

ANNEXURE E**GUIDELINES RELATING TO THE TAKING OF A STATEMENT OF A CHILD VICTIM****1. Introduction**

The basic principles pertaining to the taking of statements from children remain the same as those applicable to adult victims and witnesses.

The instructions pertaining to the taking of statements as set out in Standing Orders 322, 327 and Standing Order General 18 of 1990 must be adhered to.

There are, however, a few differences pertaining to the format and content of statements of children. These will be outlined below.

2. General aspects

- A child is a person under the age of 18 years as defined in section 28 of the Constitution.
- It is imperative that it be determined, before the taking of the statement, whether or not the child understands the oath or affirmation. It is generally accepted that a child under the age of 12 years does not understand the oath or affirmation and that a statement under oath or affirmation can therefore not be taken from him or her. In exceptional cases where a child is under the age of 12 years and can fully explain the oath or affirmation to the police official taking the statement, such a statement may be sworn or affirmed to.
- Should a child be older than 12 years, it should still be determined whether or not that child understands the oath or affirmation.
- In cases involving very young children (below the age of 7 years) who are unable to write their names or make a mark, but are able to give a full account of what happened to them, the police official who interviews the child should make a statement with regard to the interview conducted with the child. The investigative notes made during the interview must be attached to the statement of the police official in order to support the content of this statement.

- It is not always necessary, possible or advisable that the parent, guardian or accompanying adult should physically be present whilst the statement is obtained. The courts regard the statement of the child as admissible as long as the parent, guardian or accompanying adult is aware of the contents thereof and has acknowledged this by means of a signature.
- Should the parent, guardian or accompanying adult be an adult witness in the same case and the child indicates that he or she would like that adult witness to be present during the taking of the statement, it is imperative that the statement of the adult witness be taken before the statement of the child so as to ensure objectivity and minimise influence.
- Should the parent, guardian or accompanying adult be the alleged offender, the statement of the child should, under no circumstances, be taken in the presence of the alleged offender.
- Every page of the statement should be initialled by the police official taking the statement, the child, the interpreter and the parent, guardian or accompanying adult (Standing Order 322 and 327).
- All corrections must be corrected according to Standing Order 301.1 and initialled and dated by the police official who took the statement, the child and the parent, guardian or accompanying adult.

3. Format and requirements of statements of children

A statement is divided into 3 parts:

- A preamble
- Content
- Ending

3.1 Preamble of the statement

- In most cases involving children, the statement will not be sworn to or affirmed.
- The following must appear on the first line of the statement:
 - Full names and surname of the child
 - Indication of whether the statement is sworn to/affirmed or neither
 - The language spoken by the child (this enables the prosecutor to arrange for a relevant interpreter and intermediary at the trial)
 - Example:

JOSEPH THABANG RICHIE states in English/Zulu/Sepedi

- The following should appear in the preamble (paragraph 1):
 - Identity number or date of birth of the child;
 - full residential address of the child;
 - cellular phone number of the child;
 - home telephone number and contact particulars of the parent or guardian;
 - name of the child's school;
 - physical address of the child's school;
 - the grade in which the child is; and
 - the name of the child's class teacher.

3.2 Content of statement

- Before commencing with the writing of the statement, during the interview, the police official should determine whether or not the child knows the difference between the truth and a lie. This can be done by posing, for example the following questions to the child:

Truth	Lie
<i>There are televisions in South Africa.</i>	<i>There are no televisions in South Africa.</i>
<i>The sun shines during the day.</i>	<i>The sun does not shine during the day.</i>
<i>You can use a pencil to draw a picture.</i>	<i>You use a pencil to plant a tree.</i>

- Once this has been determined, paragraph 2 of the statement will contain the following:
I know the difference between right and wrong. I know what it means to speak the truth. What I am about to say, is the truth.

- The exact words used by the child must be used in order to ensure authenticity and originality. The following can be used as examples:

Words of child	Adult translation
<i>The uncle spanked me.</i>	<i>Mr Nel assaulted me.</i>
<i>The naughty man put his toti into my flower.</i>	<i>Mr Ndlovu inserted his penis into my vagina.</i>
<i>He put his wee-wee into my wee-wee.</i>	<i>Mr Rodricks raped me.</i>

- Care must be taken not to “translate” the language used by the child into adult language, for example, the meaning of “toti” and “flower” should under **no** circumstances be written in brackets after the child’s words. It must be kept in mind that the defence is entitled to obtain a copy of the child’s statement. The defence may cross-examine the child on terminology used in the child’s statement. This may lead to an acquittal in court.

- A statement must be submitted by the police official or the parent, guardian or accompanying adult in which an explanation is given to the meaning of the words used by the child.

- Great care must be taken in recording the child’s statement in an understandable, chronological order since children often do not refer to events in sequence. It is therefore advisable that the police official who obtains the statement from the child, should make extensive notes during the interview before commencing with the writing down of the statement. Police officials should refer to the module on investigative interviewing of children in order to understand this and apply this to practice.

3.3 Ending of statement

- Once the statement has been obtained, the entire statement is read to the child and an opportunity is given to the child to make any corrections, changes or additions.

- The child is requested to write his or her name or make his or her mark on the next line after the last word of the statement.

- Should the services of a interpreter be utilised, the interpreter is required to certify the interpretation in the following manner:
Interpreted from Zulu to English and vice versa

- The interpreter then signs the certification.

- The parent, guardian or accompanying adult of the child then endorses the statement in the following:
Statement was obtained in my presence. I have read the contents thereof.

- The parent, guardian or accompanying adult signs the statement and endorses the date time and place under his or her signature.

- The police official who obtained the statement endorses it in the following manner:
The above statement was taken by me in the presence of the parent, guardian or accompanying adult.
- The police official's signature is placed thereon and the date, time and place are endorsed under his or her signature.

4. Example of a statement of a child

JOSEPH THABANG RICHIE states in English:

1.

I am an 8 year old boy and I was born on 1 April 2014. I stay at 123 Alpha Road, Windsor Park, Pretoria. My home telephone number is 012 393 1234. My mother's cell phone number is 083 123 4567 and my father's cell phone number is 082 123 7654. I am a grade 3 pupil at Windsor Park Primary School, 456 Beta Road, Windsor Park, Pretoria. I am in Miss Dhlamini's class. My home language is isiZulu.

2.

I know the difference between right and wrong. I know what it means to tell the truth. What I am about to say, is the truth.

3.

On Monday, 6 November 2008, I went to my uncle John's house after school. I normally go there every day after school. I don't know what his address is but he stays close to my school.

4.

After I had lunch, uncle John told me to go and change my clothes. Whilst I was in the bathroom, changing my clothes, uncle John came into the bathroom. I was standing in my underpants and he asked me how my day at school was. He sat on the toilet with all his clothes on and asked me to come and sit on his lap. I sat on his lap and started telling him about my day at school.

5.

Uncle John then started kissing me on my mouth. He put his tongue into my mouth. I tried to jump off his lap but I couldn't because he was holding me too tightly. Uncle John then put his hand inside my underpants and started playing

with my toti. I told him to stop but he said that if he carries on a little while longer, I would like it. I felt scared and didn't know what to do and I started crying.

6.

At that moment I heard my aunt Elizabeth's car in the driveway. Uncle John threw me off his lap and told me to get dressed. He said that what happened is our secret and I mustn't tell anyone about it. He promised to buy me a new bike for Christmas.

7.

While I was busy getting dressed, my aunt Elizabeth came into the bathroom. She saw I had been crying and asked me what was wrong. I started crying again and I told her what happened. My aunt didn't say anything to me, she just took me home. When we arrived at my house, my aunt and parents sent me to my room and they spoke in the lounge. I never told anyone else but my aunt about what happened to me.

XXXXXXXXXX

(Child writes his or her name or makes his mark)

The above statement was translated by me from Zulu to English and back into Zulu.

XXXXXXXXXX

(Signature of interpreter)

Statement was obtained in my presence. I read the contents thereof.

XXXXXXXXXX

(Signature of parent, guardian or accompanying adult)

Pretoria
2022-12-17
11:20

The above statement was taken by me in the presence of the mother, Ms JS Richie.

XXXXXXXXXX

(Signature of police official)

Pretoria
2022-12-17
11:23

5. Conclusion

Obtaining a statement from a child remains a challenge and requires specialised skills. Investigating officers should approach this task with empathy and diligence. Statements which are obtained correctly ensures that the interest of justice is upheld and that children as victims are empowered.