



# Primary Health Care Gender-Based Violence

## Who Can Give Consent for HIV Testing for Children

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From: Legal, ethical and counselling issues related to HIV testing of children

HIV testing of children: Legal guidelines for implementers, 2012, Human Sciences Research Council, South Africa

A child's parent includes a natural as well as an adoptive parent, either male or female. Determining the child's parent, guardian or caregiver is a factual determination that can be made with reference to official documents such as a birth certificate, identity document or a sworn affidavit. In the absence of such official documents, unofficial documents (e.g., a school report or medical record) as well as the evidence given by an adult and the child may also provide information relating to a child's parents or caregiver. A healthcare worker is not required to be a "detective" in this regard, but should simply be reasonably satisfied of the identity of the child's parent, guardian or caregiver.

A healthcare provider needs to identify the most appropriate legally authorised person to provide proxy consent for the child's HIV test, in the order of preference provided in the national policy.

### **What the Children's Act says...**

The Children's Act defines a caregiver as any person, other than a parent or guardian, who factually cares for a child and includes:

- a foster parent;
- a person who cares for a child with the implied or express informed consent of a parent or guardian;
- a person who cares for a child whilst the child is temporarily in safe care;
- the person at the head of a child and youth care centre where the child has been placed;
- the person in charge of a shelter;
- a child and youth care worker who cares for a child who is without appropriate family care in the community;
- the child at the head of a child-headed household.

Factual care for a child may include:

- providing the child with a place to live;
- providing financial support to the child;
- protecting the child from harm;
- guiding and directing the child's education and upbringing;
- guiding the child in decision-making; and
- generally taking care of the best interests of the child.