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MEDICINE AND THE LAW

Standards for the reporting of sex/sexual activity of minors in a research context

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While there are no specific protocols for dealing with reports of sexual abuse of children, the Criminal Law (Sexual Offences and Related Matters) Amendment Act of 2007 (Act No. 32 of 2007) clearly stipulates that, in the event of a report of sexual abuse by a child or any other person of the abuse of a child, the relevant person has the

legal (statutory) obligation to report such abuse to the police; and that it replaces previous legislation where reporting could be done to a social worker or the police. According to the Child Advocate, a disclosure by a child (specific child, specific offender) is sufficient to require such reporting.

Given this statutory requirement, research with children that focuses on children's sexuality and reproductive health is likely to encounter instances of abuse of children. According to the Act, a child is any person below the age of 18; but with reference to Sections 15 and 16 of the Act, it refers also or specifically refers to any person below the age of 16. In this report, all ages up to 17 are referenced as children. To adequately address the response of this requirement within a research context, where the involvement of law enforcement can easily jeopardise the research, the following standard operating practice is recommended:

1. Any child of 17 years or younger who reports abuse (as defined in the Act), or on whose behalf abuse is reported by a peer, care

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Table I.

Examples of the protocol in practice	Action by researcher
A 14-year-old tells of having sex with her 17-year-old boyfriend	Childline → Police
A 12-year-old reports 'having sex' with 19-year-old neighbour	Childline → Police
An 11-year-old tells of a previously reported incident of 'bad touching' by an adult aunt that went to court	No action. Ask if the child wants to talk to someone
A 15-year-old relates rape by father	Childline → Police
A 13-year-old boy relates anecdote of sex with 15-year-old girlfriend (consensual underage sex)	Not >2-years rule applies, so no action. If age is uncertain, report to Childline
A 13-year-old says he or she is 'having sex' but does not disclose with whom	No action
A 17-year-old brags that he has 'forced' many girls into having sex with him	No action, but recommendation of counselling would be appropriate
A 17-year-old pupil speaks of having being made pregnant by a teacher whom she does not identify	Would she want to speak to a professional counsellor?
A 18-year-old pupil points out a female teacher with whom he says he is 'sleeping'	Would she want to speak to a professional counsellor?

giver/guardian or family member or other relevant person, will trigger an immediate termination of further interviews with the respondent and members of the household. (Such termination is subject to the researcher complying with any reporting duties required by law in terms of paragraph 3 below.)

2. If there is a clear statement that the parties to the abuse involve an adult (anyone 18 or older) or anyone who is more than 2 years older (Section 56(2) (b)) than the child, the interviewer shall report the matter to Childline South Africa at toll-free number 0800 055 555. Childline will then contact a registered social worker in the area who will investigate and inform the South African Police Service (SAPS) accordingly. The interviewer will record details of the child's name, physical address and the school attended. As proof of meeting the statutory reporting obligation, the interviewer must obtain a Childline reference number as proof of reporting. Section 56(2) (b) only applies where both the parties are children.
3. If there is a clear statement that the individuals involved in the abuse (i.e. non-consensual sex) are peers (not more than 2 years older than the victim), the matter is referred to the nearest office of the Department of Social Development. Section 56(2) (b)

does not apply to non-consensual sex. In the case of consensual underage sex, where the parties involved are no more than 2 years apart in age, no reporting action will be taken (see Table I for possible actions).

4. Any secondary reporting of abuse (i.e. where children indicate that they reported the abuse to a teacher or another adult, and no action was taken) will be brought to the attention of Childline, who will deal with the matter. Again, the interviewer will obtain a Childline reference number as proof of reporting.

An important basis for making decisions about reporting instances of sexual abuse is that the researcher needs to be clear that there was an age difference of more than 2 years between the child and the other party. It must be reiterated that this rule in section 56 (2) (b) of the Act only applies where both parties are children and the sex is consensual. If there is uncertainty or lack of clarity, the researcher must consult with the project manager or director, but continue with the research. In addition, while Childline may assist in reporting abuse, the onus remains on the researcher to ensure that the police are informed; this requires diligent follow-up on reporting by the researcher.