

PROTECTING OUR CHILDREN

The Child Justice Act, 2008 (Act No 75 of 2008)

The Child Justice Act, 2008 (Act 75 of 2008) establishes a criminal justice system for children in conflict with the law that expands and entrenches the principles of restorative justice, while ensuring their responsibility and accountability for crimes committed.



Benefits of the Child Justice Act



The Child Justice Act -

- Allows for a justice system that **heals children** and those who were affected by a child's criminal action, and it encourages forgiveness and rehabilitation.
- Ensures that the **individual needs** and circumstances of children in conflict with the law are assessed before a decision is made on how to deal with the child.
- **Balances the rights** and responsibilities of the child, the victim and the community.
- Facilitates the healing and peace-making process and further expands and entrenches the notion of **restorative justice** by insisting that the damage caused to the victim by the offence committed by the child offender be considered, where applicable and appropriate.
- Creates the possibility of **diverting matters** involving children who have committed offences away from the criminal justice system.
- Makes it easier to assist with the **rehabilitation and the reintegration** of the child in conflict with the law back into his/her family and society so that he/she can grow up to make a useful contribution to society.



What is a preliminary inquiry?

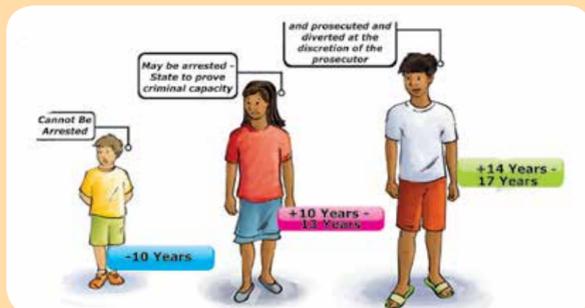
In terms of the Child Justice Act an informal process called a preliminary inquiry will be held within 48 hours of the child's arrest, before the first court appearance. The preliminary inquiry will be attended by different people, such as:

- 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 talk to the child about his/her circumstances, his/her family environment and the factors that may have led the child to commit the crime. They will also consider diverting the matter away from the criminal justice system.



Age groups covered by the Act



According to the Child Justice Act and the Constitution a child is someone who is under the age of 18. The Child Justice Act is specifically intended for children between the ages 10 and 17.

The Child Justice Act states that:

- A child under the age of 10 years cannot be arrested or prosecuted, 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 probation officer to investigate the child's individual circumstances and decide on the need for intervention.
- A child older than 10 years but below the age 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.



Diversion

The objectives of diversion are to:

- Deal with a child outside the **formal criminal justice system** in appropriate cases;
- Encourage the child to be **accountable** for the harm caused by him or her;
- Meet the **particular needs** of the individual child;
- Promote the **reintegration** of the child into his or her family and community;
- Provide an opportunity to those affected by the harm to **express their views** on its impact on them;
- **Prevent stigmatising** the child and prevent the adverse consequences flowing from being subject to the criminal justice system;
- Reduce the potential for **re-offending**;
- Prevent the child from having a **criminal record**; and
- Promote the **dignity and well-being** of the child, and the development of his or her sense of self-worth and ability to contribute to society.

Diversion may be considered during the trial in the child justice court until before closure of the state's case.

The Child Justice Act provides for various diversion options including:

- an **oral or written apology** to a specified person or persons or institution;
- **formal caution**, with or without conditions;
- placement under a **supervision and guidance order**;
- placement under a **reporting order**;
- a compulsory **school attendance** order.



Sentencing Options

In the event where a child in conflict with the law is not diverted, his or her case may be referred to the **Child Justice Court** for trial and sentencing, if convicted. The Child Justice Act provides a wide range of appropriate **sentencing options** specifically suited to the needs of children such as:

- **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.
- **Child and Youth Care Centre:** A child could be sentenced to stay in a child and youth care centre for a specified period of time.



Direct imprisonment: A child could be sentenced to be direct imprisonment in correctional facilities. A child under the age of 14 years may not be sentenced to imprisonment. Imprisonment should only be used as measure of last resort and only for the shortest appropriate period.



Child Justice Courts

Any court dealing with the bail application, plea, trial or sentencing of a child is regarded as a Child Justice Court.

Step-By-Step Summary Guide on the Child Justice Process

1. A child is suspected to have committed an offence will be apprehended by the police and depending on the seriousness of the alleged offence the child may be warned, summoned or arrested to appear at a preliminary inquiry.
2. The child and his/her parents or care givers will be informed of the charges against the child, the child's rights; the immediate procedures to be followed and the date, time, place where the child must appear in court.
3. Every child who is alleged to have committed an offence must be assessed by a probation officer.
4. The parent or care givers or police bring the child to court
5. A preliminary inquiry will be held to inquire into the matter and to decide on how the appropriate way to deal with the child.
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 referred to the children's court which will determine suitable interventions.
 - 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 is not found to be a child in need of care and protection the case is referred to the Child Justice Court for trial.
 - If the matter has been referred for trial in the Child Justice Court, the preliminary inquiry magistrate will decide on the detention or release of the child pending the finalisation of the criminal case.
7. At the end of the trial the child may be convicted and sentenced or acquitted.

