

Legislating for Prevention The South African Experience

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Post apartheid South Africa

- The UN Convention on the Rights of the Child was signed and ratified.
- This commitment prompted the reform of all domestic legislation and policy involving the care and protection of children.
- Research was commissioned and sought in order to ensure that law and policy was linked to a clear evidence base, and applied to all children in South Africa....

The Children's Act

- Is developmental and holistic in its focus and intended application.
- It provides for the care and protection of children from infancy through to adulthood.
- The focus is heavily weighted towards prevention of violations of the rights of children.

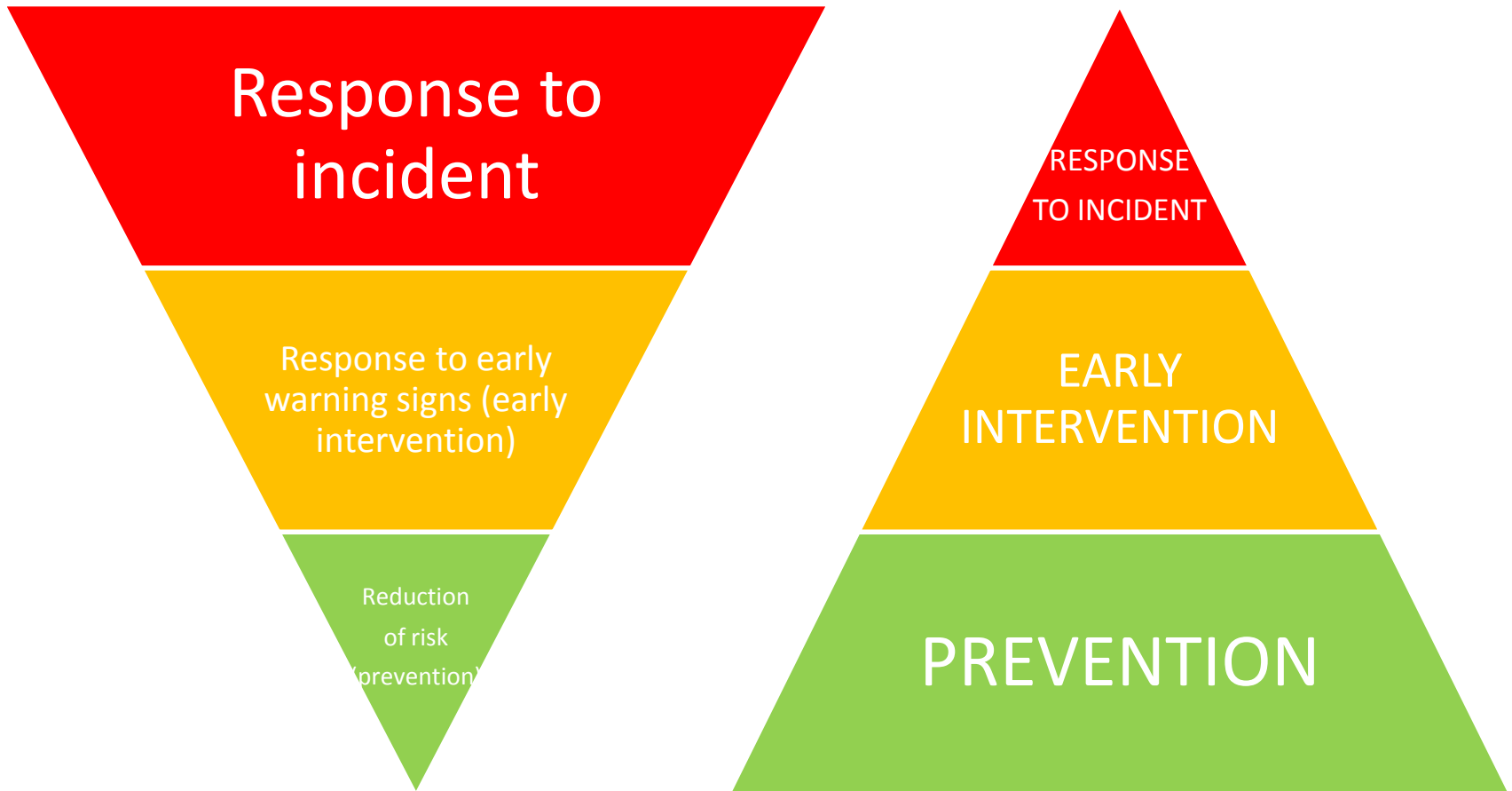
The Children's Act provides for

- Clear parental responsibilities and rights
- Protection from harmful cultural practices
- Early childhood education
- Protection in partial care facilities such as creche facilities
- Staff screening and training in these facilities
- Standards of care in places of entertainment for children
- Etc.

The Children's Act aims to move focus and resources

- From

- To



The Children's Act

- Among numerous other provisions that are preventive at various levels in their intent, the Act contains an entire chapter on prevention and early intervention.
- It obligates all provinces in SA to develop provincial profiles of prevention programmes in that province.
- It obliges national and provincial Ministers of Social Development to develop prevention and early intervention strategies for their province.

The Children's Act

- Obliges the National Minister of Social Development, in consultation with the National Treasury, to fund prevention and early intervention programmes – the section is couched in the imperative – there is no Ministerial discretion.
- The national policy on prevention and early intervention programmes developed to drive implementation of this chapter states very clearly that funded programmes must have an evidence base, and have monitoring and evaluation of impact built into the implementation of the programme.

The Child Justice Act

- Provides for diversion programmes for children in conflict with the law.
- There is a specific focus on children who have committed sexual acts that fall within the ambit of the criminal law.
- These children **MUST** be placed in diversion programmes if they have criminal capacity and if they are incapable in law of taking responsibility for their behaviour, probation services must assess the child and develop a treatment plan.

However

- Political will to implement must follow this ambitious law and policy
- As well as financial resources
- Also norms and standards for the provision of programmes should be protective, but realistic. For example, the norms and standards for programmes for children who have committed acts of sexual aggression are so sophisticated that only 2 programmes have been registered.
- There is also the challenge of developing and adding to the evidence base – roll out of pilots is often challenged by smaller budgets, thus setting up the roll-out of programmes for failure.

Welfare vs Criminality

**Are boys who sexually abuse
children first?**

Child Welfare Legislation

- Section 10, Children Act 2004 – local authority and partner agencies eg health and schools have a duty to improve outcomes for all children
- Section 11, Children Act 2004 duty on all statutory agencies including police, governors of young offenders prison and secure training centres to safeguard and promote the welfare of children to whom they are providing services
- Children Act 1989 – duty on local authority to safeguard and promote the welfare of children in need

Statutory guidance

- *Working Together to Safeguard Children* applies to all agencies – statutory and third sector
- Children under 18 who sexually abuse other children should be given consideration as being victims of abuse or neglect, as well as their victims

Age of criminal responsibility

- Ten years old in England
- Higher in other European countries eg
 - France – 13
 - Italy - 14
 - Denmark – 15
 - Spain - 16

Sexual Offences Act 2003

- Applies to adults and young offenders ie children aged 10 and over and aged 17 and below
- The Sex Offenders Register applies to both children and adults

Discussion points

- What is the age of criminal responsibility in your country?
- Are children who commit sexual offences regarded as Children or Young Offenders first?
- Does the way they are viewed affect the types of services (at all levels) provided to boys who are or are likely to sexually abuse?

Examples from other countries??

- Participants were invited to share experiences in other countries.