

# Mandatory Reporting of Child Protection Concerns

## Helping You Understand your Obligations

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# To Consider Together...

- Limits to confidentiality
- Mandatory Reporting / Appropriate reporting
- Record Keeping

# Dilemmas of working with Children

- Welcome to “the Grey”
- The “one handed lawyer”
- There are many resources available to you

- Designated Liaison Person
- Organisation's Policy
- National Guidance
- Training Days and Workshops
- Supervision

# Key Considerations with Children

- The welfare of the child is the primary concern: “Children First”
- Always adopt a child centered approach
- Due regard must be given to the right of the parents or persons entitled to act as parents
- Confidentiality may be compromised

# Confidentiality: what is a justifiable breach?

- Where consent is given
- Where required by law or a court order
- In the interest of the patient or other persons
- In the public Interest

*Remember - any breach of confidentiality must be justifiable*

# Where required by law...

## *The Withholding of Information Act, 2012*

- An obligation on every citizen to report the commission of a serious criminal offence on children or vulnerable persons to the Gardai

## *Children First Bill, 2014*

- When enacted, an obligation on mandated persons to report concerns or suspicions of harm to the HSE

# Relationship between Children First and Withholding Act?

- Operate in parallel
- Are not subject to each other
- Reporting lines are distinct and separate



# Current status...

## Children First Bill, 2014:

- Child Safeguarding Statements: (INTERIM GUIDE FOR THE DEVELOPMENT OF CHILD PROTECTION AND WELFARE POLICY, PROCEDURES & PRACTICES)
- Mandated persons obliged to make reports to the Child and Family Agency and to give assistance that may reasonably be required
- Establish a Children First Interdepartmental Group

*Will operate side by side with Children First Guidelines (shall be updated to ensure consistency with Act)*

A mandated person shall not be required to make a report where a child 15 years or more, but less than 17 years, is engaged in sexual activity with a person who is not more than 2 years older than the child, and

where the mandated person knows or believes that there is no material difference in capacity or maturity between the two parties and where the child has made known his or her view that a report should not be made.

***Does not apply where there has been a disclosure of harm.***

# Criminal Law (Sexual Offences Bill), 2014

- Age of Consent
- Proximity Clause
- Persons in a Position of Authority

# CHILDREN FIRST:

National Guidance for the Protection and Welfare of Children, 2011

*No childhood should be shattered by abuse. No young life should be lived in the shadow of fear*

...

*This begins by ensuring that children are safe and protected in all aspects of their lives – where they live, learn, pray and play.*

(Minister for Children and Youth Affairs)

# Children First, 2011

Reporting concerns or suspicions of  
child abuse or neglect to the HSE

## The Withholding of Information Act, 2012

*“The message should go out that if individuals have solid information of a child being abused, then they should give it to An Garda Síochána ... If individuals in the future connive or conspire to conceal the abuse of children, they themselves, by virtue of their conduct, will become liable to criminal conviction.”*

Minister for Justice, 2012

# The Withholding of Information Act

It is an offence to withhold information on serious offences against children where a person:

1. knows or believes an offence has been committed; and
2. has information that he/she knows or believes might be of material assistance in securing the apprehension, prosecution or conviction of the offender; and,
3. fails without reasonable excuse to disclose this to An Garda Siochana

# What is “reasonable excuse”?

## Defences under the Act

*“It is important that supports to a victim are not compromised, or victims deterred from seeking such support, by creating an immediate obligation on such services to report the offence.”*

Minister for Justice, 2012



# Range of Defences

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Where a child over 14 years of age makes known his or her view that the offence should not be disclosed to An Garda Siochana

- A parent/guardian - but not if the offender is a family member
- A designated healthcare professional
- A prescribed person providing support services

*Remember that all must be working in the best interests of the health and well-being of the child*

*“One of the reasons this legislation is complex is because of the myriad of possible human circumstances that can arise. This is one of the reasons one cannot say that some issue may not arise that none of has thought of. We are doing the best we can to ensure that the protection is there so that where abuse occurs it is appropriately and properly reported, but also that the qualifications are there to address the type of circumstances that might arise where to bring a prosecution would not be in the public interest or would be grossly inappropriate because of the circumstances of the individuals who did not report.”*

(Minister Shatter, second committee stage)

# Relationship between Children First and Withholding Act?

## *Withholding of Information Act, 2012*

- Knowledge or belief of serious offence
- An Garda Síochána – Investigate

## *Children First Guidance*

- Concern or suspicion of abuse or neglect
- HSE – assess, manage and support

# Good Practice in the Reporting of Abuse

- *What*
- *When*
- *How*
- *To Whom*

*Look at your School's  
Child Protection Policy*

# WHAT

## ***Under the Withholding of Information Act***

- Knowledge or belief that a serious offence has been committed against a child or vulnerable person

## ***Under Children First Guidance***

- Suspicions or concerns relating to:
  - Sexual Abuse
  - Physical Abuse
  - Emotional Abuse
  - Neglect

# WHEN

## *Under the Withholding of Information Act*

- If there is knowledge or belief that a serious offence has been committed

## *Under Children First Guidance*

- Knowledge, or reasonable grounds for concern,  
that a child may have been, is being, or is at risk of being abused or neglected
- Concern about a potential risk posed by a specific person, even if the children are unidentifiable

# HOW

- In line with:
  - Organisation's policy and procedures
  - Children First
  - Withholding of Information Act, 2012
- Duty to act reasonably and in good faith



# TO WHOM

Only to the appropriate persons/authorities:

## ***Under the Withholding of Information Act***

- Designated Liaison Person
- An Garda Siochana

## ***Under Children First Guidance***

- Designated Liaison Person
- HSE Children and Family Services
- Where the above are not available, and there is an immediate danger, contact the Gardai

# Let's take an example...

Consider together whether there is an obligation to report the following scenarios under:

1. The Withholding of Information Act
2. Children First
3. Your ethical code and guidelines

- 15 year old Margaret attends with her mother
- Margaret is pregnant
- The father is her 16 year old boyfriend Paul
- Margaret's parents know Paul well and are very fond of him
- Margaret and her mother wish to talk through all her options with you so that they can decide how best to cope with the pregnancy

# But what if ...

- Margaret comes to you on her own
- She tells you that Paul is 19 years old
- Paul teaches Margaret and some other girls guitar lessons on a Saturday morning

# Or what if ...

- Margaret is 13 years old
- Her mother tells you that Margaret has been sexually abused by her uncle and is now pregnant
- The mother begs you not to report this to anyone as it would drive their family apart – she wants your support and help in how to get through this

# Record Keeping

## Policy on Record Keeping and Retention

*The shortest note is better than the longest memory*

- Contemporaneous, or as soon thereafter
- Decisions/actions – plus reasons underpinning
- Signed and dated after each entry
- Stored securely and confidentially
- Criminal Law (Sexual Offences) Bill, 2014

# National Vetting Bureau Act, 2012

When commenced, will provide a mandatory legislative basis for the vetting of persons who seek positions of employment relating to children or vulnerable persons.

Provides for the disclosure of:

- Criminal Records
- “Soft Information” held by An Garda Síochána, or other organisation (Schedule 2)



# Protection for Persons Reporting Alleged Child Abuse

- It is an offence to knowingly make a false report or statement
- Protections for Persons reporting Child Abuse Act, 1998
- Protection of Qualified Privilege

# Remember...

- Duty to act reasonably and in good faith
- Only disclose to the appropriate persons/authorities
- Liaise with the Designated Liaison Person within your organisation

# Remember...

- The welfare of the child is paramount
- You have a duty of care towards children
- You must act on any concerns
- Do not assume that others will or have already made a report

# To Support You

- Awareness and Understanding of your Obligations
- Clear Child Protection Policies
- Appropriate Training
- Appropriate Supports

# Reference Material

- HSE National Consent Policy, 2013  
[http://www.hse.ie/eng/services/list/3/nas/news/National\\_Consent\\_Policy.pdf](http://www.hse.ie/eng/services/list/3/nas/news/National_Consent_Policy.pdf)
- Children First Guidance, 2011  
<http://www.hse.ie/eng/services/Publications/services/Children/cf2011.pdf>
- Child Protection and Welfare Practice Handbook (HSE)  
<http://www.hse.ie/eng/services/Publications/services/Children/WelfarePractice.pdf>
- Law Reform Commission – **suggested** legislative reform re. Children and the Law, 2011  
<http://www.lawreform.ie/fileupload/Reports/Children%20and%20the%20Law103%202011.pdf>

- HSE (Tusla) Interim Guide for the Development of Child Protection and Welfare Policy, Procedures and Practices

<http://iahip.org/wp-content/uploads/2012/10/HSE-INTERIM-GUIDE-FOR-THE-DEVELOPMENT-OF-CHILD-PROTECTION-AND-WELFARE-POLICY-PROCEDURES-PRACTICES-2012.pdf>

Head 52 (page 85-88) of the Criminal Law (Sexual Offences) Bill, 2014. The legislation shall be debated and may be altered prior to being enacted as law. The Bill should be read in conjunction with the Law Reform Commission recommendations, link set out below:

- Criminal Law (Sexual Offences) Bill, 2014

[http://www.justice.ie/en/JELR/General%20Scheme%20of%20the%20Criminal%20Law%20\(Sexual%20Offences%20Bill\)%202014.pdf/Files/General%20Scheme%20of%20the%20Criminal%20Law%20\(Sexual%20Offences%20Bill\)%202014.pdf](http://www.justice.ie/en/JELR/General%20Scheme%20of%20the%20Criminal%20Law%20(Sexual%20Offences%20Bill)%202014.pdf/Files/General%20Scheme%20of%20the%20Criminal%20Law%20(Sexual%20Offences%20Bill)%202014.pdf)

- Law Reform Commission Report – also has link to actual report: <http://www.lawreform.ie/news/commission-publishes-report-on-prosecution-duty-of-disclosure-in-criminal-cases.546.html>