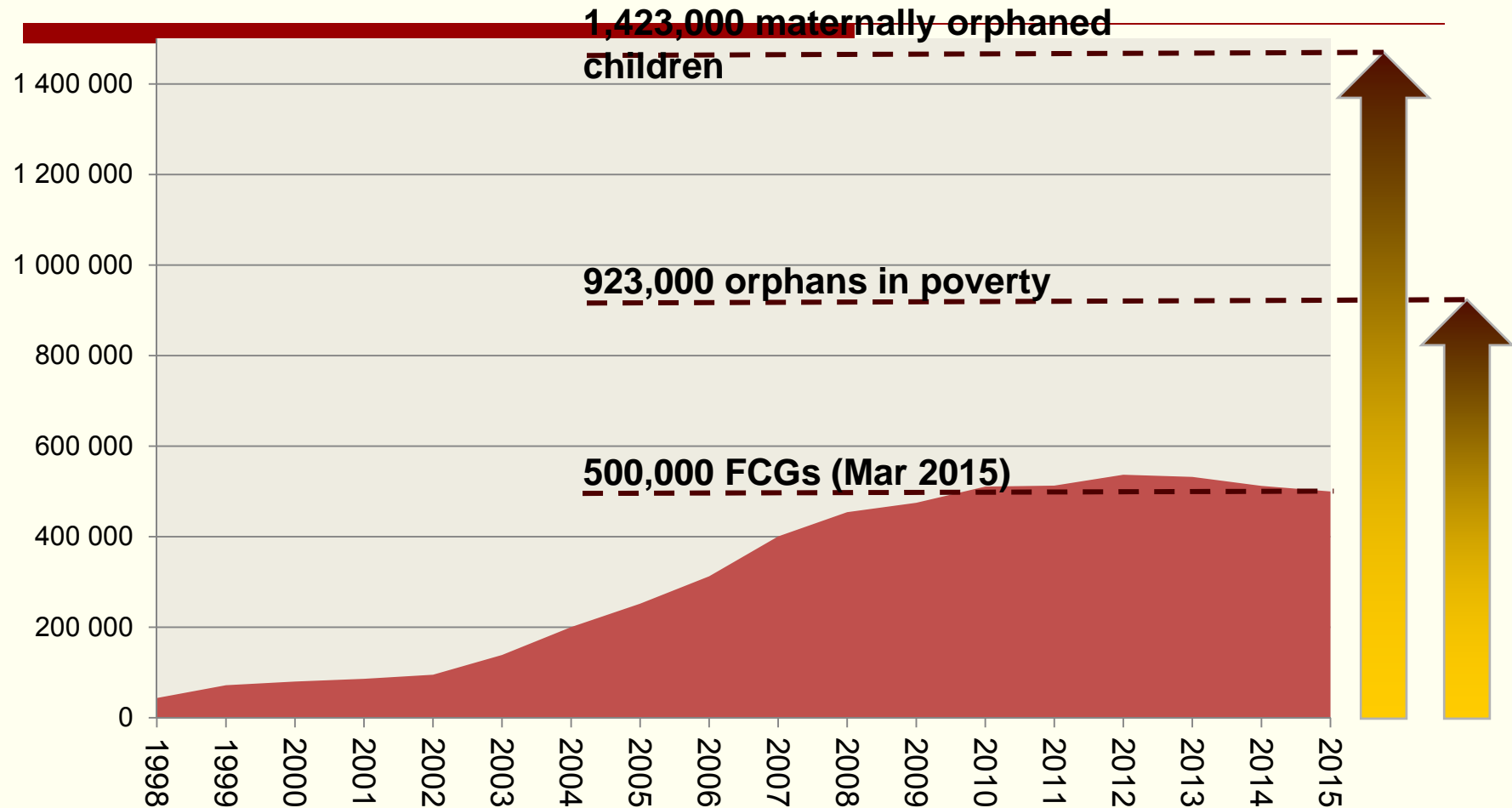


# FCG growth patterns over 7 years

	FCGs in payment	Net growth / decline over financial year	
end March 2008	454 199	Number	%
2009	474 759	20 560	5%
2010	510 760	36 001	8%
2011	512 874	2 114	0%
2012	536 747	23 873	5%
2013	532 159	 -4 588	-1%
2014	512 055	 -20 104	-4%
2015	499 774	 -12 281	-2%

2008-2015: South African Social Security Agency SOCPEN monthly reports; financial year-end

# FCG for orphans: is the target achievable?



● It took over 10 years to reach  $\frac{1}{3}$  of orphans (and  $\frac{1}{2}$  of 'poor' orphans)

Sources: 1998-2007: National Treasury Intergovernmental Fiscal Review; financial year-end figures  
2008-2014: South African Social Security Agency SOCPEN monthly reports; financial year-end

# How many social workers?

Count	Source	No. / ratio
Required ratio of social workers to FC cases	DSD Affidavit 2014	1:60
Current number of social workers	DSD Affidavit 2014	5,306
DSD calculated shortfall (to reach 553,916 'current' FC child placements)	DSD Affidavit 2014	3,725
Own calculated shortfall to reach 553,916 'current' FC child placements	Own calculations	3,926
Shortfall to reach target placements of 1m (excluding social workers to provide generic welfare services)	Own calculations	11,360

# Financial implications

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- Department has not yet given a projection of the number of targeted beneficiaries, or the financial implications of the amendment
- An additional 1 million maternal orphans living with family members could qualify for the FCG



# Costs of additional grants

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- If FCG were to reach additional 1 million orphans not yet in receipt of the FCG, the additional cost to the fiscus would be around **R11 billion annually**
  - Only counting orphans under the age of 18 years
  - Just for the grant



# Additional costs

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- High operational costs for the continued involvement of **social workers** and **court personnel** due to lapsing of foster care orders
- Operational costs of FCG are much higher than grants administered by the South African Social Security Agency (SASSA)



# Using the foster care system to scale-up access to social grants for orphans is not feasible

Foster care system is already not coping

Shortfall of **11,360** social workers

Insufficient budget





# Consequences of the amendment

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**Orphans and their family members**



Unable to access timeous and appropriate grants



Continue to live in poverty

**Abused and neglected children**



Unable to access timeous protection services



At risk for further abuse and death



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# Legal flaws

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# Necessity of amendment

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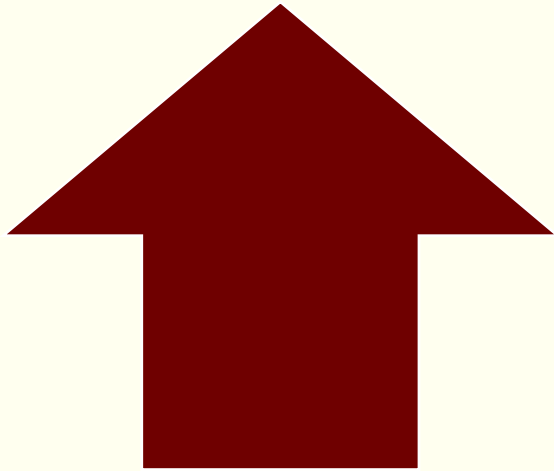
## □ Memorandum of the Bill:

“to give effect” to the High Court judgment in *Nono Cynthia Manana and Others v The Presiding Officer of the Children’s Court: District of Krugersdorp and Others*

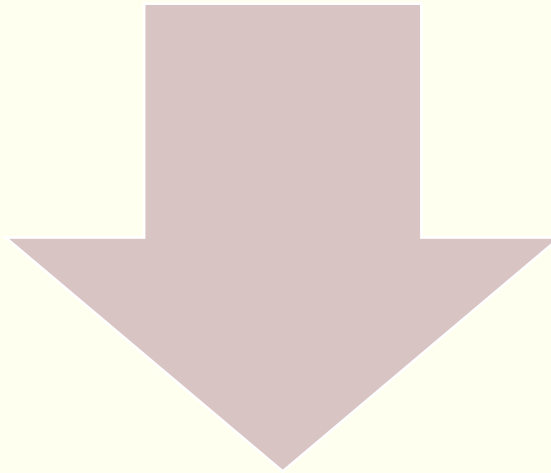


# Is the amendment necessary?

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*Manana* judgment  
provided an  
**interpretation** of  
the law



It did **not** say  
that the law is  
unconstitutional



# Inconsistent with other laws

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The proposed amendment is inconsistent with:

- the Children's Act;
- the Social Assistance Act; and
- the Constitution.



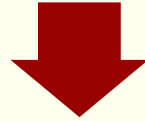
# Inconsistent application of the law

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- ❑ Magistrates will have to interpret the meaning of the phrase “does not ostensibly have the ability to support himself or herself”
- ❑ Giving magistrate discretion in this regard will lead to an inconsistent application of the law



Inconsistent application of the law



Some families caring for orphans will be able to obtain the FCG while others will be unable to do so



Unequal access to the FCG undermines the constitutional right to equality



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# Alternative amendment

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# Financial support

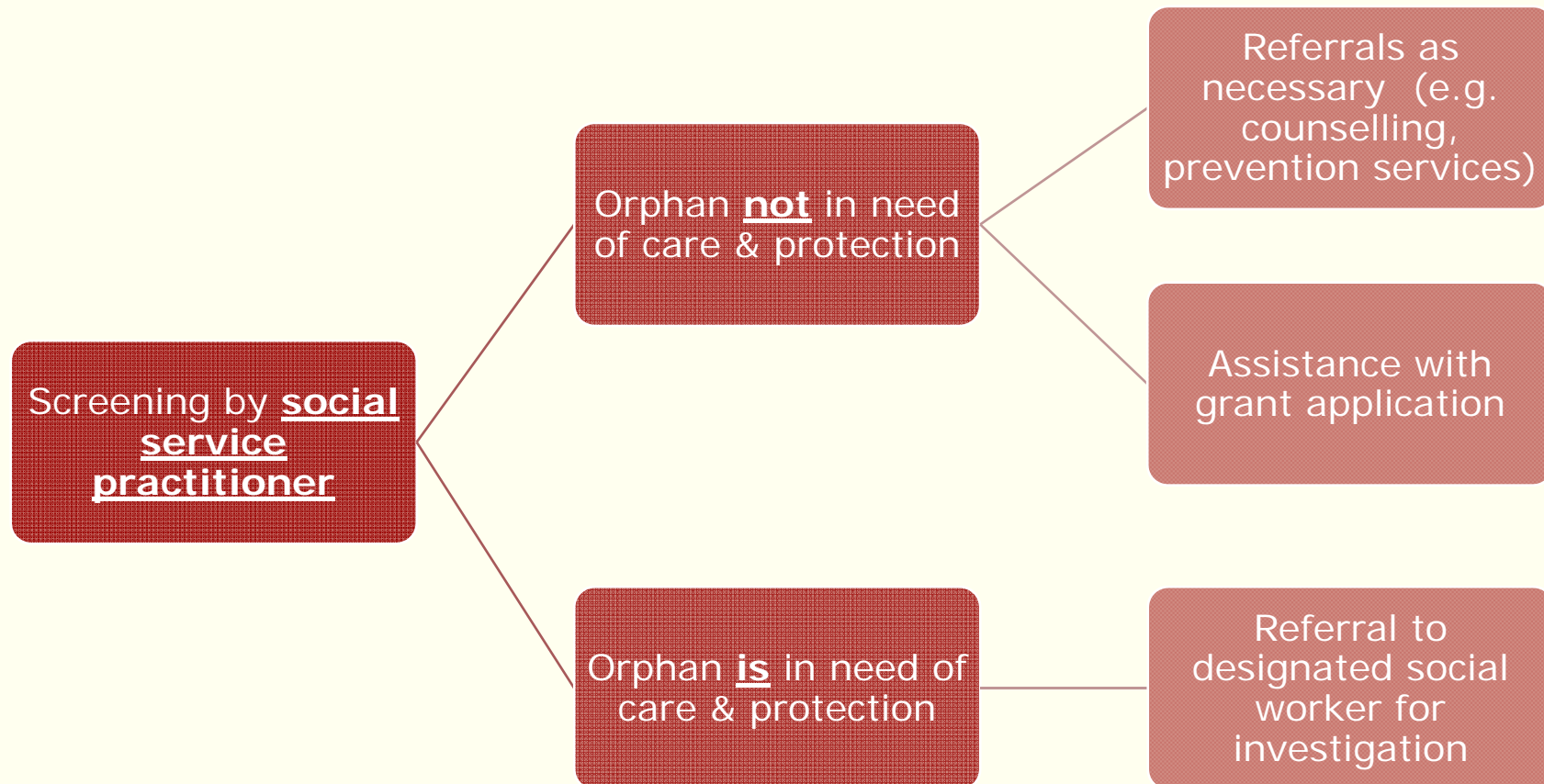
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- “Extended child support grant” = a grant targeted specifically at orphans cared for by family members
- ‘Top-up’ amount to the existing child support grant
- Administered by SASSA, therefore quick and easy to access



# Social support

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# Benefits of alternative amendment

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- ❑ Easy and quick access to grant for family members caring for orphans
- ❑ Social workers and courts freed up to provide better protection and care services for abused and neglected children



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# National Child Protection Register (NCPR)



# Inclusion of child offenders under the Children's Act

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Proposed amendment to section 120:

- ❑ Default position: all children should be added to the National Child Protection Register – *unless*
- ❑ The child and legal representative (not available outside of criminal court) prove that he or she is not a risk to other children



# Inclusion of child offenders under the Sexual Offences Act

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- ❑ Default position: child offenders should not be added to the register
- ❑ Child offenders may be added to the register *ONLY IF*
  - The **prosecutor** has proved that the child is a risk
  - The child has been **assessed** by a probation officer
  - The **best interests of the child** have been considered



# Legal inconsistencies

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## Children's Act

- ❑ Default: **all** children go onto NCPR
- ❑ *Unless*: **child** convinces court that he/she should not go onto register

## Sexual Offences Act

- ❑ Default: **no** children go onto register
- ❑ *Unless*: **prosecutor** convinces court that child poses a risk to other children AND child has been **assessed**



# Why treat children differently?

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- Child offenders have the right to be treated differently from adult offenders
  - Constitution, international and African rights conventions.
- RSA has a separate justice system to deal with child offenders
- Child sex offenders are not necessarily paedophiles; they are committing an offence against a peer and will not pose a risk to children when they become adults.





# Recommendation re: NCPR

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- Align the Children's Act with the Sexual Offences Act by –
  - Excluding children completely from the provisions in s120(1) to (6), and
  - Inserting a new sub-clause stipulating how a criminal court should deal with a child offender



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# Thank you.

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