

**The social work competency report as an aid in
court cases on child sexual abuse**

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The social work competency report as an aid in court cases on child sexual abuse

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SUMMARY

Social work competency reports are reports submitted by forensic social workers to criminal courts to assist the court in assessing the competence of the child witness in cases of child sexual abuse. The purpose of the research was to establish the views of magistrates and public prosecutors regarding social work competency reports submitted to criminal courts.

A qualitative research approach was used to collect the data from the relevant court officers. The data collection instrument used was an interview guideline for conducting semi-structured interviews with the respondents selected by means of purposive sampling.

The results indicated that the establishment of the competence of the child witness is important to magistrates and public prosecutors in court cases on child sexual abuse. Two aspects they considered important were whether the child could distinguish between the truth and lies, and fantasy and reality.

The respondents in the research project were generally satisfied with competency reports submitted to the courts.

It was recommended that forensic social workers establish the expectations of magistrates and public prosecutors in their areas regarding the content of competency reports.

OPSOMMING

Maatskaplikewerk-bevoegdheidsverslae is verslae wat deur forensiese maatskaplike werkers aan kriminele strafhowe voorgelê word ten einde die bevoegdheid van die kindergetuie in sake van seksuele misbruik van kinders te bepaal. Die doel met die navorsing was om die sienswyses van landdroste en staatsaanklaers ten opsigte van bevoegdheidsverslae wat aan die hof voorgelê word, te bepaal.

‘n Kwalitatiewe navorsingsbenadering is gebruik om die data by die relevante hofbeamptes in te samel. Die respondent is deur middel van ‘n doelgerigte steekproef gekies. ‘n Onderhoudskedule is gebruik om semi-gestruktureerde onderhoude met die respondent te voer.

Die bevindinge van die ondersoek het aangedui dat die bepaling van die bevoegdheid van die kindergetuie om in sake van seksuele mishandeling van kinders getuie te lewer, vir die landdroste en staatsaanklaers belangrik is. Twee aspekte wat veral vir hulle belangrik was, was of die kind tussen waarheid en leuens, en fantasie en die werklikheid kan onderskei.

Die respondente in die navorsingsprojek was oor die algemeen tevrede met die bevoegdheidsverslae wat aan die hof voorgelê word.

Daar word aanbeveel dat forensiese maatskaplike werkers vasstel wat die verwagtinge van landdroste en staatsaanklaers in hulle gebied ten opsigte van ‘n bevoegdheidsverslag is.

FOREWORD

The article format has been chosen in accordance with Regulations A.1.1.5.3 and A.11.1.5.4 as stipulated in the yearbook of the North-West University (Potchefstroom Campus, 2008.) The article complies with the requirements of the social work journal titled *Maatskaplike Werk/ Social Work*.

INSTRUCTIONS TO AUTHORS

The Social Work Practitioner-Researcher is an interdisciplinary journal devoted to the publication of research concerning the methods and practice of helping individuals, families, small groups, organizations and communities. The practice of professional helping can be broadly interpreted to refer to the application of intentionally designed intervention programmes and processes to problems of societal and/or interpersonal importance, inclusive of the implementation and evaluation of social policies.

The journal serves as an outlet for the publication of original reports of quantitatively orientated evaluation studies: Reports on the development or validation of new methods of assessment for use in practice: empirically-based review of the practice literature that provide direct application to practice; theoretical or conceptual papers that have direct relevance to practice; qualitative inquiries that inform practice and new developments in the field of organized research. All empirical research articles must conform to accepted standards of scientific inquiry and meet relevant expectations related to validity or credibility, reliability or dependability and objectivity or conformability.

All reviews will be conducted using blind peer-review procedures. Authors can expect an editorial decision within three months of submission. Manuscripts and an abstract should be submitted in triplicate to **The Editor, The Social Work Practitioner-Researcher**, PO Box 524, Auckland Park, 2006. Articles should be typewritten and double-spaced, with tables and figures on separate pages. Manuscripts should follow the *Publication Manual of the American Psychological Association*, 4th edition. Abstracts are compulsory.

A copy of the final revised manuscript saved on an IBM-compatible disk and formatted in MS Word format should be included with the final revised hard copy, or e-mailed to wam@w.rau.ac.za. Authors submitting manuscripts to the journal should not simultaneously submit them to another journal, nor submissions of a substantially similar content. A publication fee is payable by authors before publication.

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THE SOCIAL WORK COMPETENCY REPORT AS AN AID IN COURT CASES ON CHILD SEXUAL ABUSE

Key terms: Competency report, child sexual abuse, forensic social worker, and criminal court

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1. ORIENTATION AND PROBLEM STATEMENT

It is established practice that social workers submit professional social work reports to courts of justice in South Africa. These reports are requested by courts to assist the courts in arriving at decisions on cases before the courts. Regardless of the type of report and the type of court that requested it, it is regarded as an instrument to be used in the judicial process in order to do justice to the people concerned (De Koning, 2007:1). This research focuses on the social work competency report submitted to the criminal court in cases of child sexual abuse.

The researcher works as a forensic social worker (FSW) at the South African Police Service, where her main task is to investigate allegations of child sexual abuse, and to submit reports to criminal courts in particular. One type of report frequently requested by criminal courts in cases of child sexual abuse, is a competency report. A competency report is used to determine the reliability of the testimony of the child. In the course of time, the researcher came to realize the importance of reports of a high quality being submitted to criminal courts, and the acceptance of such a report by the court.

According to the public prosecutor of the specialist court for crimes against children in Klerksdorp (Van Biljon, 2010), an impact report may also be requested by court. However, a competency report is the type of report mostly requested by the court in cases dealing with child sexual abuse.

The sexual abuse of children is not merely a social problem in South Africa; it constitutes criminal behaviour and is dealt with as such. According to Venter (2004:

child sexual abuse is not easy to prosecute. It is often difficult to determine whether this form of abuse has occurred, as sexual abuse often occurs in privacy, away from potential eyewitnesses (Chetty, 2006:24). That is why the child, as victim of the abuse, is required by the court to verbalize what happened to him/her.

An adult, often upon disclosure by the child, usually identifies Child sexual abuse before it is formally reported to the relevant authorities. The case may be referred directly to the police or to a health-care facility. Alternatively, it may be reported to statutory welfare services, who will investigate the case and/or report it to the police (Waterhouse, 2008:16). The criminal case starts when a parent/caregiver or neighbor/teacher files a criminal case at the police station. A criminal case will be opened after a statement has been taken from the child. (Majokweni, 2002:11).

In cases of child sexual abuse, the victim (the child) is expected to give evidence in court as a witness. As the child is frequently the only available source of information, the strategies that can elicit an accurate and complete account must be applied (Pipe, Pipe, Lamb, Orbach; Cederborg, & Erlbaum, 2007:115). The reliability of the child's testimony in cases of child sexual abuse is of great importance because the legal system requires that all witnesses who testify in court must be competent.

Gallinetti (2006) explains that the competency of a child to give evidence in court is determined by the common law. It relates to whether the child has sufficient intelligence, sense and reason in order to understand the difference between truth and falsehood and recognize that it is wrong to lie. According to Lyon (2010) the test for competency requires that the witnesses have sufficient intelligence, understanding and ability to observe in order to recall and communicate information, comprehend the seriousness of taking an oath, and appreciate the necessity of telling the truth. Trowbridge (2004) explains that competent witnesses "are those who are thought to have the capacity to tell the truth and who understand their duty to do so, and under common-law only competent witnesses can testify at all. Rules about child-witness competency are mostly derived from rules about adult witness competency, since until a few decades ago child witnesses under the age of seven or eight were rarely allowed to testify in criminal cases."

Lepore (1991) suggests that the following questions be considered when establishing competency:

- a. Does the child have adequate cognitive skills for comprehending and accurately reporting the witnessed event?
- b. Can the child successfully discriminate actual events from his or her internal thoughts, images, or fantasies?
- c. Can the child resist suggestions from various sources to change his or her report or memory of an event?

Lyon (2010:240) distinguishes between basic and truth-lie competence. Basic competency concerns the child's ability to perceive, remember and communicate. It can be demonstrated by eliciting a child's report of recent events. Truth-lie competency, on the other hand, deals with the child's understanding of the difference between truth and lie, and the importance of telling the truth. This can be demonstrated by asking whether simple statements are the truth and by asking the child to promise to tell the truth. Tests of children's truth-lie competency do not predict honesty, but eliciting a child's promise to tell the truth does increase honesty.

The Memorandum of Good Practice recommends that the need to speak the truth should be emphasized within the assessment of the child as a witness (Aldridge & Wood, 1998:58; Bull, 2003:1). It is confirmed by Starks & Samuel, as cited by Fouchè & Joubert (2009:45) and Kuehnle (1996:101) that it is imperative for the interviewer to emphasize to the child the importance of telling the truth. If the social worker can imprint in the child an understanding of the difference between the "truth" and a "lie" before his/her testimony in court, it may increase the credibility of the child's statement in court (Cronch, 2006:200).

It is important to test the child's comprehension of "truth" and "lie" with a concrete and abstract concept (Orbach, 2000:750). The child may be asked questions about colours of choice and whether the child and interviewer had met the previous day.

It is also important to do a morality test in order to demonstrate what the consequences of a lie might be (Wakefield, 2006).

The "truth" criterion is a critical element in tests of competence. The appropriateness of this, particularly for unsworn evidence, is questionable. Truth is an abstract,

morally based concept. As has been said, “truth is not a unitary concept even for adults” (Hoyono and Keenan, 2007:57). For truth to be a meaningful element in communication between two people, ideally they should share the same definition. This may not be the case, for instance, with very young children who may have quite a different understanding of truth from older children or adults (Gallinatti, 1996:23).

Conflicting arguments about the reliability of child witnesses are found in the literature. Schutte (2005) focuses the attention on the cautionary rule according to which the court should remind itself of the dangers inherent in the testimony of children. He explains that this rule of practice is based on the following assumptions:

- Children’s memories are unreliable
- Children are egocentric
- Children are highly suggestible
- Children have difficulty distinguishing fact from fantasy
- Children make false allegations, particularly of sexual assault
- Children do not understand the duty of telling the truth.

Lepore (1991), commenting on research on social and cognitive factors related to children's witness abilities, lists the following consistent findings from the research:

First, children's free recall is generally accurate, but the amount of information recalled increases from preschool-age to adolescence, at which time it reaches adult levels. Second, performance on cued-recall tasks approaches adult levels by the age of 6 or 8 years.

Third, children start to distinguish real-pretend dimensions by the age of 1 to 5 years.

Fourth, suggestive questioning has little influence on children's free recall, though suggestive questioning easily corrupts preschooler’s recognition memory. By 7 to 10 years, children appear to be no more vulnerable to suggestion than adults.

These divergent trends regarding the reliability of the child’s ability to give credible testimony, stresses the importance of considering each child witness on his/her own unique merits. The request from the court for a social work competency report is provided for in terms of section 170A(2)(b) of the Criminal Procedures Act 51 of

1997. Requests of this nature place a huge responsibility on the social worker because it displays his/her professionalism.

In order to provide the court with a reliable report and recommendations, the forensic social worker should know what the court expects and requires in order to determine the ability of the child victim to give evidence in court. Not only should the social worker know what the court expects, but she should also understand what to include in the competency report to the court in cases of child sexual abuse. In view of this, it is the purpose of this investigation to establish the views of magistrates and public prosecutors on social work competency reports, and to develop some guidelines for the writing of these reports.

In view of the above, the following are the research questions on which the research was built:

What are the views of public prosecutors and magistrates on social work competency reports?

2. GOALS AND OBJECTIVES

2.1 Goals

The overall goal of the research was to determine the views of public prosecutors and magistrates on social work competency reports.

2.2 Objectives

The objectives of the research were as follows:

- To establish the views and expectations of public prosecutors and magistrates on the social work competency report
- To make recommendations regarding the general of social work competency reports.

3. CENTRAL THEORETICAL ASSUMPTION

It is necessary that forensic social workers understand the expectations of the courts regarding the social work competency report.

4. RESEARCH METHODOLOGY

4.1 Literature review

A literature review was done on the relevant themes and aspects related to the topic, with a focus on the issue of reliability of the child witness as the dominant basis of the research project. The social work competency report as an aid in court cases on child sexual abuse are a unique South African situation provided for by the Criminal Procedures Act. Not much literature on the competency report is available in South Africa and considerable use had to be made of international literature.

Databases consulted: South African journal, Social sciences index, and EBSCO Host web.

4.2 Empirical study

4.2.1 Research design

The study was of an explorative nature (Grinnel & Williams, 1990:140; Neuman, 2000:21; De Vos *et al.*, 2005:106) because not enough is known about the expectations of criminal courts regarding the competency reports written by social workers. A qualitative data collection procedure was used to provide for factual data as well as for personal views of the respondents (Rubin & Babbie, 2010: 35).

4.2.2 Participants

Purposive sampling (Strydom, 2005:202) was utilized to identify the five magistrates and five public prosecutors from specialized courts on the West Rand as research participants. The requirement was that they should have experience of child sexual abuse court cases. This was based on the assumption that court officials with experience will be able to provide informed views on competency reports.

4.2.3 Data collection instruments

A semi-structured data collection instrument was used in the project to provide for qualitative data. The researcher designed the questionnaire and she tested it herself by conducting an interview with one of the respondents. The questionnaires focused on the use of competency reports in the criminal justice system and the improvements that forensic social workers can make when writing of the report.

Due to the qualitative nature of this study, an interview schedule was used as data collection instrument for semi-structured interviews (Greeff, 2005:297). Following

the literature study, the researcher used the interview schedule for the magistrates and public prosecutors who deal with child sexual abuse cases (see addendum 1).

4.2.4 Ethical aspects

The ethics committee of the NWU approved this study with ethical number NWU-0027-09-51. Despite the existence of ethical guidelines and committees, which may support the researcher in her decision-making, the final responsibility for ethical conduct rests with the researcher. Ethical guidelines also serve as standards and a basis upon which each researcher ought to evaluate his/her own conduct (Strydom, 2005:57). For researchers in the social sciences, the ethical issues are pervasive and complex, since data should never be obtained at the expense of human beings (De Vos *et al.*, 2005: 62).

According to Babbie (2001:470), “Anyone involved in research needs to be aware of the general agreements about what is proper and improper in scientific research.”

The researcher is a registered social worker and a registered member of SAASWIP, the organization for social workers in private practice. She adheres to the ethical rules set by these two bodies.

For the purpose of this research the following ethical issues were identified:

- **Informed consent**

All adequate information on the goal of the investigation, the research procedure to be followed during the investigation, and the credentials of the researcher were disclosed to the subjects; thus, the subjects would willfully participate in the investigation and make an informed decision about their participation (Strydom, 2005:59). Signed consent forms for the participants can be found in addendum 2.

The ethical committee of the North-West University (Potchefstroom Campus) gave their approval for the study (addendum 3). Respondents were informed that they could withdraw from the study at any time.

- **The right to privacy/anonymity/confidentiality**

Over and above the rights to privacy and anonymity, the right to confidentiality of personal information was honored (Vermeulen 1998:17). It was imperative that the researcher be reminded of the importance of safeguarding the privacy and identity of respondents, and that information was to be treated as confidential at all times

(Strydom 2005:61). The identities of the public prosecutors and magistrates were anonymous to the researcher and their privacy was respected.

– **Actions and competence of researcher**

Researchers are ethically obliged to ensure that they are competent and adequately skilled to undertake the proposed investigation. The researcher worked in the South African Police Force for more than five years where she investigated in excess of 200 allegations of child sexual abuse. The researcher has acted as expert witness in criminal child sexual abuse cases in courts in Roodepoort, Pretoria and Carletonville. The researcher is up to date with recent literature on the topic and familiar with research methodology. The researcher receives supervision on a monthly basis. Due to the fact that the researcher has been conducting interviews with sexually abused children for the past five years and is an experienced expert witness, it can be assumed that she has the necessary knowledge, skills and attitude to conduct this research.

– **Deception of respondents**

Neuman (2000:49) argues: "...do not lie unless it is required for legitimate research reasons". Strydom (2005:61) is of the opinion that "...no form of deception should ever be inflicted on respondents". The nature of this study was to research the real and honest experience of respondents. This was implicated in the opinion of the researcher; the researcher initiated honesty and congruent relationships.

– **Release and publication of the findings**

Research participants would be informed about the findings of this study in an objective and responded manner after the completion of the research report. The findings of the study will be introduced to social workers in writing. Ethical responsibility rests upon the researcher to present a study that fulfils all ethical requirements.

4.2.5 Procedures

The researcher followed the following procedures to conduct this study:

- Permission to do the research at Carletonville, Roodepoort and Krugersdorp courts was verbally obtained from the South African Police Services.

- Permission was also obtained from magistrates and public prosecutors from the criminal justice system who deal with child sexual abuse.
- The researcher identified public prosecutors and magistrates who deal with child sexual abuse cases in court, and whom she works with during investigations
- A consent form was given to the participants to be completed for voluntary participation (see addendum 2).
- Identified participants were prepared and scheduled for interviews.
- Questionnaires were completed during the interviews with the public prosecutors and magistrates, and the researcher explained the questions to the participants.
- Data was analyzed
- A report was written in the form of a journal article.

4.2.6 Data analysis

The data from this study were analyzed by means of the Tesch approach (Poggenpoel, 1998:343 -344) and reported in the form of text. Kruger, De Vos, Fouchè and Venter (2005: 217-219) point out that professional research can be analyzed manually or by computer. Data were sorted to reflect the most interesting view, arranged into topics, and data belonging to each separate category were correspondingly clustered together in one group.

4.2.7 Definition of terms

Child Sexual Abuse

Child sexual abuse is the involvement of children under the age of 18 in sexual or incestuous acts they do not fully comprehend, cannot give legal consent to, and that violates criminal sexual conducts laws or social taboos (Sinanan, 1999:15).

According to Doyle (1995:13) the term “child sexual abuse” has expanded to mean not only an incestuous relationship between a father and his young daughter, but also any sexual activity involving a child or young person, which is experienced as abusive.

A shorter working definition is: child sexual abuse is the exploitation of a child for sexual gratification of an adult (Fraser, 1981:1).

From the above definition it is clear that child abuse can be seen as an adult showing a child his or her genitals, touching a child's genitals, having a child touch the adult's genitals, and/or having oral genital contact. Forced masturbation, digital penetration, intercourse or sexual violation may be seen as sexual abuse of a child. Production of child pornography or showing a child pornographic material or voyeurism also forms part of the definition of child sexual abuse.

Forensic social work

Forensic social work is a professional specialty that focuses on the interface between society's legal and human service systems. It includes such activities as providing expert testimony in a court of law, investigating cases of possible criminal conduct, and assisting the legal system in such issues as child sexual abuse (Barker & Branson, 2002: 5).

5. FINDINGS AND DISCUSSION OF FINDINGS

The following section deals with the analysis of the quantitative results. Biographical information was obtained in the first section of the questionnaire. The biographical information is presented to provide a biographical profile of the sample used in the project. The data is discussed according to the structure of the questionnaire.

Details of respondents

- **Gender Profile**

It becomes clear that there is a large number of male prosecutors/magistrate in the sample compared to female prosecutors. It is unknown whether the sample is a true reflection of the gender distribution of magistrates and public prosecutors in specialized courts in South Africa. It is assumed gender differences in the way in which the child sexual abuse victim is dealt with in court, but this was not the aim of the study.

It is found that there are more males, 70% magistrates and state prosecutor in child sexual abuse courts compare to female, 30% magistrates and state prosecutors.

- Professional profile

Magistrates and public prosecutors were equally represented in the sample, but they were not necessarily in the same court. Both the magistrates and state prosecutor acquired the necessary qualifications to work with child sexual abuse. They also receive training and workshops on a regular basis to keep the up-to-date with new acts and procedures to deal with child sexual abuse.

- **Service of magistrates and public prosecutors**

It is reflected that the most magistrates and public prosecutors (70%) have more than 25 years experience in cases of child sexual abuse. The other respondents have more than 5 years experience of child sexual abuse. All the research participants in the sample had experience of sexual child abuse cases, ranging from below one year to more than 25 years, thus providing a rich pool of experience. They were thus in a position to provide valuable information on the topic of the research. This also means that they have the expertise required to work with cases of child sexual abuse.

- **Number of sexually abused children dealt with per magistrate and public prosecutor**

The respondents have dealt with a considerable number of children in their careers. They reported that having a good knowledge of child sexual abuse helps them work effectively with children. The majority of respondents in the sample, who had worked with more than 50 children in their courtroom careers, felt the same.

The research participants were asked whether they regarded it as necessary to determine the competence of a child to give evidence in court. In the study that was conducted it was found that a competence test is highly necessary. The greatest number of prosecutors and magistrates (90%) in the sample felt it necessary for children to be tested for reliability before they gave evidence in court. A small (10%) minority of the respondents stated that they were not aware of the necessity of competence testing. This is regarded as unusual because the expectation is that judicial officials would be aware of the importance of reliability testing.

Respondents in the sample generally mentioned that children under the age of five

have to be tested for their competence. The purpose of competence testing is to determine if the child would be able to communicate in court. Few respondents said that children under the age of 7 need a competence test to determine whether they can distinguish between telling the truth or not. The legal system requires that all witnesses who testify in court be competent, with sufficient intelligence, understanding, and ability to recall, observe and communicate that information.

The respondents agreed upon the necessity of assessing a child's competence to give evidence before a trial. According to the criminal procedures Act 1977 section 170(A), a child is allowed to testify in court with the assistance of an intermediary. Therefore, the competence report authorizes the court to appoint an intermediary without opposition from the defense. The act mentions that children under 18 years of age are entitled to testify in court with the assistance of an intermediary.

The other respondents felt it necessary to test the child's intellect, the ability to communicate, and whether the child can differentiate between the truth and a lie. In literature, in proceedings where the witness is a child the presiding magistrate has to decide whether the witness is competent to testify or not.

- **The stage of the trial at which the court requires a competence report.**

According to the results there is no formal procedure dictating when the competency report should be used. The views of the respondents in the sample differed on the stage of the trial during which the competency report is used. The majority (50%) indicated that the competency report is required before the hearing commences.

While some respondents (30 %) were of the opinion that the competency report is needed when the victim has to testify in court in order to determine the readiness of the witness, 10% were of the opinion that it is required when the defendant pleads. The other 10% was of the opinion that a competency report was not required at any stage of the trial. These types of responses show that some prosecutors and magistrates are not aware of when the competency report is required in court. The majority of the magistrates and prosecutors indicated that they would require the competency report before the trial.

According to the literature on child sexual abuse (Criminal Procedure Act, 1997), the prosecutor will request the competency report from the social worker before the trial,

and when the prosecutor consults with the witnesses. The prosecutor will thus know if the child would be a competent witness or not. In terms of the National Policy Guidelines, the prosecutor is required to thoroughly consult with the child and all other witnesses during preparation for the trial.

According to the researcher's experience, it would be best for the court to use a competency report before the child testifies in court. The reason for this is that it also assists the court in determining whether the child will be using the assistance of an intermediary, and whether the child will testify in an open court or not.

- **The elements of a competency report**

It was found that majority of respondents (60%) identified essential elements of a competency report to be whether a child can distinguish between the truth and a lie. This element is of particular importance to the court: if the victim and/or witnesses cannot display to the court that he/she grasps what the truth is, his or her evidence will be discarded. The oath is a promise to tell the truth. The Criminal Procedure Act (1977) allows young children to testify in criminal proceedings without taking an oath or affirmation. Most children will not be familiar with what an oath means, but they will understand what it means to make a promise. All respondents did not regard the understanding of taking an oath as one of elements of a competency report.

Some respondents (20%) in the sample were of the opinion that the victim's ability to distinguish between reality and fantasy should be an element included in the competency report, as it assists the court in accepting the victim as a competent witness in court.

20% of the respondents were of the opinion that the child should be able to verbalize what happened to him or her to the court. According to the literature review, the victim must have the ability to communicate in a manner that is understood by adult listeners, in order to participate in the legal process.

Social workers training on the competency report

Six respondents (60%) indicated that ongoing training is important in any profession to keep the worker up to date with the latest information. Thus the social worker needs ongoing training to familiarize themselves with new laws or any changes and improvements to the acts and justice system. Four respondents (40%) did not see the need for training on the writing of a competency report, because they felt that anyone could write this report. This response is evidence of a gross misunderstanding of the value of a competency report written by a professional person. Skilled social workers are required for this task. This demand for skilled social workers was also identified by Triegaardt and Mkhwanazi (2004: 49), who conducted a study on the reconceptualisation of social work. They concluded that, amongst other things, lobbying, advocacy, training and refresher courses were important activities to improve the status of the profession.

In literature the importance and value of ongoing training is recognized, especially as far as court processes, acts and the judicial system are concerned. This implies that a competency report written by a skilled person is appreciated.

- **The value of competency reports in court**

90 % of respondents in the sample indicated that the competency report gives the court an idea of whether the child would be able to testify in court or not, require the assistance of an intermediary or not, and via the CCTV. They also mentioned that it assisted the court in preparing the child to testify. The other respondent in the sample (10%) indicated that the competency report is not a prerequisite for proceeding with the trial. They can proceed without the report and they do not see the value of the competency report. This is another indication of perhaps a lack of understanding of the issue of child testimony and a lack of appreciation of the value of contributions from other professionals.

The majority of respondents agreed with Makhubu (2009: 76), who states that competency testing is a valuable tool of the South African justice system that has been specially developed to test the child's competency to give evidence in court. She also

adds that competency relates to the ability to remember and relate an event and distinguish between truth and fantasy.

- **What is expected from a competency report?**

Most of the respondents in the sample (70%) expected the report to explain whether the child knows the difference between the truth and a lie, can disclose enough facts for the court to prosecute, the child's level of cognitive development, and whether the child can verbalize the alleged incident in a logical and chronological manner. 30% of the respondents were not aware of what the report should contain.

From the responses of the participants it was clear that the court had clear expectations of what the contents of the report should be.

- **Shortcomings of the competency report**

The respondents in the sample (90%) had no challenges regarding the competency report. A minority of respondents in the sample indicated one shortcoming to be when the child is found to be incompetent, because the prosecutor cannot proceed with the trial. Some of the other respondents (10%) indicated their experience of unclear reports and vague recommendations by the social worker as another possible shortcoming. This indicated a need for social workers to improve their report-writing skills. It also proved that the majority of respondents in the sample had not yet encountered any shortcomings in competency reports submitted by social workers. From this study it was clear that the competency report submitted by the social worker is regarded as a good source of information for the criminal justice system.

6. CONCLUSIONS

The following are the most important conclusions arising from the research:

- The sample used was too small to generalize the findings to a bigger

population, but it serves the purpose of establishing a basis for further research.

- The respondents' experiences covered a fairly large range with the majority having more than 5 years experience, enabling them to have developed clear expectations of competency reports. In conjunction with this, the respondents have dealt with quite a number of sexually abused children in their careers, positioning them well to provide the data needed for this research.
- It is clear from the data that the respondents place a high premium on establishing the reliability of the child's testimony in court cases of child sexual abuse. Justice to the victim and the perpetrator thus receives high priority.
- The respondents regarded proof of the child's intellect, communication skills and the ability to distinguish between the truth and lies as important. This emphasis provides guidelines as to which aspects the competency report should focus on. The aspect the respondents considered to be of the greatest importance is the child's ability to know the difference between lies and the truth.
- Most of the magistrates and prosecutors preferred to have the competency report before the trial, which means that they can make a decision on the reliability of the child's testimony before the child gives evidence.
- The majority of respondents recognized the importance of social workers keeping track of new developments in the justice system.
- Respondents in general held positive views on the value of the competency report, placing a clear responsibility on the social worker as the architect of the report.
- The respondents seemed happy with the competency reports they had thus far seen. However, a minority viewed some reports as unclear and recommendations as not specific enough.

7. RECOMMENDATIONS

- Competency reports should emphasize the ability of the child to know the difference between the truth and lies, fantasy and reality.

- Forensic social workers should keep track of all new developments regarding the child and child witness in the justice system.
- In view of the different expectations of the competency report as expressed by respondents, it is recommended that forensic social workers be familiar with the expectations of public prosecutors and magistrates in the areas where they work.
- Forensic social workers should make sure that competency reports are written in such a way that the facts are clear and the assessment of the child's reliability as a potential witness well founded.
- Forensic social workers should keep up with the latest research findings on the reliability of child testimonies and adjust their practices accordingly.
- Forensic social workers should explain to the child the importance of the child as victim bearing testimony.

8. LIMITATIONS OF THE STUDY

The following limitations were identified:

For quantitative data analysis, the relatively small number (10) of respondents who participated in this research proved to be a limitation. As a sole researcher, the researcher was subject to:- time

-logistical constraints

The respondents were not able to make adequate time to be interviewed, due to their tight schedules.

Some magistrates refused to give permission for the research and they were part of the initial group. The researcher had to replace them with others.

9. RECOMMENDATION FOR FUTURE RESEARCH

The following recommendations in terms of future research can be made:

- The testing of proposed guidelines for the competency report and evaluation of their effectiveness should be considered for future research.

- A study of the effect or impact made by forensic social workers in the criminal justice system should also be undertaken.
- A study should also be made of other reports the court could request from the forensic social worker, and utilize in cases of child sexual abuse.

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ADDENDUM 1

INTERVIEW GUIDE FOR INTERVIEWS WITH PRESIDING OFFICERS AND PUBLIC PROSECUTORS

The social work competency report as an aid in child sexual abuse.

- Please answer all questions.
- All questionnaires will be dealt with anonymously. It is therefore not necessary to include your name.
- The information will assist the researcher to determine whether the competency report as a source of information to the criminal court incases of child sexual abuse is necessary. The necessity of competency report will be determined.

Section A: General Information.

1. What is your gender?

Male	
Female	

2. In which, profession are you?

Magistrate	
Prosecutor	

3. What category is your work experience with child sexual abuse?

Below 1 year	
1-2 years	
2-3 years	
3-4 years	
4-5 years	
Other	

4. How many child sexual abuse cases have you worked with?

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Section B: Competency report

5. Do you think it is necessary to determine the competence of a child to give evidence in cases of child abuse?

6. How is necessary to assess the child's competency to give evidence in court?

7. When do you require a report on the competency of the child to give evidence in child abuse trial?

9. What do you expect from competency report to the court?

10. What is the role of social worker in the competence report?

11. What are the shortcomings in the competency report that you have used in the past?

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12. Do you think that social workers submitting competency report need more training in writing competency report?

Thank you for your participation
Mrs G .T Mnisi
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North- West University Potchefstroom campus.



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ADDENDUM 2: A CONSENT FORM

The social work competency report as an aid in court cases on child sexual abuse

RESEACHER: G.T MNISI, MA (FORENSIC SOCIAL WORK) STUDENT
STUDY LEADER: PROF P. RANKIN. SUBJECT GROUP SOCIAL WORK

DATE: _____

PARTICIPANT'S NAME: _____

I hereby declare that I was informed about the aim of this study and the procedures that will be followed. I understand that it will be expected of me to voluntarily participate in answering the research questions compiled by Mrs. Mnisi. I take note that the service rendered by Mrs. Mnisi are free of charge and that I am entitled to feedback after the interviewing process is completed. I am also at liberty to withdraw from the research at anytime. I understand that there is no financial gain from participating in this study and the researcher will cover my transport costs if necessary.

I understand that the results of the interview be kept confidential unless I ask that it be released. The results of this study may be published in professional journals or presented at professional conferences, but all my confidential information will be used anonymously.

SIGNATURE OF PARTICIPANT: _____ **DATE:** _____

RESEARCHERS SIGNATURE: _____ **DATE:** _____

WITNESS 1: _____ **DATE:** _____

WITNESS 2: _____ **DATE:** _____

ADDENDUM 3

LETTER OF INTRODUCTION



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8 September 2010

The Presiding Office/Public Prosecutor

Dear Sir/Madam/Ms

Research project: Mrs G T Mnisi

Mrs G T Mnisi is enrolled at this university for her Master's degree in forensic social work practice. As part of her empirical investigation she wants to determine what is expected by public prosecutors and presiding officers from a competency report in court cases on child sexual abuse.

Ethical approval for this project has been given by the Ethics Committee of the Potchefstroom Campus of the North-West University and Mrs Mnisi is obliged to comply with the ethical standards set by this committee.

Participation in this research is totally voluntary. Should you decide not to participate in the study, it will be your choice. You may withdraw from the study at any point and you may refuse to answer any questions that you feel uncomfortable with. The interview to collect the necessary data will take place at a time and venue convenient to participants. The interviews should take about an hour and a half. Please be assured that all information will be treated as completely confidential.

With your permission, the interview will be recorded for analytical purposes. The only people that will have access to the recorded information are Mrs Mnisi and the undersigned. Please contact the undersigned in cases of uncertainty, or Mrs Mnisi at 011 951 1078 or 079 882 8108

Yours sincerely

A handwritten signature in black ink, appearing to read 'P Rankin', written over a thin horizontal line.

P RANKIN
RESEARCH SUPERVISOR

ADDENDUM 4: STATEMENT BY THE LANGUAGE EDITOR

2010-11-17

Ek, Ina-Lize Venter, het die artikel getiteld *THE SOCIAL WORK COMPETENCY REPORT AS AN AID IN CHILD SEXUAL ABUSE COURT CASES* in opdrag van die skrywer, Me. Gracious Mnisi, taalversorg en opgeknep.

I, Ina-Lize Venter, proofread and language edited this article entitled *THE SOCIAL WORK COMPETENCY REPORT AS AN AID IN CHILD SEXUAL ABUSE COURT CASES*, on the instruction of the author, Ms Gracious Mnisi.



(Ina-Lize Venter)

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