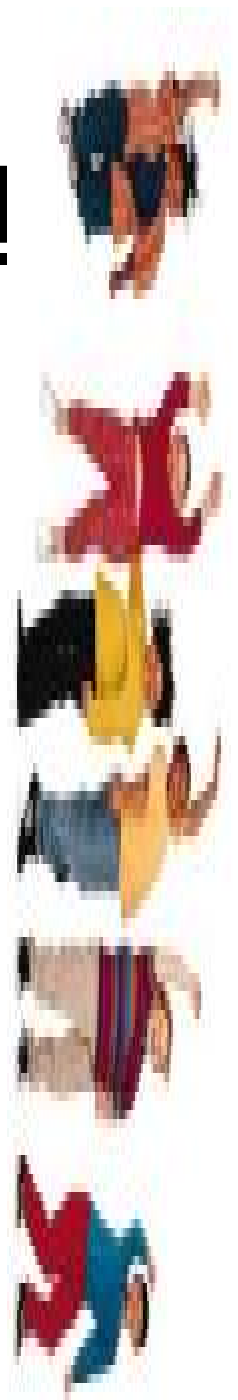


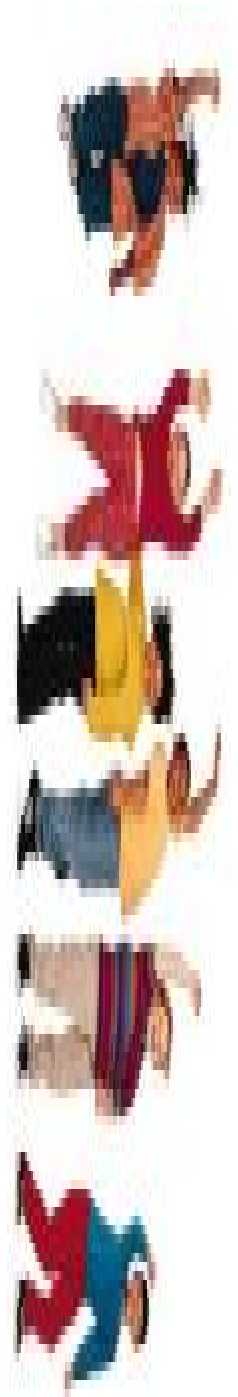
Children in need of care and protection

- Section 150(1) defines a child in need of care and protection as follows:
 - (a) has been abandoned or orphaned or is without visible means
 - (b) displays behaviour which cannot be controlled by the parent or care-giver
 - (c) lives or works on the street or begs for a living
 - (d) is addicted to a dependence-producing substance and is without any support to obtain treatment for such dependency
 - (e) has been exploited or lives in circumstances that expose the child to exploitation
 - (f) lives in or is exposed to circumstances which may seriously harm that child's physical, mental or social well-being
 - (g) may be at risk if returned to the custody of the parent, guardian or care-giver of the child as there is reason to believe that he or she will live in or be exposed to circumstances which may seriously harm the physical, mental or social well-being of the child
 - (h) is in a state of physical or mental neglect; or
 - (i) is being maltreated, abused, deliberately neglected or degraded by a parent, a care-giver, a person who has PR&R or a family member of the child or by a person under whose control the child is.
- Section 150(2) also defines a child in need of care and protection as follows:
 - a child who is a victim of child labour; and
 - a child in a child – headed household



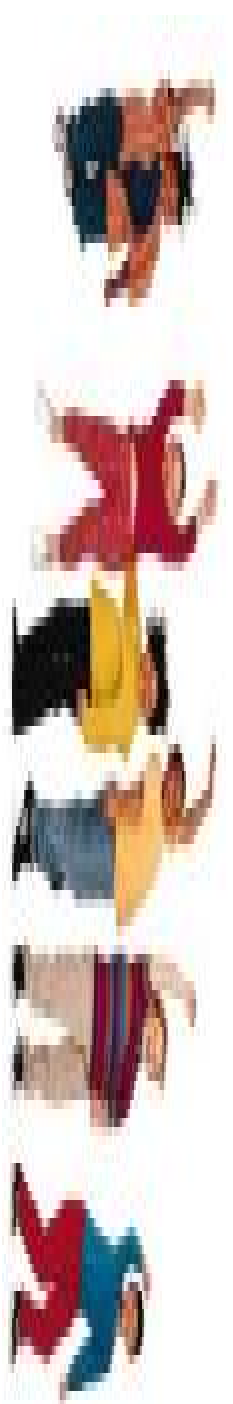
Definitions (Section 1)

- Abandoned, means a child who-
 - » (a) has obviously been deserted by the parent, guardian or care-giver; or
 - » (b) has, for no apparent reason, had no contact with the parent, guardian, or care-giver for a period of at least three months
- Abuse, means any form of harm or ill-treatment deliberately inflicted on a child and includes-
 - » (a) assaulting a child or inflicting any other form of deliberate injury to a child;
 - » (b) sexually abusing a child or allowing a child to be sexually abused;
 - » (c) bullying by another child;
 - » (d) a labour practice that exploits a child; or
 - » (e) exposing or subjecting a child to behaviour that may harm the child psychologically or emotionally



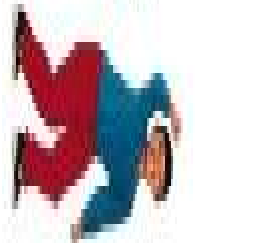
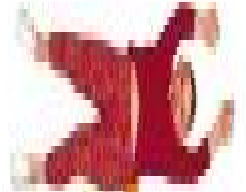
Definitions (cont.)

- Exploitation, includes
 - » (a) all forms of slavery or practices similar to slavery, including debt bondage or forced marriage;
 - » (b) sexual exploitation;
 - » (c) servitude;
 - » (d) forced labour or services;
 - » (e) child labour prohibited i.t.o. section 141; and
 - » (f) the removal of body parts.
- Neglect, means
 - » A failure in the exercise of parental responsibilities (care, Contact, guardian, maintenance) to provide for the child's basic physical, intellectual, emotional or social needs.



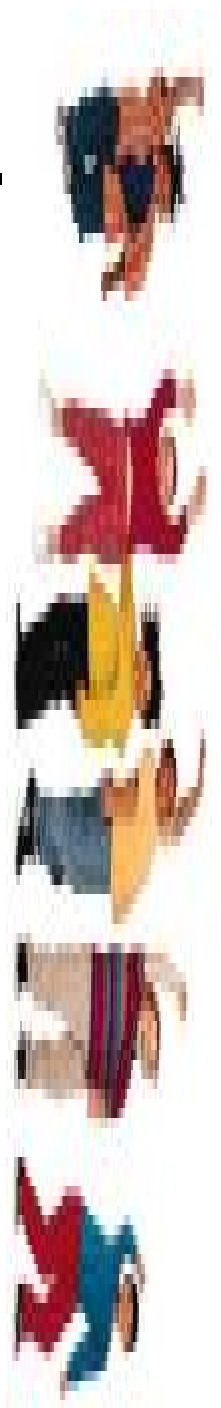
Definitions (cont.)

- Sexual abuse, means-
 - » (a) sexually molesting or assaulting a child or allowing a child to be sexually molested or assaulted;
 - (b) encouraging, inducing or forcing a child to be used for the sexual gratification of another person;
 - (c) using a child in or deliberately exposing a child to sexual activities or pornography; or
 - (d) procuring or allowing a child to be procured for commercial sexual exploitation or in any way participating or assisting in the commercial exploitation of a child.
- Street child, means a child who-
 - » (a) because of abuse, neglect, poverty, community upheaval or any other reason, has left his or her home, family or community and lives, begs or works on the street; or
 - » (b) because of inadequate care, begs or works on the streets but returns home at night



How is a child brought to the Children's Court?

- (a) S 47: referral of a child by other court for investigation; OR
- (b) S 151: Removal of a child to temporary safe care by court order; OR
- (c) S 152: Removal of a child to temporary safe care without a court order; OR
- (d) S 155: Opening/ Initialization and finalization of a matter



Section 47: Other court

- S 47(1): If it appears to any court in the course of proceedings that a child involved in or affected by those proceedings is in need of care and protection as is contemplated in s 150 the court must order that the question be referred to a designated social worker for investigation i.t.o. s 155(2);
- S 47(2): If it appears to the court in the course of proceedings of the following acts that a child of any of the parties to the proceedings has been abused or neglected the court MAY suspend the proceedings pending investigation contemplated in s 155(2) into the question whether the child is in need of care and protection AND must request the DPP to attend to the allegations of abuse and neglect:
 - Administration Amendment Act, 1929 (9 of 1929);
 - Matrimonial Affairs Act, 1953 (37 of 1953);
 - Divorce Act, 1979 (70 of 1979);
 - Maintenance Act, 1998 (99 of 1998);
 - Domestic Violence Act, 1998 (116 of 1998);
 - Recognition of Customary Marriages Act, 1998 (120 of 1998)

- S 155(2): the designated social worker must investigate the matter and within 90 days compile a report whether the child is a child in need of care and protection and report the matter to the relevant DSD;
- The report must then be forwarded to the Clerk of the Children's Court who opens a file and enters it in the register;
- If the designated social worker finds that the child is not in need of care and protection he or she must indicate the reasons for the finding in the report and forward it to the Children's court for review;
- If the designated social worker finds that the child is in need of care and protection, the child must be brought before the Children's court.



S 151: Removal of a child to a temporary safe care by court order

- If on evidence under oath or affirmation before a PO it appears that a child who resides in the area of CC is in need of care and protection, the PO must order that the question be referred to a designated social worker for an investigation.
- PO may then order that the child be placed in temporary safe care if necessary for the safety and well-being of the child

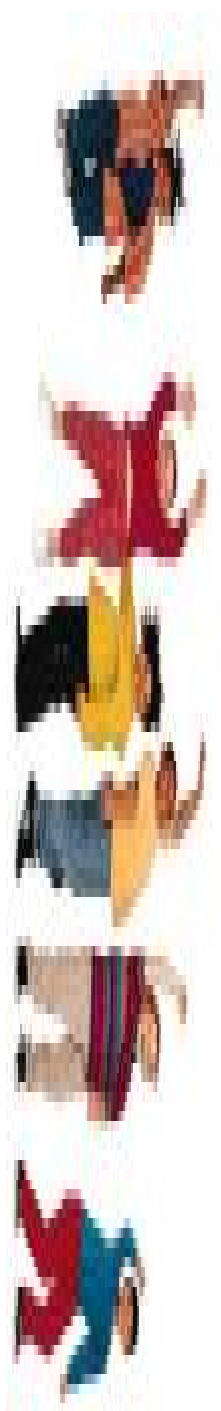
- The person who has removed a child i.t.o. this court order:
 - » Must without delay but within 24 hours inform the parent, guardian or care-giver of the child of the removal of the child (if that person can be readily traced; AND
 - » Within 24 hours refer the matter to a designated social worker for investigation i.t.o. s 155(2); AND
 - » Report the matter to the relevant provincial DSD.
- S 155(2): designated social worker must investigate the matter and within 90 days compile a report whether the child is a child in need of care and protection and report the matter to the relevant DSD;
- This report must then be forwarded to the Clerk of the Children's court who opens a file and enters it in the register.
- If the designated social worker finds that the child is not in need of care and protection, he or she must indicate the reasons for the finding in the report and forward it to the Children's court for review
- If the designated social worker finds that the child is in need of care and protection, the child must be brought before the Children's court.

S 152: Removal of a child to temporary safe care without court order

- S 152(1): A designated social worker or police official may remove a child and place the child in temporary safe care without a court order if there are reasonable grounds for believing:
 - (a) (i) that the child is in need of care and protection; AND
 - (ii) that child needs immediate emergency protection; AND
 - (b) that the delay in obtaining a court order may jeopardise the child's safety and well-being; AND
 - (c) that the removal of the child from his or her home environment is the best way to secure that child's safety and well-being



- Section 152(2): Designated social Worker must:
 - (a) without delay but within 24 hours inform the parent, guardian or care-giver of the child of the removal of the child (if that person can readily be traced) (FORMS 36 & 37)
 - (b) not later than the next court date inform the Clerk (FORM 36)
 - (c) report the matter to the relevant provincial DSD (FORM 36)

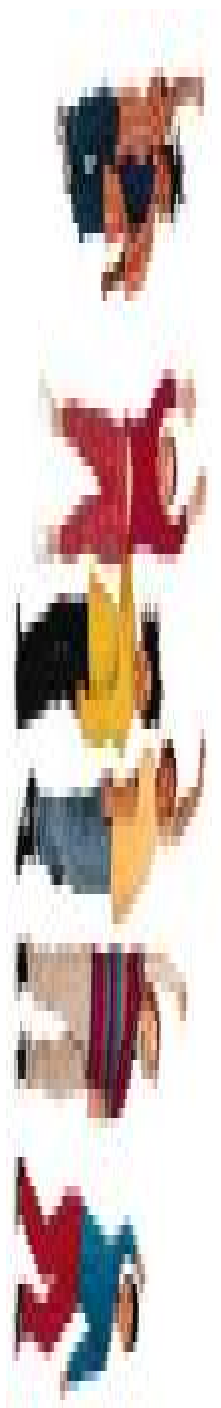


- S 155(3): Police official must:
 - » (a) without delay but within 24 hours inform the parent, guardian or care-giver of the child of the removal of that child (if that person can readily be traced); AND
 - » (b) refer the matter to a designated social worker for investigation i.t.o. s 155(2); AND
 - » (c) without delay but within 24 hours notify the relevant provincial DSD; AND
 - » (d) not later than the next court date inform the clerk of the children's court of the removal of the child



What happens at court?

- The Clerk will open a file and enter it in the register
- Matter will then be referred to the PO who will hold an inquiry
- At the inquiry the PO will:
 - » Record who is in attendance; AND
 - » Explain the nature, purpose and possible consequences of the proceedings; AND
 - » Consider the Form 36; AND
 - » Consider any statements/ affidavits/ reports, etc. AND
 - » Consider Form 7
 - » Hear any viva voce evidence and arguments
- If the PO find child in need of care and protection, PO will then (s 155(6):
 - » Adjourn the matter (not exceeding 14 days); AND
 - » Make the following order:
 - * the child is to remain in temporary safe care where the child is kept; OR
 - * transfer the child to another place in temporary safe care; OR
 - * the child is to remain under whose control the child is; OR
 - * put the child under control of a family member or other relative; OR
 - * place the child in temporary safe care
- If the PO find child not need of care and protection, PO will then (s 155(8):
 - if child in temporary safe care, order child be returned to the person in whose control the child was before the child was put in temporary safe care;
 - may make an order for EIS
 - must decline to make an order, if the child is not in temporary safe care



Finalization

- PO will record who is in attendance
- Explain the nature, purpose and possible consequences of the proceedings
- Hear viva voce evidence and consider Form 38 and arguments
- Do regulation 56 enquiry
- Make section 150 finding
- Make section 156 r/w section 46 order
- Make section 159 order
- Make section 48(1) order
- Make section 65 order



Regulation 56(2) Enquiry

The court must be satisfied of the following:

1. The child has been abandoned/ orphaned;

AND

1. An advertisement was published and that at least one month has lapsed since publication of same and that no person has claimed responsibility for the child;

AND

3. Orphaned child:

- * death certificates of parent (s)/ guardian (s)/ care-giver (s) OR
- * if same cannot be furnished an affidavit to this effect

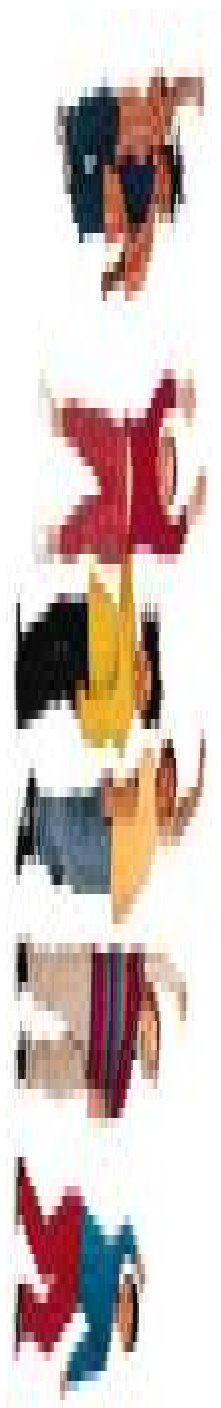
4. Abandoned child:

- * an affidavit by the social worker setting out steps taken to trace the child's parent (s)/ guardian (s)/ care-giver (s) and that they cannot be traced; AND
- * an affidavit by any other person, if any, who can testify that the child has had no contact with his/ her parent (s)/ guardian (s)/ care-giver (s) for a period of at least three months



Section 150 finding

- Section 150(1) child in need of care and protection:
 - (a) has been abandoned or orphaned or is without visible means
 - (b) displays behaviour which cannot be controlled by the parent or care-giver
 - (c) lives or works on the street or begs for a living
 - (d) is addicted to a dependence-producing substance and is without any support to obtain treatment for such dependency
 - (e) has been exploited or lives in circumstances that expose the child to exploitation
 - (f) lives in or is exposed to circumstances which may seriously harm that child's physical, mental or social well-being
 - (g) may be at risk if returned to the custody of the parent, guardian or care-giver of the child as there is reason to believe that he or she will live in or be exposed to circumstances which seriously harm the physical, mental or social well-being of the child
 - (h) is in a state of physical or mental neglect; or
 - (i) is being maltreated, abused, deliberately neglected or degraded by a parent, a care-giver, a person who has PR&R or a family member of the child or by a person under whose control the child is.
- Section 150(2) child in need of care and protection:
 - a child who is a victim of child labour; and
 - a child in a child – headed household
- Section 150(3) child is not in need of care and protection



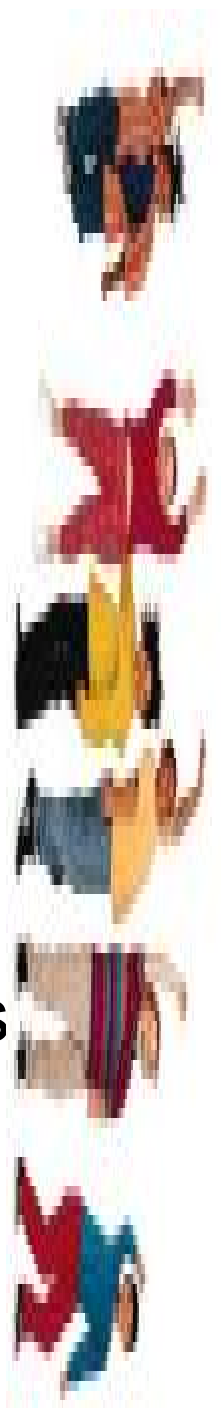
Order i.t.o. s 156 r/w s 46

- Alternative care order (s 46(1)(a));
- Placing child in a child headed household under the supervision of an adult person designated by the court (s 46(1)(b));
- Adoption order (incl. inter country adoption) (s 46(1)(c));
- Partial care order (s 46(1)(d));
- Shared care order (s 46(1)(e));
- Supervision order (s 46(1)(f));
- EIS or FPP or both EIS and FPP (s 46(1)(g));
- Child Protection order (s 46(1)(h));
- Contribution order (s 46(1)(i));
- Investigation (s 46(1)(j));
- Confirming control (s 156(1)(b));
- Return of child (s 156(1)(c));
- Partial care facility (s 156(1)(d));
- Foster care/ Cluster foster care/ Temporary safe care pending adoption/ shared care / Child & Youth Care facility (s 156(1)(e));
- Child headed household (s 156(1)(f));
- Facility for care of children with disabilities or chronic illnesses (s 156(1)(g));
- Child and Youth Care facility (s 156(1)(h));
- Medical/ Psychological or other treatment (s 156(1)(i));
- In or out patient at appropriate facility (s 156(1)(j));
- Interdict (S 156 (1)(k))
-



Court order

- May make any of these orders subject to conditions (s 156(3)(a))
- May reconsider any of these orders at any time and then may confirm, withdraw or amend the order (s 156(3)(b))
- If court find child not in need of care and protection the court may nevertheless make an order excluding a placement order



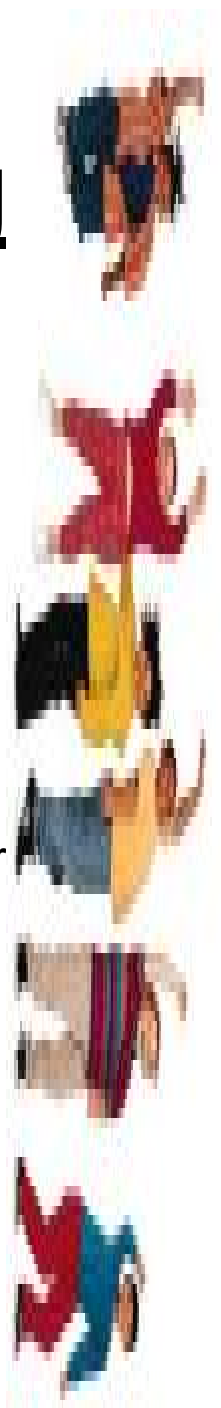
Section 48(1)

- Grant interdicts
- Extend, withdraw, suspend, vary or monitor any order
- Impose or vary time deadlines re orders
- Costs orders
- Estimation of age



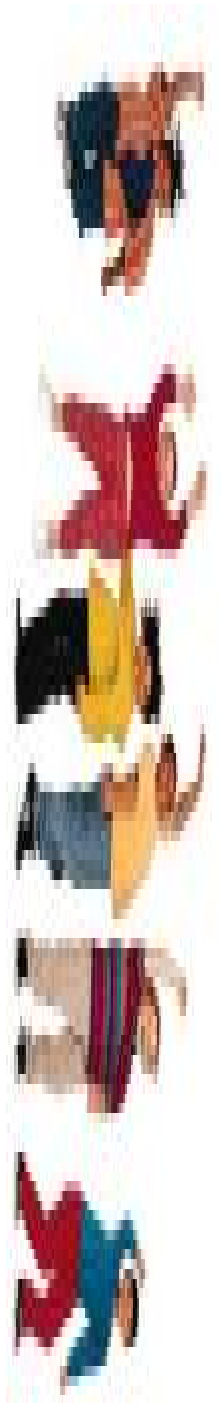
Section 65 orders (Monitoring)

- Monitor compliance or circumstances of a child
- How?
 - » Any person involved to appear before it at future date
 - » Reports by designated social worker be submitted to the court within a specified period or time to time as specified
 - » Call or recall any person involved if non compliance or worsening of the child's circumstances is alleged
 - » When person appears the court may:
 - inquire whether order has been or is being complied with and if not why not;
 - confirm or vary or withdraw the order;
 - enforce compliance through criminal prosecution or section 45(2)



Section 159(1)

- S 159(1)(a)(i): Order lapse after 2 years and i.t.o. s 159(2) may be extended for not more than 2 years at a time till date before child 18 yrs
or
- S 159(1)(a)(ii): Order lapse after shorter period and i.t.o. s 159(2) may be extended for not more than 2 years at a time till date before child 18 yrs



Section 159 (2)

- Order may be extended for a period not more than two years at a time;
- When deciding extension, court **MUST** take cognisance of the views of:
 - The child
 - The parent & any other person who has PR&R
 - The management of the centre where child is placed
 - Any alternative care-giver



Section 186(1)

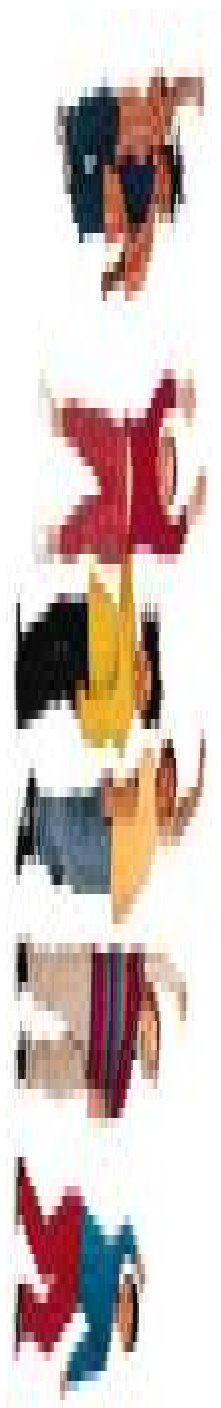
Despite s 159(1)(a) – if child has been in foster care with a person other than family member for more than 2 years and after having considered the need for creating stability in the child's life, the court MAY order that:

- no further social worker reports and supervision is required;
- the foster care placement subsists until child turns 18 years, unless otherwise directed



Section 186(2)

- Despite s 159(1)(a) – if court place child in foster care with family member and after considering the need for creating stability in the child’s life, the court may order:
 - Placement may be for more than two years,
 - Extension may be for more than two years;
 - Foster care placement subsists until child turns 18 years.
- This can only be done if:
 - (a) the child has been abandoned by the biological parents;
 - (b) the child’s biological parents are deceased;
 - (c) any other reason why there will be no purpose in attempting reunification between the child and biological parents;
 - (d) best interest of the child



Section 186(3)

Despite s 186 (1) and (2), a social service professional must visit a child in foster care at least once every two years to monitor and evaluate the placement

