

Preliminary Inquiries



**PRELIMINARY INQUIRIES AS PROVIDED FOR IN TERMS
OF CHAPTER 7 OF THE CHILD JUSTICE ACT 75 OF 2008.
THIS ACT WILL TAKE EFFECT ON 1 APRIL 2010**

- ❑ **The Child Justice Act 75 of 2008 became possible as a result of the Constitution of the Republic of South Africa of 1996 which emphasizes the rights of children – see section 28**
 - **Its aim is to establish a criminal justice system for the children who are in conflict with the law, in accordance with the values underpinning the Constitution and International obligations of this country.**
- ❑ **Chapter 7 of the Child Justice Act provides for the following;**
 - **Holding of Preliminary Inquiries.**
 - **Incorporates as a central feature, the possibility of diverting matters away from the formal criminal justice system.**
 - **Children need to be assessed by the Probation Officers before the Inquiry.**

OBJECTIVES OF THE PRELIMINARY INQUIRY *inter alia* are:

- ❑ Establish child's age, and if he /she has criminal capacity (10 -14)
- ❑ Establish if matter can be diverted before plea
- ❑ Identify diversion options
- ❑ Establish if child must be referred to Children's court
- ❑ Determine child's placement or release pending finalization of Inquiry

UNDER WHAT CIRCUMSTANCES

A preliminary inquiry must be held in respect of a child who is alleged to have committed an offence **unless** if he /she is :

- Under 10
- Charge has been withdrawn
- The Prosecutor has diverted the matter
- Criminal capacity cannot be proved

SECURING ATTENDANCE OF THE CHILD AT THE PRELIMINARY INQUIRY

- ❑ Detaining a child should be a last resort and or as short the time as possible.
- ❑ Summons
- ❑ Notice to appear in court
- ❑ Warrant of arrest
- ❑ Arrested without a warrant of arrest

WHO SHOULD ATTEND THE INQUIRY

- ❑ The Magistrate (referred to as inquiry Magistrate)
- ❑ The Prosecutor
- ❑ Parents, an appropriate adult or a guardian
- ❑ Probation Officer
- ❑ Diversion Service Provider (if diversion is envisaged)
- ❑ Any person at the discretion of the Magistrate
- ❑ Inquiry Magistrate may exclude any one from attendance except for the child and the Prosecutor if in the best interests of the child.
- ❑ Child maybe legally represented

NATURE AND PROCEDURE OF THE PROCEEDINGS

- ❑ Informal in nature and inquisitorial
 - **MAYBE HELD IN COURT OR ANY SUITABLE PLACE**
- ❑ Magistrate asks questions, and elicit information
- ❑ Child, parents etc, are encouraged to participate
- ❑ The Probation Officer's report and any relevant information is considered

ORDERS AT PRELIMINARY INQUIRY

- ❑ Inquiry Magistrate may make a diversion order if the Prosecutor indicates that the matter maybe diverted
- ❑ Order that matter be referred to a Child Justice Court for trial
- ❑ Refer the matter to Children's Court

CHILD JUSTICE COURT

- Normal trial procedures applicable - matter can still be diverted at any stage with the consent of a Prosecutor.