

# THE CHILD JUSTICE ACT, 2008 (ACT NO 75 OF 2008)

## Introduction

The Child Justice Act, 2008, establishes a criminal justice system for children in conflict with the law, in accordance with the values underpinning our Constitution and our international obligations. It expands and entrenches the principles of restorative justice while ensuring children's responsibility and accountability for crimes committed. While balancing the interests of the children and those of society, with due regard to the rights of victims.

## BENEFITS OF THE ACT

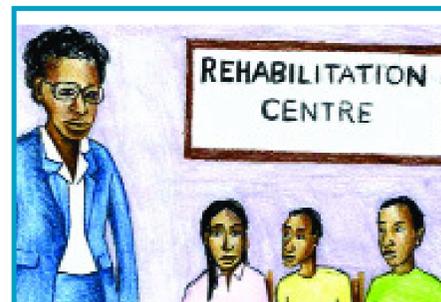
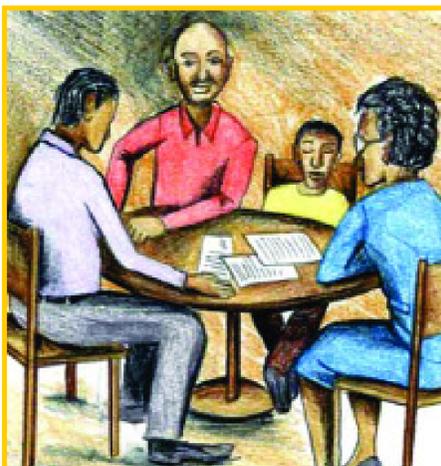
The CJA will have long term benefits for children and the country as a whole. It allows for a justice system that heals children and those who were affected by a child's action, encourages forgiveness and rehabilitation, and looks after the needs and rights of children and victims. The CJA allows the child's background or upbringing to be taken into consideration. It ensures that the individual needs and circumstances of certain children in conflict with the law are assessed when a decision is made about the child. The CJA balances the rights and responsibilities of the child, the victim and the community. When considering diversion options before a trial, the victim's or his/her families' views are also to be taken into consideration by the prosecutor and the court. The CJA also states that the damage caused by the child on the victim should be considered. The victim or someone representing the victim may submit a statement that reflects the physical, psychological, social, financial, or any other impact that may have been caused as a result of the crime on the victim. This helps make a healing and peace-making process happen and further expands and entrenches the notion of restorative justice. The CJA makes it easier to help the rehabilitation and integration of the child who is in conflict with the law, into society so that he/she can grow up and make a useful contribution to society. Courts continue to prioritise and fast-track children's matters in the child justice system and this leads to the reduction of children awaiting trial. This also leads to an increase in the numbers of children in home-based supervision and in secure care facilities.

## TYPES OF OFFENCES

The CJA provides for three different categories of offences:

- Minor offences include theft of property worth not more than R2500, malicious damage to property that is not more than R1500 and common assault.
- More serious offences include theft of property worth more than R2500; robbery, but not robbery with aggravating circumstances; assault that includes causing grievous bodily harm; public violence; culpable homicide; and arson.
- The most serious offences include robbery, rape, murder and kidnapping amongst others.

		
- 10 yrs	+ 10 yrs -14 yrs	-14 yrs
Cannot be arrested	May be arrested - state to prove criminal capacity	May be arrested and prosecuted and at the discretion of the prosecutor diverted



## ONE STOP CHILD JUSTICE CENTRES

Section 89 of the Child Justice Act, says that One-Stop Child Justice Centres may be established.

- The aim of these centres is to provide services required by children in conflict with the law in one place.
- The establishment of these centres provides for intersectoral and collaborative approaches to addressing the needs of children in conflict with the law.
- These centres emphasize on the effective rehabilitation and reintegration of children in order to minimise the potential of re-offending.

## SENTENCING OPTIONS

Diversion programs form part of the new and different sentencing options that magistrates can use when dealing with children who are in conflict with the law. Sentencing options include the following:

- Community-based options: this involves a number of diversion options such as, a family group conference, restorative justice options and so forth.
- Restorative justice options: "restorative justice" means an approach that involves the child offender, the victim, the families concerned, and community members who all identify the damage, the needs and obligations that arise as a result of the child's act. If the child accepts responsibility and makes some effort to prevent this type of incident this can promote reconciliation. This process may be handled through a Family Group Conference, a victim and offender mediation process and/or another restorative justice process.
- A Fine or symbolic restitution: An offer to pay a fine or make another form of symbolic restitution, such as fixing a broken window from his or her own pocket money, is another way of making restitution. An obligation may rest on the child to provide some service or benefit, provided that the child is 15 years or older. This is another option that the court may consider.
- Correctional supervision: A child could be sentenced by the court to undergo correctional supervision. In such a case the child will be supervised by the Department of Correctional Services to do what is listed in the court order.
- Attendance of a non-custodial sanctions program: A child could be ordered to attend a non-custodial sanction program such as a school program, Youth Care Centres: A child could be sentenced to live in a child and youth care centre for a period of time.
- Direct imprisonment: A child could be sentenced to be placed in direct imprisonment. The CJA prioritises sanctions that keep children out of prison.

## WHAT IS A PRELIMINARY INQUIRY

In terms of the CJA, an informal process called a preliminary inquiry will be held within 48 hours of the child's arrest, before the first court appearance. The preliminary inquiry will be attended by many different people, such as:

- A Magistrate,
- The child,
- His/her parents,
- A Prosecutor,
- A Probation Officer,
- The arresting police officer, and
- A Legal Aid Attorney.

These people will meet to speak to the child and talk about the factors that may have led the child to do the crime. They will also try to find ways of assisting the child to accept that he/she did wrong and that he or she has responsibility for the crime.

In the case where the child admits that he or she has done wrong, a plan is created to resolve the original crime in such a way that he or she does not continue to commit crime and violence.

- The plan could involve the diversion of the child. This means that the child may be asked to take part in programs that will teach him or her not to commit crime. The child will NOT be imprisoned but rather be directed to care and rehabilitation centres, youth care centres or school programs or a life skills program, an anger management program or a drug abuse program and so forth.
- Where the preliminary inquiry decides that the child should be attending some form of diversion programme, the Magistrate will make that decision an order of court. The Magistrate will order the probation officer or another suitable person to monitor the child and report back to the court as to whether he/she did as was ordered.

## AGE GROUPS COVERED BY THE ACT

According to the CJA, a child is someone who is under the age of 18. The CJA is specifically intended for children between the ages 10 and 18. The CJA states that:

- A child under the age of 10 years cannot be arrested. This means that a child under 10 years does not have criminal capacity and cannot be charged or arrested for an offence. In such a case, the child will be referred to the Children's Court.
- A child older than 10 years but below the ages of 14 years is presumed to lack criminal capacity unless the state proves that he/she has criminal capacity. Such a child can be arrested.
- A child above 14, but under 18 years of age, is said to have criminal capacity and can be arrested.

## STEP-BY-STEP SUMMARY GUIDE ON THE CHILD JUSTICE PROCESS

- 1 A child is **suspected to have committed** an offence. In the event of an offence that is not serious, the child will not be arrested but be warned to appear in court.
- 2 If the offence is serious, the child is **informed, arrested and charged** by the police. If the offence is less serious, the child and his/her parents or care givers, is warned or summonsed to appear in court by the police.
- 3 There are two possibilities at this stage:
  - A child **under 10** may be referred to a children's court, or
  - The child above **10 years** must be assessed by a probation officer (Social worker).
- 4 The parent or care givers or police bring the child to court.
- 5 A **preliminary inquiry** will be set-up to inquire into the matter and how the child may be assisted if he or she accepts responsibility.
- 6 At the preliminary inquiry there are four possible steps that may be taken:
  - If the **child is in need of care or protection**, the matter will be offered to the children's court which will determine the best possible environment for the child.
  - At the preliminary inquiry, the probation officer's assessment report will be considered to determine if the child has **criminal capacity**. The child may then be referred to the children's court of be diverted.
  - If the child accepts responsibility, it may be recommended at the preliminary inquiry that the **child be diverted**. If the child does not complete or comply with the diversion, he/she will be brought back to court.
  - If no diversion order is made by the court or the child does not comply with the diversion, the case is referred to the **child Justice Court** for trial.
- 7 At the trial the child may be convicted and sentenced or **acquitted**.

## Regional Offices

KwaZulu-Natal Tel: 031-301 5348  
Eastern Cape Tel: 043-702 7106;  
043-721 2782

Western Cape Tel: 021 462 5471  
Northern Cape Tel: 053-839 0000/1  
Gauteng Tel: 011 332 9000/1/14  
Limpopo Tel: 015-297 5562/5586  
North West Tel: 018-397 7000  
Mpumalanga Tel: 013-752 8393  
Free State Tel: 051-407 1800

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