



# CHILD JUSTICE ACT 75 OF 2008

REGULATIONS

NATIONAL INSTRUCTION 2 OF 2010

DIRECTIVES ISSUED IN TERMS OF SECTION  
97(4) OF THE CHILD JUSTICE ACT



**the doj & cd**

Department:  
Justice and Constitutional Development  
REPUBLIC OF SOUTH AFRICA



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CHILD JUSTICE ACT.

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REFLECTING THE LAW AS AT AUGUST 2022

**CHILD JUSTICE ACT**  
75 OF 2008

# CHILD JUSTICE ACT 75 OF 2008<sup>1</sup>

[ASSENTED TO 7 MAY 2009]  
[DATE OF COMMENCEMENT: 1 APRIL 2010]  
(see s. 100 of this Act)

*(English text signed by the President)*

**published in**

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**as amended**

<b>by</b>	<b>with effect from</b>	<b>refer to</b>
Prevention and Combating of Trafficking in Persons Act 7 of 2013	9 August 2015	s. 50 of Act 7 of 2013; Proc R32 in GG 39078 of 7 August 2015
Judicial Matters Amendment Act 42 of 2013	22 January 2014	s. 43 of Act 42 of 2013
Judicial Matters Amendment Act 14 of 2014	19 May 2014	s. 7 (1) of Act 14 of 2014

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<sup>1</sup> This Act has been updated to include all available historical commencement details

	1 December 2017	Proc 40 in GG 41287 of 1 December 2017; s. 7 (2) of Act 14 of 2014
Legal Aid South Africa Act 39 of 2014	1 March 2015	s. 27 of Act 39 of 2014; Proc R7 in GG 38512 of 27 February 2015
Judicial Matters Amendment Act 24 of 2015	8 January 2016; a date to be proclaimed - see PENDLEX	s. 23 of Act 24 of 2015
Cybercrimes Act 19 of 2020	1 December 2021	s. 60 of Act 19 of 2020; Proc R42 in GG 45562 of 30 November 2021
Child Justice Amendment Act 28 of 2019	19 August 2022	s. 28 of Act 28 of 2019; Proc 2400 [sic] in GG 46752 of 19 August 2022

## ACT

To establish a criminal justice system for children, who are in conflict with the law and are accused of committing offences, in accordance with the values underpinning the Constitution and the international obligations of the Republic; to provide for the minimum age of criminal capacity of children; to provide a mechanism for dealing with children who lack criminal capacity outside the criminal justice system; to make special provision for securing attendance at court and the release or detention and placement of children; to make provision for the assessment of children; to provide for the holding of a preliminary inquiry and to incorporate, as a central feature, the possibility of diverting matters away from the formal criminal justice system, in appropriate circumstances; to make provision for child justice courts to hear all trials of children whose matters are not diverted; to extend the sentencing options available in respect of children who have been convicted; to entrench the notion of restorative justice in the criminal justice system in respect of children who are in conflict with the law; and to provide for matters incidental thereto.

### Preamble

#### RECOGNISING-

- that before 1994, South Africa, as a country, had not given many of its children, particularly black children, the opportunity to live and act like children, and also that some children, as a result of circumstances in which they find themselves, have come into conflict with the law;

#### AND MINDFUL that-

- the Constitution of the Republic of South Africa, 1996, as the supreme law of the Republic, was adopted to establish a society based on democratic values, social and economic justice, equality and fundamental human rights and to improve the

quality of life of all its people and to free the potential of every person by all means possible;

- the Constitution, while envisaging the limitation of fundamental rights in certain circumstances, emphasises the best interests of children, and singles them out for special protection, affording children in conflict with the law specific safeguards, among others, the right-
  - \* not to be detained, except as a measure of last resort, and if detained, only for the shortest appropriate period of time;
  - \* to be treated in a manner and kept in conditions that take account of the child's age;
  - \* to be kept separately from adults, and to separate boys from girls, while in detention;
  - \* to family, parental or appropriate alternative care;
  - \* to be protected from maltreatment, neglect, abuse or degradation; and
  - \* not to be subjected to practices that could endanger the child's well-being, education, physical or mental health or spiritual, moral or social development; and
- the current statutory law does not effectively approach the plight of children in conflict with the law in a comprehensive and integrated manner that takes into account their vulnerability and special needs;

#### AND ACKNOWLEDGING THAT-

- there are capacity, resource and other constraints on the State which may require a pragmatic and incremental strategy to implement the new criminal justice system for children;



## THIS ACT THEREFORE AIMS TO-

- establish a criminal justice system for children, who are in conflict with the law, in accordance with the values underpinning our Constitution and our international obligations, by, among others, creating, as a central feature of this new criminal justice system for children, the possibility of diverting matters involving children who have committed offences away from the criminal justice system, in appropriate circumstances, while children whose matters are not diverted, are to be dealt with in the criminal justice system in child justice courts;
- expand and entrench the principles of restorative justice in the criminal justice system for children who are in conflict with the law, while ensuring their responsibility and accountability for crimes committed;
- recognise the present realities of crime in the country and the need to be proactive in crime prevention by placing increased emphasis on the effective rehabilitation and reintegration of children in order to minimise the potential for re-offending;
- balance the interests of children and those of society, with due regard to the rights of victims;
- create incrementally, where appropriate, special mechanisms, processes or procedures for children in conflict with the law-
  - \* that in broad terms take into account-
    - the past and sometimes unduly harsh measures taken against some of these children;
    - the long-term benefits of a less rigid criminal justice process that suits the needs of children in conflict with the law in appropriate cases; and
    - South Africa's obligations as party to international and regional instruments relating to children, with particular reference to the United Nations Convention on the

Rights of the Child and the African Charter on the Rights and Welfare of the Child;

\* in specific terms, by-

- raising the minimum age of criminal capacity for children;
- ensuring that the individual needs and circumstances of children in conflict with the law are assessed;
- providing for special processes or procedures for securing attendance at court of, the release or detention and placement of, children;
- creating an informal, inquisitorial, pre-trial procedure, designed to facilitate the disposal of cases in the best interests of children by allowing for the diversion of matters involving children away from formal criminal proceedings in appropriate cases;
- providing for the adjudication of matters involving children which are not diverted in child justice courts; and
- providing for a wide range of appropriate sentencing options specifically suited to the needs of children,

PARLIAMENT of the Republic of South Africa therefore enacts as follows:-

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**CHAPTER 1**  
**DEFINITIONS, OBJECTS AND GUIDING PRINCIPLES OF ACT**  
**(ss 1-3)**

**1 Definitions**

In this Act, unless the context indicates otherwise-

**‘acknowledges responsibility’** means acknowledges responsibility for an offence without a formal admission of guilt;

**‘adult’** means a person who is 18 years or older but does not include a person referred to in section 4 (2);

**‘appropriate person’** means any member of a child’s family, including a sibling who is 16 years or older, or care-giver referred to in section 1 of the Children’s Act;

[Definition of ‘appropriate person’, previously ‘appropriate adult’, substituted by s. 1 of Act 28 of 2019 (wef 19 August 2022).]

**‘assessment’** means assessment of a child by a probation officer in terms of Chapter 5;

**‘child’** means any person under the age of 18 years and, in certain circumstances, means a person who is 18 years or older but under the age of 21 years whose matter is dealt with in terms of section 4 (2);

**‘child and youth care centre’** means a child and youth care centre referred to in section 191 of the Children’s Act;

**‘child justice court’** means any court provided for in the Criminal Procedure Act, dealing with the bail application, plea, trial or sentencing of a child;

**‘Children’s Act’** means the Children’s Act, 2005 (Act 38 of 2005);

**‘children’s court’** means the court established under section 42 of the Children’s Act;

**‘community service’** means work for a community organisation or other work of value to the community performed by a child without payment;

**‘Constitution’** means the Constitution of the Republic of South Africa, 1996;

**‘Criminal Procedure Act’** means the Criminal Procedure Act, 1977 (Act 51 of 1977);

**‘detention’** includes confinement of a child prior to sentence in a police cell or lock-up, prison or a child and youth care centre, providing a programme referred to in section 191 (2) (h) of the Children’s Act;

**‘Director of Public Prosecutions’** means a Director of Public Prosecutions appointed in terms of section 13 of the National Prosecuting Authority Act, 1998 (Act 32 of 1998), acting in terms of any policy directives issued under this Act by the National Director of Public Prosecutions, where applicable, or in terms of any other prosecution policy or policy directives referred to in section 21 of the National Prosecuting Authority Act, 1998;

**‘diversion’** means diversion of a matter involving a child away from the formal court procedures in a criminal matter by means of the procedures established by Chapter 6 and Chapter 8;

**‘diversion option’** means an option referred to in section 53, and includes a diversion programme referred to in section 56;

**‘diversion service provider’** means a service provider accredited in terms of section 56;

**‘guardian’** means a guardian referred to in section 1 of the Children’s Act;

**‘family group conference’** means a conference referred to in section 61;

**‘independent observer’**, for purposes of section 65 (6), means a representative from a community or organisation, or community police forum, who is not in the full-time employ of the State and whose name appears on a prescribed list for this purpose, which is to be kept by the magistrate of every district;

**‘inquiry magistrate’** means the judicial officer presiding at a preliminary inquiry;

**‘Legal Aid Board’** .....

[Definition of ‘Legal Aid Board’ deleted by s. 25 (1) of Act 39 of 2014 (wef 1 March 2015).]

**‘Legal Aid South Africa’** means the entity referred to in section 2 of the Legal Aid South Africa Act, 2014’;

[Definition of ‘Legal Aid South Africa’ inserted by s. 25 (1) of Act 39 of 2014 (wef 1 March 2015).]

**‘medical practitioner’** means a medical practitioner referred to in section 1 of the Children’s Act;

**‘National Director of Public Prosecutions’** means the person appointed in terms of section 10 of the National Prosecuting Authority Act, 1998 (Act 32 of 1998);

**‘One-Stop Child Justice Centre’** means a centre established in terms of section 89;

**‘police cell or lock-up’** means any place which is used for the reception, detention or confinement of a person who is in custody of the South African Police Service or who is being detained by the South African Police Service, and includes all land, buildings and premises adjacent to any such place and used in connection therewith;

**‘police official’** means a member of the South African Police Service or of a municipal police service established in terms of the South African Police Service Act, 1995 (Act 68 of 1995);

**‘preliminary inquiry’** means an inquiry referred to in Chapter 7;

**‘prescribed’** means prescribed by regulation made under section 97;

**‘presiding officer’** means an inquiry magistrate or a judicial officer presiding at a child justice court;

**‘prison’** means a prison as defined in the Correctional Services Act, 1998 (Act 111 of 1998);

**‘probation officer’** means any person who has been appointed as a probation officer under section 2 of the Probation Services Act, 1991 (Act 116 of 1991);

**‘restorative justice’** means an approach to justice that aims to involve the child offender, the victim, the families concerned and community members to collectively identify and address harms, needs and obligations through accepting responsibility, making restitution, taking measures to prevent a recurrence of the incident and promoting reconciliation;

**‘suitable person’** means a person with standing in the community who has a special relationship with the child, identified by the probation officer to act in the best interests of the child;

**‘symbolic restitution’** means the giving of an object owned, made or bought by a child or the provision of any service to a specified person, persons, group of persons or community, charity or welfare organisation or institution as symbolic compensation for the harm caused by that child;

**‘this Act’** includes any regulation made under section 97;

**‘victim-offender mediation’** means a procedure referred to in section 62.

## 2 Objects of Act

The objects of this Act are to-

- (a) protect the rights of children as provided for in the Constitution;
- (b) promote the spirit of *ubuntu* in the child justice system through-
  - (i) fostering children’s sense of dignity and worth;
  - (ii) reinforcing children’s respect for human rights and the fundamental freedoms of others by holding children accountable for their actions and safe-guarding the interests of victims and the community;
  - (iii) supporting reconciliation by means of a restorative justice response; and
  - (iv) involving parents, families, victims and, where appropriate, other members of the community affected by the crime in procedures in terms of this Act in order to encourage the reintegration of children;
- (c) provide for the special treatment of children in a child justice system designed to break the cycle of crime, which will contribute to safer communities, and encourage these children to become law-abiding and productive adults;
- (d) prevent children from being exposed to the adverse effects of the formal criminal justice system by using, where appropriate, processes, procedures, mechanisms, services or options more suitable to the needs of children and in accordance with the Constitution, including the use of diversion; and

- (e) promote co-operation between government departments, and between government departments and the non-governmental sector and civil society, to ensure an integrated and holistic approach in the implementation of this Act.

### **3 Guiding principles**

In the application of this Act, the following guiding principles must be taken into account:

- (a) All consequences arising from the commission of an offence by a child should be proportionate to the circumstances of the child, the nature of the offence and the interests of society.
- (b) A child must not be treated more severely than an adult would have been treated in the same circumstances.
- (c) Every child should, as far as possible, be given an opportunity to participate in any proceedings, particularly the informal and inquisitorial proceedings in terms of this Act, where decisions affecting him or her might be taken.
- (d) Every child should be addressed in a manner appropriate to his or her age and intellectual development and should be spoken to and be allowed to speak in his or her language of choice, through an interpreter, if necessary.
- (e) Every child should be treated in a manner which takes into account his or her cultural values and beliefs.
- (f) All procedures in terms of this Act should be conducted and completed without unreasonable delay.
- (g) Parents, appropriate persons and guardians should be able to assist children in proceedings in terms of this Act and, wherever possible, participate in decisions affecting them.

- (h) A child lacking in family support or educational or employment opportunities must have equal access to available services and every effort should be made to ensure that children receive similar treatment when having committed similar offences.
- (i) The rights and obligations of children contained in international and regional instruments, with particular reference to the United Nations Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child.

**CHAPTER 2**  
**APPLICATION OF ACT, CRIMINAL CAPACITY OF CHILDREN**  
**UNDER THE AGE OF 14 YEARS AND MATTERS RELATED TO AGE**  
**(ss 4-11)**

**PART 1**  
***Application of Act (ss 4-6)***

**4 Application of Act**

- (1) Subject to subsection (2), this Act applies to any person in the Republic who is alleged to have committed an offence and-
  - (a) was under the age of 12 years at the time of the commission of the alleged offence; or
  - (b) was 12 years or older but under the age of 18 years when he or she was-
    - (i) handed a written notice in terms of section 18 or 22;
    - (ii) served with a summons in terms of section 19; or
    - (iii) arrested in terms of section 20, for that offence.



[Sub-s. (1) substituted by s. 2 of Act 28 of 2019 (wef 19 August 2022).]

(2) The Director of Public Prosecutions having jurisdiction may, in accordance with directives issued by the National Director of Public Prosecutions in terms of section 97 (4) (a) (i) (aa), in the case of a person who-

(a) is alleged to have committed an offence when he or she was under the age of 18 years; and

(b) is 18 years or older but under the age of 21 years, at the time referred to in subsection (1) (b),

direct that the matter be dealt with in terms of section 5 (2) to (4).

(3) (a) The Criminal Procedure Act applies with the necessary changes as may be required by the context to any person referred to in this section, except in so far as this Act provides for amended, additional or different provisions or procedures in respect of that person.

(b) For purposes of paragraph (a), Schedule 5 to this Act, which is not part of this Act and does not have the force of law, contains an exposition of the interface between the Criminal Procedure Act and this Act.

## **5 Manner of dealing with children who are alleged to have committed offences**

(1) Every child who is alleged to have committed an offence and is under the age of 12 years, must be referred to a probation officer to be dealt with in terms of section 9.

[Sub-s. (1) substituted by s. 3 of Act 28 of 2019 (wef 19 August 2022).]

(2) Every child who is 12 years or older, who is alleged to have committed an offence and who is required to appear at a

preliminary inquiry in respect of that offence must, before his or her first appearance at the preliminary inquiry, be assessed by a probation officer, unless assessment is dispensed with in terms of section 41 (3) or 47 (5).

[Sub-s. (2) substituted by s. 3 of Act 28 of 2019 (wef 19 August 2022).]

- (3) A preliminary inquiry must be held in respect of every child referred to in subsection (2) after he or she has been assessed, except where the matter-
- (a) has been diverted in accordance with Chapter 6;
  - (b) involves a child who is 12 years or older but under the age of 14 years where criminal capacity is not likely to be proved, as provided for in section 10 (2) (b); or
  - (c) has been withdrawn.

[Sub-s. (3) substituted by s. 3 of Act 28 of 2019 (wef 19 August 2022).]

- (4) (a) A matter in respect of a child referred to in subsection (2) may be considered for diversion-
- (i) by a prosecutor in accordance with Chapter 6; or
  - (ii) at a preliminary inquiry in accordance with Chapter 7.
- (b) A matter which is for any reason not diverted in terms of paragraph (a) must, unless the matter has been withdrawn or referred to a children's court, be referred to a child justice court for plea and trial in terms of Chapter 9.
- (c) A matter in respect of a child referred to in paragraph (b) may, before the conclusion of the case for the prosecution, be

considered for diversion by a child justice court in terms of Chapter 9.

## **6 Seriousness of offences**

- (1) In order to determine the seriousness of offences for purposes of this Act, the categories of offences are listed in the following order, beginning with the category of least serious offences:
  - (a) Offences contained in Schedule 1;
  - (b) offences contained in Schedule 2; and
  - (c) offences contained in Schedule 3.
- (2) In the case of a child being charged with more than one offence which are dealt with in the same criminal proceedings, the most serious offence must guide the manner in which the child must be dealt with in terms of this Act.
- (3) In the case of a child being charged with more than one offence which are dealt with in separate criminal proceedings, subsection (2) does not apply.

### **PART 2**

## ***Criminal capacity of children under the age of 14 years (ss 7-11)***

### **7 Minimum age of criminal capacity**

- (1) A child who commits an offence while under the age of 12 years does not have criminal capacity and cannot be prosecuted for that offence, but must be dealt with in terms of section 9.

[Sub-s. (1) substituted by s. 4 of Act 28 of 2019 (wef 19 August 2022).]

- (2) A child who is 12 years or older but under the age of 14 years and who commits an offence is presumed to lack criminal capacity, unless the State proves that he or she has criminal capacity in accordance with section 11.

[Sub-s. (2) substituted by s. 4 of Act 28 of 2019 (wef 19 August 2022).]

- (3) The common law pertaining to the criminal capacity of children under the age of 14 years is hereby amended to the extent set out in this section.

## **8 Review of minimum age of criminal capacity**

In order to determine whether or not the minimum age of criminal capacity as set out in section 7 (1) should be raised, the Cabinet member responsible for the administration of justice must, not later than five years after the commencement of section 5 of the Child Justice Amendment Act, 2019, submit a report to Parliament, as provided for in section 96 (4) and (5).

[S. 8 substituted by s. 5 of Act 28 of 2019 (wef 19 August 2022).]

## **9 Manner of dealing with child under the age of 12 years**

[Heading substituted by s. 6 (a) of Act 28 of 2019 (wef 19 August 2022).]

- (1) Where a police official has reason to believe that a child suspected of having committed an offence is under the age of 12 years, he or she may not arrest the child, and must, in the prescribed manner, immediately hand the child over-
- (a) to his or her parents or an appropriate person or a guardian; or
- (b) if no parent, appropriate person or a guardian is available or if it is not in the best interests of the child to be handed over to the parent, an appropriate person or a guardian, to a suitable child and youth care centre,  
and must notify a probation officer.

[Sub-s. (1) substituted by s. 6 (b) of Act 28 of 2019 (wef 19 August 2022).]

- (2) A probation officer who receives notification from a police official in terms of subsection (1), must assess the child in terms of the provisions of Chapter 5 which are applicable to children under the age of 12 years as soon as possible but not later than seven days after being notified.

[Sub-s. (2) substituted by s. 6 (b) of Act 28 of 2019 (wef 19 August 2022).]

- (3) (a) After assessing a child in terms of subsection (2), the probation officer may, in the prescribed manner-
- (i) refer the child to the children's court on any of the grounds set out in section 50;
  - (ii) refer the child for counselling or therapy;
  - (iii) refer the child to an accredited programme designed specifically to suit the needs of children under the age of 12 years;
  - (iv) arrange support services for the child;
  - (v) arrange a meeting, which must be attended by the child, his or her parent or an appropriate person or a guardian, and which may be attended by any other person likely to provide information for the purposes of the meeting referred to in subsection (4); or
  - (vi) decide to take no action.
- (b) Any action taken under paragraph (a) does not imply that the child is criminally liable for the incident that led to the assessment.

[Sub-s. (3) substituted by s. 6 (b) of Act 28 of 2019 (wef 19 August 2022).]

- (4) The purpose of the meeting convened by a probation officer in

terms of subsection (3) (a) (v) is to-

- (a) assist the probation officer to establish more fully the circumstances surrounding the allegations against a child; and
  - (b) formulate a written plan appropriate to the child and relevant to the circumstances.
- (5) The written plan referred to in subsection (4) (b) must, at least-
- (a) specify the objectives to be achieved for the child and the period within which they should be achieved;
  - (b) contain details of the services and assistance to be provided for the child, as prescribed;
  - (c) specify the persons or organisations to provide the services and assistance, as prescribed; and
  - (d) state the responsibilities of the child and of the parent, appropriate person or a guardian.
- (6) The probation officer must record, with reasons, the outcome of the assessment and the decision made in terms of subsection (3) in the prescribed manner.
- (7) In the event of a child failing to comply with any obligation imposed in terms of this section, including compliance with the written plan referred to in subsection (4) (b), the probation officer must refer the matter to a children's court to be dealt with in terms of Chapter 9 of the Children's Act.

## **10 Decision to prosecute child who is 12 years or older but under the age of 14 years**

- (1) A prosecutor who is required to make a decision whether or not to prosecute a child referred to in section 7 (2) must take the following into consideration:

- (a) The educational level, domestic and environmental circumstances, age and maturity of the child;
  - (b) the nature and seriousness of the alleged offence;
  - (c) the impact of the alleged offence on any victim;
  - (d) the interests of the community;
  - (e) a probation officer's assessment report in terms of Chapter 5;
  - (f) the prospects of establishing criminal capacity in terms of section 11 if the matter were to be referred to a child justice court in terms of Chapter 9;
  - (g) the appropriateness of diversion; and
  - (h) any other relevant factor.
- (2) If a prosecutor decides in respect of a child referred to in subsection (1) that criminal capacity is-
- (a) likely to be proved in terms of section 11, he or she may refer the matter to a preliminary inquiry as provided for in Chapter 7; or
  - (b) not likely to be proved in terms of section 11, he or she may cause the child to be taken to a probation officer to be dealt with in terms of section 9.
- (3) A prosecutor may divert the matter in terms of Chapter 6, if the matter is suitable for diversion.

[S. 10 substituted by s. 7 of Act 28 of 2019 (wef 19 August 2022).]

## 11 Proof of criminal capacity

- (1) The State must, for purposes of plea and trial, prove beyond reasonable doubt the capacity of a child who is 12 years or older but under the age of 14 years to appreciate the difference between right and wrong at the time of the commission of an alleged offence and to act in accordance with that appreciation.
- (2) In making a decision regarding the criminal capacity of the child in question the child justice court must consider-
  - (a) all evidence placed before the child justice court, which evidence may include a report of an evaluation referred to in subsection (3); and
  - (b) the cognitive, moral, emotional, psychological and social development of the child.
- (3) A child justice court may, on own accord, or on the request of the prosecutor or the child's legal representative, order an evaluation of the criminal capacity of the child referred to in subsection (1), in the prescribed manner, by a suitably qualified person.
- (4) If an order has been made by the child justice court in terms of subsection (3), the person identified to conduct an evaluation of the child must furnish the child justice court with a written report of the evaluation within 30 days of the date of the order.
- (4A) The provisions of section 77 (2), (3) and (4) of the Criminal Procedure Act apply with the changes required by the context to a report referred to in subsection (4).
- (5) Where a child justice court has found that a child's criminal capacity has not been proved beyond a reasonable doubt, the child justice court may, if it is in the interests of the child,



cause the child to be taken to a probation officer for any further action in terms of section 9.

[S. 11 amended by s. 2 (a) and (b) of Act 14 of 2014 (wef 1 December 2017) and substituted by s. 8 of Act 28 of 2019 (wef 19 August 2022).]

### **PART 3**

#### ***Age estimation, age determination and error regarding age (ss 12-16)***

#### **12 Responsibility of police official where age of child is uncertain**

If a police official is uncertain about the age of a person suspected of having committed an offence but has reason to believe that-

- (a) the person may be a child under the age of 12 years, the police official must act in accordance with the provisions of section 9; or
- (b) the person may be a child who is 12 years or older but under the age of 14 years, or a child who is 14 years or older but under the age of 18 years, the police official must treat the person as a child with due regard to the provisions relating to
  - (i) arrest in terms of Chapter 3; or
  - (ii) release or detention in terms of Chapter 4, and, in particular, section 27 relating to placement options before a child's first appearance at a preliminary inquiry,

until a probation officer or medical practitioner has expressed an opinion on the age of the person or until the determination of that person's age at the preliminary inquiry or child justice court, after which the police official must treat the person in accordance with the opinion or determination.

[S. 12 substituted by s. 9 of Act 28 of 2019 (wef 19 August 2022).]

### **13 Age estimation by probation officer**

- (1) If, during an assessment of a child in terms of Chapter 5, the age of the child, at the time of the commission of the alleged offence, is uncertain, the probation officer must make an estimation of the child's age and must complete the prescribed form.
- (2) In making the estimation, the probation officer must consider any available information, including the following:
  - (a) A previous determination of age by a magistrate under this Act or under the Criminal Procedure Act or an estimation of age in terms of the Children's Act;
  - (b) statements made by a parent, an appropriate person, guardian or any other person, including a religious or community leader, likely to have direct knowledge of the age of the child;
  - (c) a statement made by the child concerned;
  - (d) a school registration form, school report, other document of a similar nature, a baptismal or other similar religious certificate;  
or
  - (e) an estimation of age by a medical practitioner.
- (3) The probation officer must submit the estimation on the prescribed form, together with any relevant documentation to the inquiry magistrate before the child's appearance at a preliminary inquiry.
- (4) Should evidence to the contrary emerge at any stage before sentence, the estimation of age by a probation officer in terms of this section may be altered and a different estimation of age may be recorded.

## **14 Age determination by inquiry magistrate or child justice court**

- (1) If, during a preliminary inquiry or during proceedings before a child justice court, the age of a child at the time of the commission of the alleged offence is uncertain, the presiding officer must determine the age of the child.
- (2) In order to determine the age of a child, a presiding officer may-
  - (a) consider the form and any documentation submitted by the probation officer in terms of section 13 (3);
  - (b) require any relevant documentation, information or statement from any person;
  - (c) subpoena any person to produce the documentation, information or statements referred to in paragraph (b); or
  - (d) if necessary, refer the child to a medical practitioner, in the prescribed manner, for an estimation of age.
- (3) (a) The presiding officer must enter the age determined in terms of subsection (1) into the record of the proceedings as the age of the child.
- (b) Should evidence to the contrary emerge, the presiding officer must alter the record to reflect the correct age.

## **15 Age determination by any other court**

Where there is any uncertainty as to whether a person appearing before any other court was over or under the age of 18 years at the time of the commission of the alleged offence, the court must-

- (a) determine the age of that person in accordance with section 14; and
- (b) where necessary, alter the record to reflect the correct age of that person, in accordance with the provisions of section 16, which apply with the changes required by the context.

## **16 Error regarding age of child or adult who is alleged to have committed offence**

- (1) If, at any stage during proceedings in terms of this Act, a presiding officer is satisfied on the basis of evidence placed before him or her that the age of a child or adult who is alleged to have committed an offence (hereafter in this section referred to as person) is incorrect, the age must be altered on the record of the proceedings in accordance with section 14 and the proceedings must be finalised in accordance with the provisions of-
  - (a) this Act, if the person is found to be a child; or
  - (b) the Criminal Procedure Act, if the person is found to be an adult, unless the provisions of section 4 (2) are applicable.
- (2) If a presiding officer is of the opinion that an error regarding age may have caused any prejudice to a person during the proceedings in question, the presiding officer must transmit the record of the proceedings to the registrar of the High Court having jurisdiction, in the same manner as provided for in section 303 of the Criminal Procedure Act, in which event the proceedings must be dealt with in terms of the procedure on review as provided for in section 304 of the Criminal Procedure Act.
- (3) Subject to subsection (1), if a presiding officer is of the opinion that an error regarding age has not caused any prejudice to the person, the presiding officer must continue

with the proceedings in terms of the provisions of this Act, in accordance with his or her age, as altered.

### **CHAPTER 3**

#### **WRITTEN NOTICE, SUMMONS AND ARREST (ss 17-20)**

#### **17 Methods of securing attendance of child at preliminary inquiry**

- (1) The methods of securing the attendance of a child at a preliminary inquiry are-
  - (a) a written notice, as provided for in section 18;
  - (b) a summons, as provided for in section 19; or
  - (c) arrest, as provided for in section 20.
- (2) Where circumstances permit, a police official should obtain guidance from the Director of Public Prosecutions or a prosecutor on whether or not the child is required to attend a preliminary inquiry and, if so, the manner in which the child's attendance should be secured.

#### **18 Written notice to appear at preliminary inquiry**

- (1) A police official may, in respect of a child who is alleged to have committed an offence referred to in Schedule 1, hand to the child a written notice provided for in section 56 of the Criminal Procedure Act, but as amended by this section in respect of children, requiring the child to appear at a preliminary inquiry.
- (2) The provisions of section 56 (1) (c) of the Criminal Procedure Act relating to an admission of guilt and payment of a fine do not apply to a written notice in terms of this Act.

- (3) (a) A written notice must specify the date, time and place of the preliminary inquiry and be handed to the child in the presence of his or her parent, appropriate person or guardian, in which case both the child and parent, appropriate person or guardian must acknowledge receipt by way of a signature or mark.
- (b) In exceptional circumstances, where it is not possible to hand a written notice to the child in the presence of his or her parent, an appropriate person or guardian, the written notice must be handed to the child and a copy must, as soon as circumstances permit, be handed to the parent, appropriate person or guardian, and both the child and parent, appropriate person or guardian must acknowledge receipt by way of a signature or mark.
- (4) A police official must, in the prescribed manner-
- (a) when handing a written notice to the child, parent, appropriate person or guardian-
- (i) inform them of the nature of the allegation against the child;
  - (ii) inform them of the child's rights;
  - (iii) explain to them the immediate procedures to be followed in terms of this Act;
  - (iv) warn the child to appear at the preliminary inquiry on the date, and at the time and place specified in the written notice and to remain in attendance; and
  - (v) warn the parent, appropriate person or guardian to bring or cause the child to be brought to the preliminary inquiry on the date and at the time and place specified in the written notice and to remain in attendance; and

- (b) immediately but not later than 24 hours after handing the written notice to the child, notify the probation officer concerned.

## **19 Summons**

- (1) A summons issued in respect of a child in terms of section 54 of the Criminal Procedure Act who is to appear at a preliminary inquiry, must specify the date, time and place of the preliminary inquiry.
- (2) (a) A summons must be served on a child in the presence of his or her parent, an appropriate person or a guardian, in which case both the child and parent, appropriate person or guardian must acknowledge service by way of a signature or mark.  
  
(b) In exceptional circumstances, where it is not possible to serve a summons on a child in the presence of his or her parent, an appropriate person or a guardian, the summons must be served on the child and a copy of the summons must, as soon as circumstances permit, be served on the parent, appropriate person or guardian, and both the child and parent, appropriate person or guardian must acknowledge service by way of a signature or mark.
- (3) A police official must, in the prescribed manner-
  - (a) when serving a summons on the child, parent, appropriate person or guardian-
    - (i) inform them of the nature of the allegation against the child;
    - (ii) inform them of the child's rights;
    - (iii) explain to them the immediate procedures to be followed in terms of this Act;

- (iv) warn the child to appear at the preliminary inquiry on the date and at the time and place specified in the summons and to remain in attendance; and
  - (v) warn the parent, appropriate person or guardian to bring or cause the child to be brought to the preliminary inquiry on the date and at the time and place specified in the summons and to remain in attendance; and
- (b) immediately but not later than 24 hours after the service of the summons notify the probation officer concerned.

## **20 Arrest**

- (1) A child may not be arrested for an offence referred to in Schedule 1, unless there are compelling reasons justifying the arrest, which may include the following circumstances:
- (a) Where the police official has reason to believe that the child does not have a fixed residential address;
  - (b) where the police official has reason to believe that the child will continue to commit offences, unless he or she is arrested;
  - (c) where the police official has reason to believe that the child poses a danger to any person;
  - (d) where the offence is in the process of being committed; or
  - (e) where the offence is committed in circumstances as set out in national instructions referred to in section 97 (5) (a) (ii).
- (2) A warrant of arrest issued under section 43 of the Criminal Procedure Act in respect of a child must direct that the child be brought to appear at a preliminary inquiry.
- (3) The police official arresting a child must, in the prescribed manner-



- (a) inform the child of the nature of the allegation against him or her;
  - (b) inform the child of his or her rights;
  - (c) explain to the child the immediate procedures to be followed in terms of this Act; and
  - (d) notify the child's parent, an appropriate person or guardian of the arrest: Provided that if a police official is unable to notify the child's parent, an appropriate person or guardian of the arrest, the police official must submit a written report to the presiding officer at the preliminary inquiry.
- (4) (a) A police official, where possible the police official who arrested the child, must immediately, but not later than 24 hours after the arrest, inform the probation officer in whose area of jurisdiction the child was arrested of the arrest in the prescribed manner.
- (b) If a police official is unable to inform a probation officer of the arrest, the police official must submit a written report to the inquiry magistrate at the preliminary inquiry, furnishing reasons for non-compliance, as prescribed.
- (5) Any child who has been arrested and who remains in custody must, whether or not an assessment of the child has been done, be taken by a police official to the magistrate's court having jurisdiction, in order to deal with the matter in terms of section 5 (2) to (4), as soon as possible but not later than 48 hours after arrest, in which case the provisions of section 50 (1) (d) of the Criminal Procedure Act dealing with-
- (i) ordinary court hours;
  - (ii) physical illness or other physical condition; and

- (iii) arrest outside of the area of jurisdiction of the court, apply in respect of the expiry of the period of 48 hours.

**CHAPTER 4**  
**RELEASE OR DETENTION AND PLACEMENT OF CHILD PRIOR**  
**TO SENTENCE AND RELATED MATTERS (ss 21-33)**

*Part 1*  
*Release or detention (ss 21-25)*

**21 Approach to be followed when considering release or detention of child after arrest**

- (1) When considering the release or detention of a child who has been arrested, preference must be given to releasing the child, as set out in subsections (2) and (3).
- (2) Prior to the child's first appearance at a preliminary inquiry-
  - (a) a police official must, in respect of an offence referred to in Schedule 1, where appropriate, release a child on written notice into the care of a parent, an appropriate person or guardian in terms of section 18, read with section 22; or
  - (b) a prosecutor may, in respect of an offence referred to in Schedule 1 or 2, authorise the release of a child on bail in terms of section 25, read with section 59A of the Criminal Procedure Act, in which case the reference to Schedule 7 in section 59A of that Act is to be regarded as a reference to Schedule 2 of this Act.
- (3) A presiding officer may, at a child's first appearance at a preliminary inquiry or thereafter at a child justice court-
  - (a) in respect of any offence, release a child into the care of a parent, an appropriate person or guardian in terms of section 24 (2) (a);

- (b) in respect of an offence referred to in Schedule 1 or 2, release a child on his or her own recognisance in terms of section 24 (2) (b); or
- (c) if a child is not released from detention in terms of paragraph (a) or (b), release the child on bail in terms of section 25.

## **22 Release of child on written notice into care of parent, appropriate person or guardian before first appearance at preliminary inquiry**

- (1) A police official must release a child on written notice in terms of section 18 into the care of a parent, an appropriate person or guardian if the child is in detention in police custody in respect of an offence referred to in Schedule 1, as soon as possible and before the child appears at the preliminary inquiry, unless-
  - (a) the child's parent or an appropriate person or guardian cannot be located or is not available and all reasonable efforts have been made to locate the parent or appropriate person or guardian; or
  - (b) there is a substantial risk that the child may be a danger to any other person or to himself or herself.
- (2) Where a child has not been released in terms of subsection (1), the investigating police official must provide the inquiry magistrate with a written report in the prescribed manner, giving reasons why the child could not be released, with particular reference to the factors referred to in subsection (1) (a) or (b).

## **23 Duty of police official when releasing child into care of parent, appropriate person or guardian**

A police official who releases a child from detention in terms

of section 22 and places the child in the care of a parent or an appropriate person or guardian, must, at the time of the release of the child, hand to the child and to the person into whose care the child is released, a written notice in accordance with section 18.

#### **24 Release of child into care of parent, appropriate person or guardian or on own recognisance at preliminary inquiry or child justice court**

- (1) Where a child who is in detention in respect of any offence appears-
  - (a) at a preliminary inquiry and the inquiry is to be postponed, or the matter, at the conclusion of the preliminary inquiry, is set down for trial in a child justice court; or
  - (b) at a child justice court and the matter is to be postponed, the presiding officer must, subject to subsection (2) (b), consider the release of the child in terms of this section.
- (2) The presiding officer may release a child referred to in subsection (1)-
  - (a) into the care of a parent, an appropriate person or guardian; or
  - (b) if the child is alleged to have committed an offence referred to in Schedule 1 or 2, on the child's own recognisance,  
if it is in the interests of justice to release the child.
- (3) In considering whether or not it would be in the interests of justice to release a child in terms of subsection (2), the presiding officer must have regard to the recommendations of the probation officer's assessment report and all other relevant factors, including-

- (a) the best interests of the child;
- (b) whether the child has previous convictions;
- (c) the fact that the child is 12 years or older but under the age of 14 years and is presumed to lack criminal capacity;

[Para. (c) substituted by s. 10 of Act 28 of 2019 (wef 19 August 2022).]

- (d) the interests and safety of the community in which the child resides; and
  - (e) the seriousness of the offence.
- (4) The presiding officer must, when releasing a child in terms of this section, warn him or her to appear on a specified date and at a specified time and place and may impose one or more conditions, namely that the child must-
- (a) report periodically to a specified person or at a specified place;
  - (b) attend a particular school;
  - (c) reside at a particular address;
  - (d) be placed under the supervision of a specified person;
  - (e) not interfere with any witness, tamper with any evidence or associate with any person or group of specified persons; or
  - (f) comply with any other condition that the presiding officer deems fit in the circumstances.
- (5) If a child is released into the care of a parent, appropriate person or guardian, the presiding officer must direct the parent, appropriate person or guardian to appear and warn the parent, appropriate person or guardian to ensure that the child appears on a specified date and at a specified time and place and, if a

condition has been imposed in terms of this section, to ensure that the child complies with that condition.

- (6) If a child is released on his or her own recognisance, the presiding officer must warn the child to appear on a specified date and at a specified time and place and, if a condition has been imposed in terms of this section, to comply with that condition.
- (7) (a) If a child fails to appear on the date and at the time and place referred to in subsection (4) or (6) or comply with any condition referred to in this section, the presiding officer may, on being notified of the failure, in the prescribed manner, issue a warrant for the arrest of the child or cause a summons to be issued in accordance with section 19, for the child to appear at the preliminary inquiry or child justice court.
  - (b) When a child appears before a presiding officer pursuant to a warrant of arrest or summons referred to in paragraph (a), the presiding officer must inquire into the reasons for the child's failure to appear or comply with the conditions or to remain in attendance and make a determination whether or not the failure is due to the child's fault.
  - (c) If it is found that the failure is not due to the child's fault, the presiding officer may-
    - (i) order the child's release on the same conditions; or
    - (ii) order the child's release on any other condition; and
    - (iii) if necessary, make an appropriate order which will assist the child and his or her family to comply with the conditions initially imposed.
  - (d) If it is found that the failure is due to the child's fault, the presiding officer may order the release of the child on different

or further conditions or make an order that the child be detained, subject to the provisions of section 26.

- (e) A parent, an appropriate person or guardian who fails to comply with subsection (5) is guilty of an offence and is liable on conviction to a fine or to imprisonment for a period not exceeding three months.

## **25 Release of child on bail**

- (1) Chapter 9 of the Criminal Procedure Act applies to an application for the release of a child on bail, except for section 59 and section 59A, to the extent set out in section 21 (2) (b).
- (2) An application for the release of a child, referred to in section 21 (3) (c), on bail, must be considered in the following three stages:
  - (a) Whether the interests of justice permit the release of the child on bail; and
  - (b) if so, a separate inquiry must be held into the ability of the child and his or her parent, an appropriate person or guardian to pay the amount of money being considered or any other appropriate amount; and
  - (c) if after an inquiry referred to in paragraph (b), it is found that the child and his or her parent, an appropriate person or guardian are-
    - (i) unable to pay any amount of money, the presiding officer must set appropriate conditions that do not include an amount of money for the release of the child on bail; or
    - (ii) able to pay an amount of money, the presiding officer must set conditions for the release of the child on bail and an amount which is appropriate in the circumstances.

**Part 2**  
**Placement (ss 26-31)**

**26 Approach to be followed when considering placement of child**

- (1) If after due consideration of the options for release of a child in terms of Part 1, a decision is made that the child is to be detained or is to remain in detention a police official or presiding officer must give preference to the least restrictive option possible in the circumstances, as set out in subsections (2) and (3), beginning with the least restrictive option.
- (2) Prior to a child's first appearance at a preliminary inquiry within 48 hours after arrest-
  - (a) a police official must, depending on the age of the child and the alleged offence committed by the child, consider the placement of the child in a suitable child and youth care centre in accordance with section 27 (a); or
  - (b) if placement referred to in paragraph (a) is not appropriate or applicable, a police official must detain the child in a police cell or lock-up, in accordance with section 27 (b).
- (3) A presiding officer may, at a child's first or subsequent appearance at a preliminary inquiry or thereafter at a child justice court order the detention of a child in-
  - (a) a child and youth care centre in accordance with section 29; or
  - (b) prison in accordance with section 30, subject to the limitations set out in that section.

**27 Placement options for child who has not been released before first appearance at preliminary inquiry**

If, at any stage before a child's first appearance at a preliminary



inquiry, the child has not been released from detention in police custody and is charged, in the case of a child who is-

- (a) (i) 12 years or older but under the age of 14 years, with any offence; or
- (ii) 14 years or older, with an offence referred to in Schedule 1 or 2,

the police official must give consideration to the detention of the child in an appropriate child and youth care centre, if a centre is available and there is a vacancy, or if a centre or vacancy is not available, in a police cell or lock-up; or

- (b) 14 years or older, with an offence referred to in Schedule 3, the police official must cause the child to be detained in a police cell or lock-up.

[S. 27 substituted by s. 11 of Act 28 of 2019 (wef 19 August 2022).]

## **28 Protection of children detained in police custody**

- (1) A child who is in detention in police custody must be-
  - (a) detained separately from adults, and boys must be held separately from girls;
  - (b) detained in conditions which take into account their particular vulnerability and will reduce the risk of harm to that child, including the risk of harm caused by other children;
  - (c) permitted visits by parents, appropriate persons, guardians, legal representatives, registered social workers, probation officers, assistant probation officers, health workers, religious counsellors and any other person who, in terms of any law, is entitled to visit; and
  - (d) cared for in a manner consistent with the special needs of children, including the provision of-

- (i) immediate and appropriate health care in the event of any illness, injury or severe psychological trauma; and
  - (ii) adequate food, water, blankets and bedding.
- (2) (a) If any complaint is received from a child or any other person during an arrest or while the child is in detention in police custody relating to any injury sustained or severe psychological trauma suffered by the child or if a police official observes that a child has been injured or is severely traumatised, that complaint or observation must, in the prescribed manner, be recorded and reported to the station commissioner, who must ensure that the child receives immediate and appropriate medical treatment if he or she is satisfied that any of the following circumstances exist:
- (i) There is evidence of physical injury or severe psychological trauma;
  - (ii) the child appears to be in pain as a result of an injury;
  - (iii) there is an allegation that a sexual offence as defined in section 1 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act 32 of 2007), has been committed against the child; or
  - (iv) there are other circumstances which warrant medical treatment.
- (b) In the event of a report being made as referred to in paragraph (a), that report must, in the prescribed manner, as soon as is reasonably possible, be submitted to the Provincial Commissioner of Police concerned and a copy of the report must be submitted simultaneously to the National Commissioner of Police, indicating-
- (i) the nature of the injury sustained or severe psychological trauma suffered by the child;

- (ii) an explanation of the circumstances surrounding the injury or trauma; and
- (iii) a recommendation as to whether any further action is required.

[Para. (b) amended by s. 35 of Act 42 of 2013 (wef 22 January 2014).]

- (c) A copy of the medical report, if applicable, must accompany the report by the station commissioner referred to in paragraph (b), and a further copy must be filed in the docket.
- (3) The station commissioner of each police station must keep a register in which prescribed details regarding the detention of all children in police cells or lock-ups must be recorded in a manner that entries regarding the detention of children are clearly distinguishable from those of adults.
- (4) The register may be examined by any person, as may be prescribed.

## **29 Placement in a child and youth care centre**

- (1) A presiding officer may order the detention of a child who is alleged to have committed any offence in a specified child and youth care centre.
- (2) When a presiding officer must decide whether to place a child in a child and youth care centre referred to in subsection (1), consideration must be given to the following factors:
  - (a) The age and maturity of the child;
  - (b) the seriousness of the offence in question;
  - (c) the risk that the child may be a danger to himself, herself or to any other person or child in the child and youth care centre;

- (d) the appropriateness of the level of security of the child and youth care centre when regard is had to the seriousness of the offence allegedly committed by the child; and
  - (e) the availability of accommodation in an appropriate child and youth care centre.
- (3) Whenever a presiding officer is required to make a decision in terms of subsection (1), the presiding officer must consider the information referred to in section 40 (2).
- (4) Where the information referred to in subsection (3) is, for any reason, not available, called into question or no longer current, the presiding officer may request the functionary responsible for the management of a child and youth care centre to furnish a prescribed sworn statement in respect of-
- (a) the availability or otherwise of accommodation for the child in question; and
  - (b) all other available information relating to the level of security, amenities and features of the centre.

### **30 Placement in a prison**

- (1) A presiding officer may only order the detention of a child in a specified prison, if-
- (a) an application for bail has been postponed or refused or bail has been granted but one or more conditions have not been complied with;
  - (b) the child is 14 years or older;
  - (c) the child is accused of having committed an offence referred to in Schedule 3;
  - (d) the detention is necessary in the interests of the administration

of justice or the safety or protection of the public or the child or another child in detention; and

- (e) there is a likelihood that the child, if convicted, could be sentenced to imprisonment.
- (2) A child who is 14 years or older but under the age of 16 years may only be detained in a prison if, in addition to the factors referred to in subsection (1) (a), (c), (d) and (e), the Director of Public Prosecutions or a prosecutor authorised thereto in writing by him or her issues a certificate which confirms that there is sufficient evidence to institute a prosecution against the child for an offence referred to in Schedule 3 and is charging the child with the offence.
- (3) Before a decision is made to detain or further detain a child in prison, the presiding officer must consider any recommendations relating to placement in the probation officer's assessment report, the information referred to in section 40 (2) and any relevant evidence placed before him or her, including evidence, where applicable, in respect of:
  - (a) the best interests of the child;
  - (b) the child's state of health;
  - (c) previous convictions, previous diversions or charges pending against the child;
  - (d) the risk that the child may be a danger to himself, herself or to any other person or child in a child and youth care centre;
  - (e) any danger that the child may pose to the safety of members of the public;
  - (f) whether the child can be placed in a child and youth care centre, which complies with the appropriate level of security;

- (g) the risk of the child absconding from a child and youth care centre;
  - (h) the probable period of detention until the conclusion of the matter;
  - (i) any impediment to the preparation of the child's defence or any delay in obtaining legal representation which may be brought about by the detention of the child;
  - (j) the seriousness of the offence in question; or
  - (k) any other relevant factor.
- (4) A presiding officer ordering the detention of a child in prison in terms of this section must direct that the child be brought before him or her or any other court every 14 days to reconsider the order.
- (5) (a) A presiding officer may order the detention of a child who is alleged to have committed an offence referred to in Schedule 1 or 2 in a prison instead of a child and youth care centre, if he or she, in addition to the factors referred to in subsections (1) and (3), finds substantial and compelling reasons, including any relevant serious previous convictions or any relevant pending serious charges against the child, provided that the child is 14 years or older.
- (b) A presiding officer who makes an order to place a child in a prison in terms of paragraph (a), must enter the reasons for the decision on the record of the proceedings.

### **31 Error regarding placement**

Where a child is placed in a child and youth care centre, police cell or lock-up or a prison and it comes to the attention of the person admitting the child that an error has been made regarding

placement, that person must act in accordance with the order of the court, committing the child to the child and youth care centre, police cell, lock-up or prison and receive the child but must, as soon as practicable, not later than the next court day, in the prescribed manner, refer the child back to the presiding officer in question for the error to be corrected.

### **Part 3**

#### ***Factors to be taken into account by presiding officer regarding further detention and placement and conditions of detention at preliminary inquiry or child justice court (ss 32-33)***

#### **32 Factors to be taken into account by presiding officer regarding further detention and placement at preliminary inquiry or child justice court**

Where a child, in terms of Parts 1 and 2 of this Chapter, has been or is to be detained and placed in a child and youth care centre or prison, the presiding officer at a preliminary inquiry or child justice court must, at every subsequent appearance of the child or at any time thereafter-

- (a) determine whether or not the detention is or remains necessary and whether the placement is or remains appropriate;
- (b) enter the reasons for the detention or further detention on the record of the proceedings;
- (c) consider a reduction of the amount of bail, if applicable;
- (d) inquire whether or not the child is being treated properly and being kept in suitable conditions, if applicable;
- (e) if not satisfied that the child is being treated properly and being kept in suitable conditions, order that an inspection or investigation be undertaken into the treatment and conditions and make an appropriate remedial order; and

- (f) enter the reasons for any decision made in this regard on the record of the proceedings.

### **33 Conditions of detention at preliminary inquiry or child justice court**

- (1) No child may be subjected to the wearing of leg-irons when he or she appears at a preliminary inquiry or child justice court, and handcuffs may only be used if there are exceptional circumstances warranting their use.
- (2) (a) A child held in a police cell or lock-up while waiting to appear at a preliminary inquiry or child justice court must be kept separately from adults and be treated in a manner and kept in conditions which take account of his or her age.
- (b) Girls must be kept separately from boys and must be under the care of an adult female.
- (c) Where a child is transported to or from a preliminary inquiry or child justice court, the child must be transported separately from adults: Provided that where it is not possible to comply, the police official must, within 48 hours, submit a prescribed written report to the presiding officer, furnishing reasons for non-compliance.

## **CHAPTER 5 ASSESSMENT OF CHILD (ss 34-40)**

### **34 Duty of probation officer to assess children**

- (1) Every child who is alleged to have committed an offence must be assessed by a probation officer, as set out in subsections (2) and (3), unless assessment has been dispensed with in terms of section 41 (3).
- (2) A probation officer who has been notified by a police official



that a child has been handed a written notice, served with a summons or arrested must assess the child before the child appears at a preliminary inquiry within the time periods provided for in section 43 (3) (b).

- (3) A probation officer who has been notified by a police official that a child under the age of 12 years has been dealt with in terms of section 9, must make arrangements to assess the child within seven days of the notification.

[Sub-s. (3) substituted by s. 12 of Act 28 of 2019 (wef 19 August 2022).]

### **35 Purpose of assessment**

The purpose of an assessment is to-

- (a) establish whether a child may be in need of care and protection in order to refer the child to a children's court in terms of section 50 or 64;
- (b) estimate the age of the child if the age is uncertain;
- (c) gather information relating to any previous conviction, previous diversion or pending charge in respect of the child;
- (d) formulate recommendations regarding the release or detention and placement of the child;
- (e) where appropriate, establish the prospects for diversion of the matter;
- (f) in the case of a child under the age of 12 years or a child referred to in section 10 (2) (b), establish what measures need to be taken in terms of section 9;

[Para. (f) substituted by s. 13 (a) of Act 28 of 2019 (wef 19 August 2022).]

- (g) .....

[Para. (g) deleted by s. 13 (b) of Act 28 of 2019 (wef 19 August 2022).]

- (h) determine whether the child has been used by an adult to commit the crime in question; and
- (i) provide any other relevant information regarding the child which the probation officer may regard to be in the best interests of the child or which may further any objective which this Act intends to achieve.

### **36 Confidentiality of information obtained at assessment**

- (1) Any information obtained at an assessment is confidential and-
  - (a) may only be used for any purpose authorised by this Act, including at a preliminary inquiry; and
  - (b) is inadmissible as evidence during any bail application, plea, trial or sentencing proceedings in which the child appears.
- (2) Any person who contravenes the provisions of subsection (1) (a) is guilty of an offence and, if convicted, liable to a fine or to imprisonment for a period not exceeding three months.

### **37 Place where assessment is to be conducted**

- (1) The assessment of a child may take place in any suitable place identified by the probation officer, which may include a room at a police station, a magistrate's court, the offices of the Department of Social Development or a One-Stop Child Justice Centre.
- (2) The place identified in terms of subsection (1) must, as far as possible, be conducive to privacy.

### **38 Persons to attend assessment**

- (1) The child must be present at his or her assessment in terms of this Act.

- (2) A child's parent or an appropriate person or a guardian must attend the assessment of the child, unless he or she has been-
    - (a) exempted by the probation officer from attending; or
    - (b) excluded by the probation officer from attending because he or she has disrupted, undermined or obstructed the assessment or it is in the best interests of the child or the administration of justice.
  - (3) A probation officer may permit the following persons to attend an assessment:
    - (a) A diversion service provider;
    - (b) a researcher; or
    - (c) any other person whose presence is necessary or desirable for the assessment.
  - (4) A probation officer may, if there is any risk that the child may escape or endanger the safety of the probation officer or any other person, request a police official to be present at an assessment.
  - (5) A probation officer may, where appropriate, elicit the views of the child in private regarding the presence of any person who is attending the assessment.
  - (6)
    - (a) A probation officer must make every effort to locate a parent or an appropriate person or a guardian in order to conclude the assessment of a child and may request a police official to assist in the location of that person.
    - (b) A probation officer may conclude the assessment of a child in the absence of a parent, appropriate person or guardian if all reasonable efforts to locate that person have failed or if that person has been notified of the assessment and has failed to attend.
-

### **39 Powers and duties of probation officer at assessment**

- (1) The probation officer must-
  - (a) explain the purpose of the assessment to the child;
  - (b) inform the child of his or her rights in the prescribed manner;
  - (c) explain to the child the immediate procedures to be followed in terms of this Act; and
  - (d) inquire from the child whether or not he or she intends acknowledging responsibility for the offence in question.
- (2) The probation officer may, at any stage during the assessment of a child, consult with any person who may provide information necessary for the assessment, including a prosecutor, police official or diversion service provider.
- (3) The probation officer may, at any stage during the assessment, consult privately with any person present.
- (4) The probation officer may consult any person who is not at the assessment and who has any information relating to the assessment, but if additional information is obtained, the child must be informed accordingly.
- (5) Where a child is accused with another child or other children, the probation officer may conduct the assessment of the children simultaneously if this will be in the best interests of all the children concerned.
- (6) The probation officer must encourage the participation of the child during the assessment.

### **40 Assessment report of probation officer**

- (1) The probation officer must complete an assessment report in

the prescribed manner with recommendations on the following issues, where applicable:

- (a) The possible referral of the matter to a children's court in terms of section 50 or 64;
- (b) the appropriateness of diversion, including a particular diversion service provider, or a particular diversion option or options, as provided for in section 53;
- (c) the possible release of the child into the care of a parent, an appropriate person or guardian or on his or her own recognisance, in terms of section 24;
- (d) if it is likely that the child could be detained after the first appearance at the preliminary inquiry, the placement of the child in a specified child and youth care centre or prison in terms of section 29 or 30;
- (e) in the case of a child under the age of 12 years, establish what measures need to be taken in terms of section 9;

[Para. (e) substituted by s. 14 (a) of Act 28 of 2019 (wef 19 August 2022).]

(f) .....

[Para. (f) deleted by s. 14 (b) of Act 28 of 2019 (wef 19 August 2022).]

- (g) whether a further and more detailed assessment of the child is required in order to consider the circumstances referred to in subsection (3); and
  - (h) an estimation of the age of the child if this is uncertain, as provided for in section 13.
- (2) A recommendation referred to in subsection (1) (d) relating to the placement of the child in a child and youth care centre

must be supported by current and reliable information in a prescribed form, obtained by the probation officer from the functionary responsible for the management of the centre regarding-

- (a) the availability or otherwise of accommodation for the child in question; and
  - (b) the level of security, amenities and features of the centre.
- (3) A recommendation referred to in subsection (1) (g) may be made in one or more of the following circumstances:
- (a) The possibility that the child may be a danger to others or to himself or herself;
  - (b) the fact that the child has a history of repeatedly committing offences or absconding;
  - (c) where the social welfare history of the child warrants a further assessment; and
  - (d) the possibility that the child may be admitted to a sexual offenders' programme, substance abuse programme or other intensive treatment programme.
- (4) The probation officer must indicate in the assessment report whether or not the child intends to acknowledge responsibility for the alleged offence.
- (5) The report referred to in subsection (1) must be submitted to the prosecutor before the commencement of a preliminary inquiry, with due regard to the time periods referred to in section 43 (3) (b).

**CHAPTER 6**  
**DIVERSION BY PROSECUTOR IN RESPECT OF MINOR**  
**OFFENCES (ss 41-42)**

**41 Diversion by prosecutor before preliminary inquiry in respect of offences referred to in Schedule 1**

- (1) A prosecutor may divert a matter involving a child who is alleged to have committed an offence referred to in Schedule 1 and may, for this purpose, select any level one diversion option set out in section 53 (3) or any combination thereof, if the prosecutor is satisfied-
- (a) that the factors referred to in section 52 (1) (a) to (d) have been complied with; and
  - (b) in the case of a child who is 12 years or older but under the age of 14 years, that the child will benefit from diversion.

[Sub-s. (1) substituted by s. 15 (a) of Act 28 of 2019 (wef 19 August 2022).]

- (1A) If the prosecutor is of the view that the child is unlikely to benefit from diversion, or if diversion is for any reason not appropriate, the prosecutor may refer the child to a probation officer to be dealt with as a child who lacks criminal capacity, in terms of section 9 of the Act.

[Sub-s. (1A) inserted by s. 15 (b) of Act 28 of 2019 (wef 19 August 2022).]

- (2) The diversion referred to in subsection (1) must take place-
- (a) in accordance with directives issued by the National Director of Public Prosecutions, as provided for in section 97 (4) (a) (i) (bb);
  - (b) subject to subsection (3), after an assessment of the child in accordance with Chapter 5; and

- (c) before a preliminary inquiry as provided for in Chapter 7.
- (3) If the child has not been assessed, the prosecutor may dispense with the assessment if it is in the best interests of the child to do so: Provided that the reasons for dispensing with the assessment must be entered on the record of the proceedings by the magistrate in chambers referred to in section 42.
- (4) If the prosecutor is of the opinion that the child is in need of care and protection as envisaged by section 150 of the Children's Act, he or she must not divert the matter but refer the matter to a preliminary inquiry for consideration of referring it to a children's court.
- (5) In order to decide whether to divert the matter or not, the prosecutor must take into account whether the child has a record of previous diversions.
- (6) If the prosecutor decides not to divert a matter in terms of this section, he or she must immediately make arrangements for the child to appear at a preliminary inquiry referred to in Chapter 7.

#### **42 Diversion option to be made order of court**

- (1) If a matter is diverted in terms of section 41, the child and, where possible, his or her parent, appropriate person or guardian must appear before a magistrate in chambers, in order to have the diversion option that has been selected by the prosecutor, made an order of court.
- (2) The provisions of section 58 apply with the changes required by the context, to a child who fails to comply with any order referred to in subsection (1).



**CHAPTER 7**  
**PRELIMINARY INQUIRY (ss 43-50)**

**43 Nature and objectives of preliminary inquiry**

- (1) A preliminary inquiry-
- (a) is an informal pre-trial procedure which is inquisitorial in nature;
  - (b) may be held in a court or any other suitable place; and
  - (c) must be presided over by a magistrate of the district within which the child is alleged to have committed the offence.

[Para. (c) added by s. 36 (a) of Act 42 of 2013 (wef 22 January 2014).]

- (2) The objectives of a preliminary inquiry are to-
- (a) consider the assessment report of the probation officer, with particular reference to-
    - (i) the age estimation of the child, if the age is uncertain; and
    - (ii) .....

[Sub-par. (ii) deleted by s. 16 (a) of Act 28 of 2019.]

- (iii) whether a further and more detailed assessment of the child is needed as referred to in section 40 (1) (g);

[Para. (a) substituted by s. 16 (a) of Act 28 of 2019 (wef 19 August 2022).]

- (b) establish whether the matter can be diverted before plea;
- (c) identify a suitable diversion option, where applicable;
- (d) establish whether the matter should be referred in terms of section 50 to a children's court referred to in section 42 of the Children's Act;

- (e) ensure that all available information relevant to the child, his or her circumstances and the offence are considered in order to make a decision on diversion and placement of the child;
  - (f) ensure that the views of all persons present are considered before a decision is taken;
  - (g) encourage the participation of the child and his or her parent, an appropriate person or a guardian in decisions concerning the child; and
  - (h) determine the release or placement of a child, pending-
    - (i) the conclusion of the preliminary inquiry;
    - (ii) the appearance of the child in a child justice court; or
    - (iii) the referral of the matter to a children's court, where applicable.
- (3) (a) A preliminary inquiry must be held in respect of every child who is alleged to have committed an offence, except where-
- (i) the matter has been diverted by a prosecutor in terms of Chapter 6;
  - (ii) the child is under the age of 12 years; or
  - (iii) the matter has been withdrawn.

[Para. (a) substituted by s. 16 (b) of Act 28 of 2019 (wef 19 August 2022).]

- (b) A preliminary inquiry referred to in paragraph (a) must be held-
- (i) within 48 hours of arrest as provided for in section 20 (5) if a child is arrested and remains in detention; or
  - (ii) within the time periods specified in a written notice in terms of section 18 or a summons in terms of section 19.

- (c) A child's appearance at a preliminary inquiry is regarded as his or her first appearance before a lower court, in terms of section 50 of the Criminal Procedure Act.
- (4) Section 90 of the Magistrates' Courts Act, 1944 (Act 32 of 1944), applies with the changes required by the context to subsection (1) (c).

[Sub-s. (4) added by s. 36 (b) of Act 42 of 2013 (wef 22 January 2014).]

#### **44 Persons to attend preliminary inquiry**

- (1) The following persons must, in addition to the inquiry magistrate and prosecutor, attend the preliminary inquiry, subject to subsections (2) and (3):
  - (a) The child;
  - (b) the child's parent, an appropriate person or a guardian; and
  - (c) the probation officer.
- (2) If a diversion order is likely to be made, a diversion service provider identified by the probation officer should be present at the preliminary inquiry.
- (3) The inquiry magistrate may, subject to section 81, exclude any person from attending the preliminary inquiry if that person's presence is not in the best interests of the child or undermines the inquisitorial nature and objectives of a preliminary inquiry.
- (4) (a) A preliminary inquiry may proceed in the absence of the child's parent, an appropriate person, guardian or the probation officer if the inquiry magistrate is satisfied that to do so would be in the best interests of the child.
  - (b) An inquiry magistrate who proceeds in the absence of the child's parent, an appropriate person, guardian or probation

officer in terms of paragraph (a), must enter the reasons for the decision on the record of the proceedings.

- (5) The inquiry magistrate may permit the attendance of any other person who has an interest in attending or who may contribute to the proceedings.
- (6) The inquiry magistrate may subpoena or cause to be subpoenaed any person whose presence is necessary at the preliminary inquiry.

#### **45 Confidentiality of information furnished at preliminary inquiry**

- (1) Section 154 of the Criminal Procedure Act relating to the publication of information that reveals or may reveal the identity of a child or a witness under the age of 18 years applies with the changes required by the context to proceedings at a preliminary inquiry.
- (2) No information furnished by any person at a preliminary inquiry in relation to the child may be used against that child in any bail application, plea, trial or sentencing proceedings.

#### **46 Failure to appear at preliminary inquiry**

A child or his or her parent, an appropriate person or a guardian, who has been directed to appear at a preliminary inquiry in terms of-

- (a) a written notice in terms of section 18;
- (b) a summons in terms of section 19;
- (c) a written notice by a police official in terms of section 22, read with section 23;
- (d) a warning by a presiding officer in terms of section 24 (4), (5) or (6),

or is otherwise obliged to appear at a preliminary inquiry and who fails to appear at the inquiry or to remain in attendance at the proceedings must be dealt with in accordance with the provisions of section 24 (7), which apply with the changes required by the context.

#### **47 Procedure relating to holding of preliminary inquiry**

- (1) The inquiry magistrate must conduct the preliminary inquiry in an informal manner by asking questions, interviewing persons at the inquiry and eliciting information, and must keep a record of the proceedings.
- (2) At the start of the preliminary inquiry the inquiry magistrate must-
  - (a) in the prescribed manner-
    - (i) explain the purpose and inquisitorial nature of the preliminary inquiry to the child;
    - (ii) inform the child of the nature of the allegation against him or her;
    - (iii) inform the child of his or her rights; and
    - (iv) explain to the child the immediate procedures to be followed in terms of this Act;
  - (b) in order to consider diversion, ascertain from the child whether he or she acknowledges responsibility for the alleged offence, and if the child-
    - (i) does not acknowledge responsibility, no questions regarding the alleged offence may be put to the child and no information regarding a previous diversion or conviction or charge pending against the child may be placed before the preliminary inquiry, whereupon the

provisions of subsection (9) (c) apply with the changes required by the context; or

- (ii) does acknowledge responsibility, the preliminary inquiry proceeds in terms of this Chapter; and
- (c) determine the age of a child in accordance with section 14, if necessary.
- (3) The following information must be placed before the inquiry magistrate:
- (a) The probation officer's assessment report, if available;
  - (b) any form and documentation required for the determination of age referred to in section 14 (2) (a) and (b), if available;
  - (c) any documentation relating to any previous conviction, diversion or a pending charge;
  - (d) the report regarding the detention of the child in police custody provided by the investigating police official in terms of section 22 (2), if applicable; and
  - (e) any other information that may be relevant to the proceedings.
- (4) In considering the information referred to in subsection (3), the inquiry magistrate may-
- (a) request any further documentation which may be relevant to the proceedings;
  - (b) elicit any information from any person attending the preliminary inquiry to supplement or clarify the available information; and
  - (c) take any steps as may be necessary to establish the truth of any statement or the correctness of any submission.

- (5) (a) If the child has not yet been assessed, the inquiry magistrate may dispense with assessment if it is in the best interests of the child to do so.
- (b) An inquiry magistrate who dispenses with an assessment in terms of paragraph (a), must enter the reasons for that decision on the record of the proceedings.
- (6) If a preliminary inquiry proceeds in the absence of a probation officer, the probation officer's assessment report must be available at the preliminary inquiry, unless assessment has been dispensed with in terms of subsection (5).
- (7) In order to ensure that the views of all persons present are considered before a decision regarding the child is made, the inquiry magistrate must-
- (a) encourage the participation of the child and his or her parent, appropriate person or a guardian;
- (b) allow the child, the child's parent, an appropriate person or a guardian or any other person present to ask questions and to raise issues which, in the opinion of the inquiry magistrate, are relevant for the purposes of a preliminary inquiry.
- (8) (a) If the child is a co-accused with one or more other children, a joint preliminary inquiry may be held if the inquiry magistrate is satisfied that this will be in the best interests of all the children concerned.
- (b) If a joint preliminary inquiry is held in terms of paragraph (a), different decisions may be made in respect of each child.
- (9) If the prosecutor indicates that the matter may not be diverted, the inquiry magistrate must-
- (a) obtain from the prosecutor confirmation that, based on the

facts of the case at his or her disposal and after consideration of other relevant factors, there is sufficient evidence or there is reason to believe that further investigation is likely to result in the necessary evidence being obtained, for the matter to proceed;

- (b) enter the prosecutor's confirmation on the record of the proceedings; and
  - (c) inform the child that the matter is being referred to the child justice court to be dealt with in accordance with Chapter 9.
- (10) Where an inquiry magistrate has presided over a preliminary inquiry and has heard any information prejudicial to the impartial determination of the matter, the magistrate may not preside over any subsequent proceedings, procedure or trial arising from the same facts.

#### **48 Postponement of preliminary inquiry**

- (1) The inquiry magistrate may, subject to subsections (2) and (4), postpone the proceedings of a preliminary inquiry for a period not exceeding 48 hours-
  - (a) in the case where the child is in detention and the prosecutor indicates that diversion is being considered but an assessment has not been done and is required;
  - (b) if it is necessary in order to-
    - (i) secure the attendance of a person essential for the conclusion of the inquiry;
    - (ii) obtain information essential for the conclusion of the inquiry;
    - (iii) establish the views of the victim regarding diversion and the diversion option being considered;



- (iv) make arrangements in respect of a diversion option;
  - (v) find alternatives to detention; or
  - (vi) assess the child, where no assessment has previously been undertaken; or
- (c) for the purposes of further investigation of the matter.
- (2) The proceedings of a preliminary inquiry may be postponed for a further period not exceeding 48 hours, in addition to the period referred to in subsection (1) if the postponement is likely to increase the prospects of diversion, after which the preliminary inquiry, if it has not been concluded must, subject to subsection (4), be closed and the prosecutor must refer the matter to a child justice court to be dealt with in terms of Chapter 9.
- (3) If the proceedings of a preliminary inquiry are postponed in terms of subsection (1) (c) in order to note a confession or an admission or hold an identity parade or a pointing-out, the inquiry magistrate must inform the child of the right to have a parent, an appropriate person, guardian or a legal representative present during those proceedings.
- (4) An inquiry magistrate may postpone the proceedings of a preliminary inquiry for a period not exceeding 14 days-
- (a) if a probation officer has, in terms of section 40 (1) (g), recommended that a further and more detailed assessment of the child be undertaken or makes a recommendation to that effect during the course of the preliminary inquiry and the inquiry magistrate is satisfied that there are reasons justifying such an assessment; or
  - (b) in order to obtain the written indication from the Director of Public Prosecutions having jurisdiction for the diversion of the matter in terms of section 52 (3).

- (5) The proceedings of a preliminary inquiry may be postponed for a period determined by the inquiry magistrate in the case where-
- (a) the child is in need of medical treatment for illness, injury or severe psychological trauma; or
  - (b) the child has been referred for a decision relating to mental illness or defect in terms of section 77 or 78 of the Criminal Procedure Act.
- (6) Section 50 (1) (d) of the Criminal Procedure Act applies in relation to the period of 48 hours as provided for in this section.

#### **49 Orders at preliminary inquiry**

- (1) (a) An inquiry magistrate may, subject to paragraph (b), make an order that the matter be diverted in terms of section 52 (5).
- (b) An inquiry magistrate may only make an order that the matter be diverted in terms of paragraph (a) if he or she is satisfied-
- (i) that the factors referred to in section 52 (1) (a) to (d) have been complied with; and
  - (ii) in the case of a child who is 12 years or older but under the age of 14 years, that the child will benefit from diversion.
- (c) If the inquiry magistrate is of the view that the child is unlikely to benefit from diversion, or if diversion is for any reason not appropriate, the inquiry magistrate may refer the child to a probation officer to be dealt with as a child who lacks criminal capacity, in terms of section 9 of the Act.

[Sub-s. (1) substituted by s. 17 of Act 28 of 2019 (wef 19 August 2022).]

- (2) An inquiry magistrate may make an order that the matter be

referred to a child justice court in terms of section 47 (9) (c) to be dealt with in terms of Chapter 9, in which case-

- (a) if the child is not legally represented, the inquiry magistrate must explain to the child and the parent, an appropriate person or a guardian, the provisions of section 82 (1) regarding legal representation;
- (b) if the child is in detention, the inquiry magistrate must, after due consideration of the provisions of Chapter 4, inform the child of the charge against him or her and the date, time and place of the next appearance in a child justice court and must warn the child's parent, an appropriate person or a guardian to attend the proceedings on the specified date, and at the specified time and place; and
- (c) if the child is not in detention, the inquiry magistrate-
  - (i) may alter or extend any condition imposed in terms of section 24 (4); and
  - (ii) must warn the child and his or her parent, an appropriate person or a guardian to appear in a child justice court on the specified date and at the specified time and place.

## **50 Referral of children in need of care and protection to children's court**

If it appears to the inquiry magistrate during the course of a preliminary inquiry that-

- (a) a child is in need of care and protection referred to in section 150 (1) or (2) of the Children's Act, and it is desirable to deal with the child in terms of sections 155 and 156 of that Act; or
- (b) the child does not live at his or her family home or in appropriate alternative care; or

- (c) the child is alleged to have committed a minor offence or offences aimed at meeting the child's basic need for food and warmth,

the inquiry magistrate may stop the proceedings and order that the child be brought before a children's court referred to in section 42 of that Act and that the child be dealt with under the said sections 155 and 156.

## **CHAPTER 8 DIVERSION (ss 51-62)**

### **51 Objectives of diversion**

The objectives of diversion are to-

- (a) deal with a child outside the formal criminal justice system in appropriate cases;
- (b) encourage the child to be accountable for the harm caused by him or her;
- (c) meet the particular needs of the individual child;
- (d) promote the reintegration of the child into his or her family and community;
- (e) provide an opportunity to those affected by the harm to express their views on its impact on them;
- (f) encourage the rendering to the victim of some symbolic benefit or the delivery of some object as compensation for the harm;
- (g) promote reconciliation between the child and the person or community affected by the harm caused by the child;
- (h) prevent stigmatising the child and prevent the adverse

consequences flowing from being subject to the criminal justice system;

- (i) reduce the potential for re-offending;
- (j) prevent the child from having a criminal record; and
- (k) 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.

## 52 Consideration of diversion

(1) A matter may, after consideration of all relevant information presented at a preliminary inquiry, or during a trial, including whether the child has a record of previous diversions, be considered for diversion if-

- (a) the child acknowledges responsibility for the offence;
- (b) the child has not been unduly influenced to acknowledge responsibility;
- (c) there is *prima facie* evidence that the child committed the offence;

[Para. (c) substituted by s. 18 of Act 28 of 2019 (wef 19 August 2022).]

- (d) the child and, if available, his or her parent, an appropriate person or a guardian, consent to diversion; and
- (e) the prosecutor indicates that the matter may be diverted in accordance with subsection (2) or the Director of Public Prosecutions indicates that the matter may be diverted in accordance with subsection (3).

(2) A prosecutor may, in the case of an offence referred to in Schedule 1, if the matter has not already been diverted in accordance with Chapter 6, or in the case of an offence referred to in Schedule 2, after he or she has-

- (a) considered the views of the victim or any person who has a direct interest in the affairs of the victim, whether or not the matter should be diverted, unless it is not reasonably possible to do so; and
  - (b) consulted with the police official responsible for the investigation of the matter, indicate that the matter may be diverted.
- (3) (a) The Director of Public Prosecutions having jurisdiction may, in the case of an offence referred to in Schedule 3, in writing, indicate that the matter be diverted if exceptional circumstances exist, as determined by the National Director of Public Prosecutions in directives issued in terms of section 97 (4) (a) (iii).
- (b) A Director of Public Prosecutions may only indicate that a matter may be diverted in terms of paragraph (a) after he or she has-
- (i) afforded the victim or any person who has a direct interest in the affairs of the victim, where it is reasonable to do so an opportunity to express a view on whether or not the matter should be diverted, and if so, on the nature and content of the diversion option being considered and the possibility of including in the diversion option, a condition relating to compensation or the rendering of a specific benefit or service and has considered the views expressed; and
  - (ii) consulted with the police official responsible for the investigation of the matter.
- (c) In order to obtain the written indication of the Director of Public Prosecutions in terms of paragraph (a), the inquiry magistrate or child justice court may postpone the matter.

- (d) A Director of Public Prosecutions may not delegate his or her power to decide whether a matter may be diverted in terms of paragraph (a).
- (4) The written indication referred to in subsection (3) must be handed to the presiding officer at the preliminary inquiry or child justice court and must form part of the record of the proceedings.
- (5) If the prosecutor or a Director of Public Prosecutions indicates that the matter can be diverted in terms of subsection (2) or (3), the prosecutor must request the presiding officer at the preliminary inquiry or child justice court to make an order for diversion in respect of the child, in accordance with the provisions of this Chapter.
- (6) If the presiding officer does not divert the matter as provided for in subsection (5), he or she must refer the matter to the child justice court to be dealt with in accordance with Chapter 9.

### 53 Diversion options

- (1) For the purposes of this section-
- (a) **'a compulsory school attendance order'** means an order issued in the prescribed manner, requiring a child to attend school every day for a specified period of time, which must be monitored by a specified person;
- (b) **'a family time order'** means an order issued in the prescribed manner, requiring a child to spend a specified number of hours with his or her family;
- (c) **'a good behaviour order'** means an order issued in the prescribed manner, requiring a child to abide by an agreement made between the child and his or her family to comply with certain standards of behaviour;

- (d) **'a peer association order'** means an order issued in the prescribed manner, requiring a child to associate with persons or peers who can contribute to the child's positive behaviour or to refrain from associating with certain specified persons or peers;
  - (e) **'a reporting order'** means an order issued in the prescribed manner, requiring a child to report to a specified person at a time or at times specified in the order so as to enable that person to monitor the child's behaviour; and
  - (f) **'a supervision and guidance order'** means an order issued in the prescribed manner, placing a child under the supervision and guidance of a mentor or peer in order to monitor and guide the child's behaviour.
- (2) In this section diversion options are set out in two levels, with-
- (a) level one applying to offences referred to in Schedule 1; and
  - (b) level two applying to all other offences as referred to in Schedules 2 and 3.
- (3) Level one diversion options include-
- (a) an oral or written apology to a specified person or persons or institution;
  - (b) a formal caution, with or without conditions;
  - (c) placement under a supervision and guidance order;
  - (d) placement under a reporting order;
  - (e) a compulsory school attendance order;
  - (f) a family time order;



- (g) a peer association order;
- (h) a good behaviour order;
- (i) an order prohibiting the child from visiting, frequenting or appearing at a specified place;
- (j) referral to counselling or therapy;
- (k) compulsory attendance at a specified centre or place for a specified vocational, educational or therapeutic purpose;
- (l) symbolic restitution to a specified person, persons, group of persons or community, charity or welfare organisation or institution;
- (m) restitution of a specified object to a specified victim or victims of the alleged offence where the object concerned can be returned or restored;
- (n) community service under the supervision or control of an organisation or institution, or a specified person, persons or group of persons identified by the probation officer;
- (o) provision of some service or benefit by the child to a specified victim or victims;
- (p) payment of compensation to a specified person, persons, group of persons or community, charity or welfare organisation or institution where the child or his or her family is able to afford this; and
- (q) where there is no identifiable person, persons or group of persons to whom restitution or compensation can be made, provision of some service or benefit or payment of compensation to a community, charity or welfare organisation or institution.

- (4) Level two diversion options include-
- (a) the level one diversion options referred to in subsection (3) (j) to (q);
  - (b) compulsory attendance at a specified centre or place for a specified vocational, educational or therapeutic purpose, which may include a period or periods of temporary residence;
  - (c) referral to intensive therapy to treat or manage problems that have been identified as a cause of the child coming into conflict with the law, which may include a period or periods of temporary residence; and
  - (d) placement under the supervision of a probation officer on conditions which may include restriction of the child's movement outside the magisterial district in which the child usually resides without the prior written approval of the probation officer.
- (5) (a) Where a diversion option from level one as referred to in subsection (3) is selected in respect of a child who is-
- (i) under the age of 14 years, the order may not exceed 12 months in duration, if a time period is applicable;
  - (ii) 14 years or older, the order may, subject to paragraph (b), not exceed 24 months in duration, if a time period is applicable.
- (b) An order exceeding the time period referred to in paragraph (a) may be given, in which case the reasons for exceeding the time period must be entered on the record of the proceedings.
- (6) (a) Where a diversion option from level two as referred to in subsection (4) is selected in respect of a child who is-

- (i) under the age of 14 years, the order may not exceed 24 months in duration, if a time period is applicable;
  - (ii) 14 years or older, the order may, subject to paragraph (b), not exceed 48 months in duration, if a time period is applicable.
- (b) An order exceeding the time period referred to in paragraph (a) may be given, in which case the reasons for exceeding the time period must be entered on the record of the proceedings.
- (7) A magistrate referred to in section 42, an inquiry magistrate or child justice court may order a child to appear at a family group conference in terms of section 61 or a victim-offender mediation in terms of section 62 on a specified date and at a specified time and place, or order any other restorative justice option in appropriate cases in the place of any of the diversion options referred to in subsections (3) or (4), or in combination with any of the diversion options referred to in subsections (3) and (4).

## **54 Selection of diversion option**

- (1) The following factors must be considered when a diversion option is selected:
  - (a) The diversion option must be at the appropriate level in terms of section 53;
  - (b) the child's cultural, religious and linguistic background;
  - (c) the child's educational level, cognitive ability and domestic and environmental circumstances;
  - (d) the proportionality of the option recommended or selected, to the circumstances of the child, the nature of the offence and the interests of society; and

- (e) the child's age and developmental needs.
- (2) (a) In the case of an offence referred to in Schedule 1, level one diversion options set out in section 53 (3) are applicable and may be used in combination.
- (b) In the case of an offence referred to in Schedule 2 or 3, level two diversion options set out in section 53 (4) are applicable and may be used in combination, together with any one or more level one diversion options, where appropriate.
- (3) In addition to the diversion options set out in section 53, a prosecutor, in terms of section 41 (1), an inquiry magistrate, in terms of section 49 (1) (a), or a presiding officer in a child justice court, in terms of section 67 (1) (a), may, where appropriate, after consideration of all available information, develop an individual diversion option which meets the objectives of diversion in terms of section 51 and, where applicable, the minimum standards set out in section 55.

## **55 Minimum standards applicable to diversion**

- (1) Diversion options, in keeping with the objectives of diversion must be structured in a way so as to strike a balance between the circumstances of the child, the nature of the offence and the interests of society, and-
  - (a) may not be exploitative, harmful or hazardous to the child's physical or mental health;
  - (b) must be appropriate to the age and maturity of the child;
  - (c) may not interfere with the child's schooling;
  - (d) may not be structured in a manner that completely excludes certain children due to a lack of resources, financial or otherwise; and

- (e) must be sensitive to the circumstances of the victim.
- (2) Diversion programmes must, where reasonably possible-
  - (a) impart useful skills;
  - (b) include a restorative justice element which aims at healing relationships, including the relationship with the victim;
  - (c) include an element which seeks to ensure that the child understands the impact of his or her behaviour on others, including the victims of the offence, and may include compensation or restitution;
  - (d) be presented in a location reasonably accessible to the child;
  - (e) be structured in a way that they are suitable to be used in a variety of circumstances and for a variety of offences;
  - (f) be structured in a way that their effectiveness can be measured;
  - (g) be promoted and developed with a view to equal application and access throughout the country, bearing in mind the special needs and circumstances of children in rural areas and vulnerable groups; and
  - (h) involve parents, appropriate persons or guardians, if applicable.

## **56 Provision and accreditation of diversion programmes and diversion service providers**

- (1) Subject to section 98 (2), a prosecutor, an inquiry magistrate or a child justice court may only refer a matter for diversion to a diversion programme and diversion service provider that has been accredited in terms of this section and has a valid certificate of accreditation, referred to in subsection (2) (e).

- (2) (a) The Cabinet member responsible for social development, in consultation with the Cabinet members responsible for the administration of justice, education, correctional services, safety and security and health must-
- (i) create a policy framework to develop the capacity within all levels of Government and the non-governmental sector to establish, maintain and develop programmes for diversion;
  - (ii) establish and maintain a system for accreditation, as prescribed, of programmes for diversion and diversion service providers; and
  - (iii) ensure the availability of resources to implement diversion programmes, as prescribed.
- (b) The system for accreditation referred to in paragraph (a) (ii) must contain-
- (i) criteria for the evaluation of diversion programmes to ensure that they comply with the minimum standards referred to in section 55;
  - (ii) criteria for the evaluation of the content of diversion programmes to ensure that they reflect a meaningful and adequate response to the harm caused by offences committed by children, to achieve the objectives of diversion;
  - (iii) mechanisms to monitor diversion programmes and diversion service providers in respect of their ability to render quality service in achieving the objectives of diversion and their ability to promote compliance with diversion orders;
  - (iv) measures for the removal of diversion programmes and diversion service providers from the system, where appropriate.

- (c) The Cabinet member responsible for social development must-
- (i) before the commencement of this Act, table the policy framework and system for accreditation referred to in paragraph (a) (i) and (ii) in Parliament;
  - (ii) three months after tabling the policy framework and system for accreditation in Parliament, publish a notice in the *Gazette*, inviting applications for the accreditation of diversion programmes and diversion service providers, as provided for in the policy framework and system for accreditation referred to in subparagraph (i), which applications must be submitted within four months from the publication of the notice;
  - (iii) within four months of the closing date for applications referred to in subparagraph (ii), ensure that all applications received are considered and decided on, with preference being given to the finalisation of applications in respect of diversion programmes and diversion service providers which existed at the time of commencement of this Act.
  - (d) After the expiry of the time limits referred to in paragraph (c), all applications for accreditation must be dealt with in the manner and within the time limits determined in the policy framework and system for accreditation.
  - (e) The Cabinet member responsible for social development must issue a prescribed certificate of accreditation to each diversion programme and diversion service provider that is accredited in terms of this section.
  - (f) A certificate of accreditation referred to in paragraph (e) is valid for a maximum period of four years from the date of accreditation.

- (g) A quality assurance process must be conducted in the prescribed manner in respect of each accredited diversion programme and diversion service provider.
- (3) (a) The Cabinet member responsible for social development must publish the particulars of each diversion programme and diversion service provider that is accredited or removed from the system in terms of this section in the *Gazette* within 30 days of accreditation or removal.
- (b) The Director-General: Social Development must, immediately after any publication referred to in paragraph (a), provide a copy of the publication to-
- (i) the relevant role-players falling under his or her jurisdiction; and
  - (ii) the Director-General: Justice and Constitutional Development, who must distribute the publication to all relevant role-players who are involved in the administration of this Act.
- (4) (a) The Cabinet member responsible for social development may delegate any power or assign any duty conferred on or imposed upon him or her by this section to any member of the Executive Council of a province responsible for welfare services, except the powers and duties referred to in subsection (2) (a).
- (b) A delegation or an assignment in terms of paragraph (a)-
- (i) is subject to any limitation, condition and direction that the Cabinet member responsible for social development may impose;
  - (ii) must be in writing; and



- (iii) does not divest the Cabinet member responsible for social development of the responsibility concerning the exercise of the power or the performance of the duty.
- (c) The Cabinet member responsible for social development may-
- (i) confirm, vary or revoke any decision taken in consequence of a delegation or assignment in terms of this section, subject to any rights that may have accrued to a person as a result of the decision; and
  - (ii) at any time withdraw a delegation or assignment.

[Sub-s. (4) added by s. 3 of Act 14 of 2014 (wef 1 December 2017).]

## **57 Monitoring of compliance with diversion order**

- (1) When making a diversion order, the magistrate referred to in section 42, inquiry magistrate or child justice court must identify a probation officer or other suitable person to monitor the child's compliance with the diversion order.
- (2) If a child fails to comply with the diversion order, the probation officer or person identified in terms of subsection (1) must, in the prescribed manner, notify the magistrate, inquiry magistrate or child justice court in writing of the failure.
- (3) If it comes to the notice of the magistrate, inquiry magistrate or child justice court that the probation officer or person identified in terms of subsection (1) has failed to monitor the child's compliance with the diversion order or has failed to notify the magistrate, inquiry magistrate or child justice court of the child's failure to comply with the diversion order, the magistrate, inquiry magistrate or child justice court must inquire into the probation officer's or person's failure and if it is found that the failure is due to the fault of the probation officer or person-

- (a) in the case of a probation officer or person who is in the employ of the State, the magistrate, inquiry magistrate or child justice court must bring the finding to the attention of the appropriate authority in order to take the necessary action; or
- (b) in the case of a person who is not in the employ of the State, the magistrate, inquiry magistrate or child justice court must notify the Director-General: Social Development.
- (4) The procedure set out in subsection (3) does not preclude the application of any other remedy in any other law.
- (5) The probation officer or other suitable person referred to in subsection (1) must, when a child has successfully complied with a diversion order, submit a prescribed report to the relevant prosecutor.

## **58 Failure to comply with diversion order**

- (1) If a child fails to comply with any diversion order, the magistrate referred to in section 42, the inquiry magistrate or child justice court may, on being notified of the failure, in the prescribed manner, issue a warrant for the arrest of the child or cause a summons to be issued in respect of the child in terms of section 19, to appear before the magistrate, inquiry magistrate or child justice court.
- (2) When a child appears before the magistrate, inquiry magistrate or child justice court pursuant to a warrant of arrest or summons, the magistrate, inquiry magistrate or child justice court must inquire into the reasons for the child's failure to comply with the diversion order and make a determination whether or not the failure is due to the child's fault.
- (3) If it is found that the failure is not due to the child's fault, the magistrate, inquiry magistrate or child justice court may-

- (a) continue with the same diversion option with or without altered conditions;
  - (b) add or apply any other diversion option; or
  - (c) make an appropriate order which will assist the child and his or her family to comply with the diversion option initially applied, with or without altered or additional conditions.
- (4) If it is found that the failure is due to the child's fault-
- (a) the prosecutor, in the case where the matter was diverted by a prosecutor in terms of section 41 (1) or at a preliminary inquiry in terms of section 49 (1), may decide to proceed with the prosecution, in which case section 49 (2) applies with the changes required by the context;
  - (b) the child justice court, in the case where the matter was diverted by the court in terms of section 67, may record the acknowledgement of responsibility made by the child as an admission referred to in section 220 of the Criminal Procedure Act and proceed with the trial; or
  - (c) the prosecutor or child justice court must, where the matter does not go to trial, decide on another diversion option which is more onerous than the diversion option originally decided on.
- (5) If the prosecutor decides to proceed with the prosecution in terms of subsection (4) (a) in the case of a child who is 12 years old but under the age of 14 years, criminal capacity of that child must be proved in terms of section 11.

[Sub-s. (5) added by s. 19 of Act 28 of 2019 (wef 19 August 2022).]

## **59 Legal consequences of diversion**

- (1) (a) If a matter has been diverted by a prosecutor in terms of

Chapter 6, at a preliminary inquiry in terms of Chapter 7 or by a child justice court in terms of Chapter 9, and the diversion order has been successfully complied with, a prosecution on the same facts may not be instituted.

- (b) A diversion order made in terms of this Act does not constitute a previous conviction referred to in the Criminal Procedure Act.
- (2) A private prosecution in terms of section 7 of the Criminal Procedure Act may not be instituted against a child in respect of whom the matter has been diverted in terms of this Act.

#### **60 Register of children in respect of whom diversion order has been made**

- (1) The Director-General: Social Development must, in consultation with the Director-General: Justice and Constitutional Development and the National Commissioner of the South African Police Service, establish and maintain a register, as prescribed, of children in respect of whom a diversion order has been made in terms of this Act, which must include-
  - (a) the personal details of each child;
  - (b) details of the offence in relation to which the diversion order was made;
  - (c) the diversion option or options as described in the diversion order; and
  - (d) particulars of the child's compliance with the diversion order.

- (2) The purpose of the register is to keep a record of particulars referred to in subsection (1) in respect of children whose matters are diverted from the formal criminal justice system in terms of this Act-
- (a) for access by-
- (i) probation officers when assessing a child in terms of Chapter 5;
  - (ii) police officials when performing functions in terms of Chapter 3 or 4; or
  - (iii) presiding officers, members of the national prosecuting authority referred to in section 4 of the National Prosecuting Authority Act, 1998 (Act 32 of 1998), or other court officials, when considering diversion in terms of Chapter 6, at a preliminary inquiry in terms of Chapter 7, and during proceedings at a child justice court in terms of Chapter 9; and
- (b) in order to facilitate research relating to the effectiveness of diversion and trends relating to diversion.
- (3) Access to the register must be limited, as prescribed, to persons or organisations requiring the information for the purposes set out in subsection (2).

## **61 Family group conference**

- (1) (a) A family group conference is an informal procedure which is intended to bring a child who is alleged to have committed an offence and the victim together, supported by their families and other appropriate persons and, attended by persons referred to in subsection (3) (b), at which a plan is developed on how the child will redress the effects of the offence.

- (b) A family group conference may only take place if both the victim and the child consent.
- (2) If a child has been ordered to appear at a family group conference, a probation officer appointed by the magistrate referred to in section 42, an inquiry magistrate or a child justice court must, within 21 days after the order, convene the conference by-
- (a) setting the date, time and place of the conference; and
- (b) taking steps to ensure that all persons who may attend the conference are timeously notified of the date, time and place of the conference.
- (3) (a) The family group conference must be facilitated by a family group conference facilitator, who may be a probation officer or a diversion service provider referred to in section 56 (1).
- (b) A family group conference may be attended by the following persons:
- (i) The child and his or her parent, an appropriate person or a guardian;
  - (ii) any person requested by the child;
  - (iii) the victim of the alleged offence, his or her parent, an appropriate person or a guardian, where applicable, and any other support person of the victim's choice;
  - (iv) the probation officer, if he or she is not the family group conference facilitator;
  - (v) the prosecutor;

- (vi) any police official;
  - (vii) a member of the community in which the child normally resides, as determined by the family group conference facilitator; and
  - (viii) any person authorised by the family group conference facilitator to attend the conference.
- (4) If a family group conference fails to take place on the date and at the time and place set for the conference, the probation officer must convene another conference, as provided for in this section, within 21 days from the date on which it was to take place.
- (5) Participants in a family group conference must follow the procedure agreed on by them and may agree to a plan in respect of the child, in accordance with subsection (6).
- (6) A plan referred to in subsection (5)-
- (a) may include-
    - (i) the application of any option contained in section 53 (3);  
or
    - (ii) any other action appropriate to the child, his or her family and local circumstances, which is consistent with the principles contained in this Act; and
  - (b) must-
    - (i) specify the objectives for the child and the period within which they are to be achieved;
    - (ii) contain details of the services and assistance to be

- provided to the child and a parent, an appropriate person or a guardian;
- (iii) specify the persons or organisations to provide the required services and assistance;
  - (iv) state the responsibilities of the child and of the child's parent, an appropriate person or a guardian;
  - (v) state personal objectives for the child and for the child's parent, an appropriate person or a guardian;
  - (vi) include any other matters relating to the education, employment, recreation and welfare of the child as are relevant; and
  - (vii) include a mechanism to monitor the plan.
- (7) (a) The family group conference facilitator must record the details of and reasons for any plan agreed to at the family group conference and must furnish a copy of the record to the child and to the probation officer or person referred to in section 57 (1).
- (b) In the event of the conference not taking place or the child failing to comply with the plan agreed to at the family group conference, the probation officer or person must notify the magistrate, inquiry magistrate or child justice court in writing of the failure, in which case section 58 applies.
- (8) If the participants in a family group conference cannot agree on a plan, the conference must be closed and the probation officer must refer the matter back to the magistrate, inquiry magistrate or child justice court for consideration of another diversion option.
- (9) No information furnished by the child at a family group



conference may be used in any subsequent criminal proceedings arising from the same facts.

## **62 Victim-offender mediation**

- (1) (a) Victim-offender mediation means an informal procedure which is intended to bring a child who is alleged to have committed an offence and the victim together at which a plan is developed on how the child will redress the effects of the offence.
- (b) A victim-offender mediation may only take place if both the victim and the child consent.
- (2) If a child has been ordered to appear at a victim-offender mediation, section 61 (2), (4), (5), (6), (7), (8) and (9) applies with the changes required by the context.
- (3) A probation officer appointed by a magistrate referred to in section 42, an inquiry magistrate or a child justice court must convene the victim-offender mediation.
- (4) The victim-offender mediation must be mediated by a probation officer or a diversion service provider referred to in section 56 (1), who or which may regulate the procedure to be followed at the mediation.

## **CHAPTER 9 TRIAL IN CHILD JUSTICE COURT (ss 63-67)**

### **63 Child justice courts and conduct of trials involving children**

- (1) (a) Any child whose matter has been referred to the child justice court in terms of section 49 (2), must appear before a court with the requisite jurisdiction to be dealt with in terms of this Chapter.

- (b) A child justice court must apply the relevant provisions of the Criminal Procedure Act relating to plea and trial of accused persons, as extended or amended by the provisions as set out in this Chapter and Chapter 10.
- (2) Where a child and an adult are charged together in the same trial in respect of the same set of facts in terms of sections 155, 156 and 157 of the Criminal Procedure Act, a court must apply the provisions of-
  - (a) this Act in respect of the child; and
  - (b) the Criminal Procedure Act in respect of the adult.
- (3) Before plea in a child justice court, the presiding officer must, in the prescribed manner-
  - (a) inform the child of the nature of the allegations against him or her;
  - (b) inform the child of his or her rights; and
  - (c) explain to the child the further procedures to be followed in terms of this Act.
- (4) A child justice court must, during the proceedings, ensure that the best interests of the child are upheld, and to this end-
  - (a) may elicit additional information from any person involved in the proceedings; and
  - (b) must, during all stages of the trial, especially during cross-examination of a child, ensure that the proceedings are fair and not unduly hostile and are appropriate to the age and understanding of the child.

- (5) No person may be present at any sitting of a child justice court, unless his or her presence is necessary in connection with the proceedings of the child justice court or the presiding officer has granted him or her permission to be present.
- (6) Section 154 (3) of the Criminal Procedure Act applies with the changes required by the context regarding the publication of information.

#### **64 Referral of children in need of care and protection to children's court**

If it appears to the presiding officer during the course of proceedings at a child justice court that a child is a child in need of care and protection referred to in section 50, the court must act in accordance with that section.

#### **65 Parental assistance**

- (1) Subject to subsections (2) and (5), a child must be assisted by a parent, an appropriate person or a guardian in proceedings in a child justice court.
- (2) If a parent, an appropriate person or a guardian cannot be traced after reasonable efforts and any further delay would be prejudicial to the best interests of the child or to the administration of justice, the child justice court may dispense with the obligation that the child must be assisted by a parent, an appropriate person or a guardian.
- (3) The parent of a child, an appropriate person or a guardian who has been warned by an inquiry magistrate to attend proceedings in terms of section 49 (2), must attend the proceedings, unless he or she has been exempted in terms of subsection (5).

[Sub-s. (3) substituted by s. 37 of Act 42 of 2013 (wef 22 January 2014).]

- (4) If a parent, an appropriate person or a guardian has not been warned to attend as referred to in subsection (3), the child justice court may, at any stage of the proceedings, subpoena or cause to be subpoenaed any parent, appropriate person or a guardian to appear at the proceedings.
- (5) A parent, an appropriate person or a guardian who has been warned to attend as referred to in subsection (3) or subpoenaed in terms of subsection (4), may apply to the child justice court for exemption from the obligation to attend the proceedings, and if the presiding officer of the child justice court exempts a parent, an appropriate person or a guardian, he or she must do so in writing.
- (6) Where a child is not assisted by a parent, an appropriate person or a guardian and the child requests assistance, an independent observer may, in exceptional circumstances, be appointed by the presiding officer in the prescribed manner to assist the child.
- (7) In the event of a failure to comply with the provisions of subsection (3), the procedure referred to in section 24 (7) (e) applies, with the changes required by the context.

## **66 Time limits relating to postponements**

- (1) A child justice court must conclude all trials of children as speedily as possible and must ensure that postponements in terms of this Act are limited in number and in duration.
- (2) If a child-
  - (a) is in detention in prison, a child justice court may, prior to the commencement of a trial, not postpone the proceedings for a period longer than 14 days at a time;

- (b) is in detention in a child and youth care centre, a child justice court may, prior to the commencement of a trial, not postpone the proceedings for a period longer than 30 days at a time;
  - (c) has been released, a child justice court may, prior to the commencement of a trial, not postpone the proceedings for a period longer than 60 days at a time.
- (3) Section 50 (6) (d) of the Criminal Procedure Act applies to a child whose bail application has not been finalised.

## **67 Child justice court may divert matter**

- (1) (a) A child justice court may, at any time before the conclusion of the case for the prosecution, make an order for diversion in respect of a child in accordance with the provisions of section 52 (5).
- (aA) A child justice court may only make an order for diversion in terms of paragraph (a) if the court is satisfied-
- (i) that the factors referred to in section 52 (1) (a) to (d) have been complied with; and
  - (ii) in the case of a child who is 12 years or older but under the age of 14 years, that the child will benefit from diversion.

[Para. (aA) inserted by s. 20 of Act 28 of 2019 (wef 19 August 2022).]

- (aB) If the child justice court is of the view that the child is unlikely to benefit from diversion, or if diversion is for any reason not appropriate, the court may refer the child to a probation officer to be dealt with as a child who lacks criminal capacity, in terms of section 9 of the Act.

[Para. (aB) inserted by s. 20 of Act 28 of 2019 (wef 19 August 2022).]

- (b) A child justice court that makes a diversion order must postpone those proceedings, pending the child's compliance with the diversion order and warn the child that any failure to comply with the diversion order may result in any acknowledgment of responsibility being recorded as an admission in the event of the trial being proceeded with as referred to in section 58 (4) (b).
- (2) The child justice court must, on receipt of a report from the probation officer that a child has successfully complied with the diversion order, and if the child justice court is satisfied that the child has complied, make an order to stop the proceedings.

## **CHAPTER 10** **SENTENCING (ss 68-79)**

### ***Part 1*** ***General (ss 68-71)***

#### **68 Child to be sentenced in terms of this Chapter**

A child justice court must, after convicting a child, impose a sentence in accordance with this Chapter.

#### **69 Objectives of sentencing and factors to be considered**

- (1) In addition to any other considerations relating to sentencing, the objectives of sentencing in terms of this Act are to-
- (a) encourage the child to understand the implications of and be accountable for the harm caused;
- (b) promote an individualised response which strikes a balance

between the circumstances of the child, the nature of the offence and the interests of society;

- (c) promote the reintegration of the child into the family and community;
  - (d) ensure that any necessary supervision, guidance, treatment or services which form part of the sentence assist the child in the process of reintegration; and
  - (e) use imprisonment only as a measure of last resort and only for the shortest appropriate period of time.
- (2) In order to promote the objectives of sentencing referred to in subsection (1) and to encourage a restorative justice approach, sentences may be used in combination.
- (3) When considering the imposition of a sentence involving compulsory residence in a child and youth care centre in terms of section 76, which provides a programme referred to in section 191 (2) (j) of the Children's Act, a child justice court must, in addition to the factors referred to in subsection (4) relating to imprisonment, consider the following:
- (a) Whether the offence is of such a serious nature that it indicates that the child has a tendency towards harmful activities;
  - (b) whether the harm caused by the offence indicates that a residential sentence is appropriate;
  - (c) the extent to which the harm caused by the offence can be apportioned to the culpability of the child in causing or risking the harm; and
  - (d) whether the child is in need of a particular service provided at a child and youth care centre.

- (4) When considering the imposition of a sentence involving imprisonment in terms of section 77, the child justice court must take the following factors into account:
- (a) The seriousness of the offence, with due regard to-
    - (i) the amount of harm done or risked through the offence; and
    - (ii) the culpability of the child in causing or risking the harm;
  - (b) the protection of the community;
  - (c) the severity of the impact of the offence on the victim;
  - (d) the previous failure of the child to respond to non-residential alternatives, if applicable; and
  - (e) the desirability of keeping the child out of prison.

## **70 Impact of offence on victim**

- (1) For purposes of this section, a victim impact statement means a sworn statement by the victim or someone authorised by the victim to make a statement on behalf of the victim which reflects the physical, psychological, social, financial or any other consequences of the offence for the victim.
- (2) The prosecutor may, when adducing evidence or addressing the court on sentence, consider the interests of a victim of the offence and the impact of the crime on the victim, and, where practicable, furnish the child justice court with a victim impact statement provided for in subsection (1).
- (3) If the contents of a victim impact statement are not disputed, a victim impact statement is admissible as evidence on its production.



## 71 Pre-sentence reports

- (1) (a) A child justice court imposing a sentence must, subject to paragraph (b), request a pre-sentence report prepared by a probation officer prior to the imposition of sentence.
- (b) A child justice court may, subject to paragraph (c), dispense with a presentence report where a child is convicted of an offence referred to in Schedule 1 or where requiring the report would cause undue delay in the conclusion of the case, to the prejudice of the child.
- (c) A child justice court may not dispense with a pre-sentence report where the court may-
  - (i) impose a sentence involving compulsory residence in a child and youth care centre providing a programme referred to in section 191 (2) (j) of the Children's Act or imprisonment; or
  - (ii) make an order referred to in section 50 (2) (c) (ii) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act 32 of 2007).

[Sub-s. (1) substituted by s. 21 of Act 28 of 2019 (wef 19 August 2022).]

- (2) The probation officer must complete the report as soon as possible but no later than six weeks following the date on which the report was requested.
- (3) Where a probation officer recommends that a child be sentenced to compulsory residence in a child and youth care centre providing a programme referred to in section 191 (2) (j) of the Children's Act, the recommendation must be supported by current and reliable information, obtained by the probation officer from the person in charge of that centre, regarding the availability or otherwise of accommodation for the child in question.

- (4) A child justice court may impose a sentence other than that recommended in the pre-sentence report and must, in that event, enter the reasons for the imposition of a different sentence on the record of the proceedings.

**Part 2**  
***Sentencing options (ss 72-79)***

**72 Community-based sentences**

- (1) A community-based sentence is a sentence which allows a child to remain in the community and includes any of the options referred to in section 53, as sentencing options, or any combination thereof and a sentence involving correctional supervision referred to in section 75.
- (2) A child justice court that has imposed a community-based sentence in terms of subsection (1) must-
- (a) request the probation officer concerned to monitor the child's compliance with the relevant order and to provide the court with progress reports, in the prescribed manner, indicating compliance; and
- (b) warn the child that any failure to comply with the sentence will result in him or her being brought back before the child justice court for an inquiry to be held in terms of section 79.

**73 Restorative justice sentences**

- (1) A child justice court that convicts a child of an offence may refer the matter-
- (a) to a family group conference in terms of section 61;
- (b) for victim-offender mediation in terms of section 62; or
- (c) to any other restorative justice process which is in accordance with the definition of restorative justice.

- (2) On receipt of the written recommendations from a family group conference, victim-offender mediation or other restorative justice process, the child justice court may impose a sentence by confirming, amending or substituting the recommendations.
- (3) If the child justice court does not agree with the terms of the plan made at a family group conference, victim-offender mediation or other restorative justice process, the court may impose any other sentence provided for in this Chapter and enter the reasons for substituting the plan with that sentence on the record of the proceedings.
- (4) A child justice court that has imposed a sentence in terms of subsection (2) must-
  - (a) request the probation officer concerned to monitor the child's compliance with the sentence referred to in subsection (2) and to provide the court with progress reports, in the prescribed manner, indicating compliance; and
  - (b) warn the child that any failure to comply with the sentence will result in the child being brought back before the child justice court for an inquiry to be held in terms of section 79.

#### **74 Fine or alternatives to fine**

- (1) A child justice court convicting a child of an offence for which a fine is appropriate must, before imposing a fine-
  - (a) inquire into the ability of the child or his or her parents, an appropriate person or a guardian to pay the fine, whether in full or in instalments; and
  - (b) consider whether the failure to pay the fine may cause the child to be imprisoned.

- (2) A child justice court may consider the imposition of any of the following options as an alternative to the payment of a fine:
- (a) Symbolic restitution to a specified person, persons, group of persons or community, charity or welfare organisation or institution;
  - (b) payment of compensation to a specified person, persons, group of persons or community, charity or welfare organisation or institution where the child or his or her family is able to afford this;
  - (c) an obligation on the child to provide some service or benefit to a specified person, persons, group of persons or community, charity or welfare organisation or institution: Provided that an obligation to provide some service or benefit may only be imposed on a child who is 15 years or older; or
  - (d) any other option that the child justice court considers to be appropriate in the circumstances.
- (3) A child justice court that has imposed a sentence in terms of this section must-
- (a) request the probation officer concerned to monitor the compliance with the sentence and to provide the court with progress reports, in the prescribed manner, indicating compliance; and
  - (b) warn the child that any failure to comply with the sentence will result in the child being brought back before the child justice court for an inquiry to be held in terms of section 79.

## **75 Sentences of correctional supervision**

A child justice court that convicts a child of an offence may impose a sentence of correctional supervision envisaged in section 276

(1) (h) of the Criminal Procedure Act.

[S. 75 substituted by s. 38 of Act 42 of 2013 (wef 22 January 2014).]

## **76 Sentence of compulsory residence in child and youth care centre**

- (1) A child justice court that convicts a child of an offence may sentence him or her to compulsory residence in a child and youth care centre providing a programme referred to in section 191 (2) (j) of the Children's Act.
- (2) A sentence referred to in subsection (1) may, subject to subsection (3), be imposed for a period not exceeding five years or for a period which may not exceed the date on which the child in question turns 21 years of age, whichever date is the earliest.
- (3) (a) A child justice court that convicts a child of an offence-
  - (i) referred to in Schedule 3; and
  - (ii) which, if committed by an adult, would have justified a term of imprisonment exceeding ten years,

may, if substantial and compelling reasons exist, in addition to a sentence in terms of subsection (1), sentence the child to a period of imprisonment which is to be served after completion of the period determined in accordance with subsection (2).

- (b) The head of the child and youth care centre to which a child has been sentenced in terms of subsection (1) must, on the child's completion of that sentence, submit a prescribed report to the child justice court which imposed the sentence, containing his or her views on the extent to which the relevant objectives of sentencing referred to in section 69 have been achieved and the possibility of the child's reintegration into

society without serving the additional term of imprisonment.

- (c) The child justice court, after consideration of the report and any other relevant factors, may, if satisfied that it would be in the interests of justice to do so-
  - (i) confirm the sentence and period of imprisonment originally imposed, upon which the child must immediately be transferred from the child and youth care centre to the specified prison;
  - (ii) substitute that sentence with any other sentence that the court considers to be appropriate in the circumstances; or
  - (iii) order the release of the child, with or without conditions.
- (d) If a sentence has been confirmed in accordance with paragraph (c) (i), the period served by the child in a child and youth care centre must be taken into account when consideration is given as to whether or not the child should be released on parole in accordance with Chapter VII of the Correctional Services Act, 1998 (Act 111 of 1998).
- (4) (a) A child who is sentenced in terms of this section, must be taken in the prescribed manner to the centre specified in the order as soon as possible, but not later than one month after the order was made.
- (b) When making an order referred to in subsection (1), the child justice court must-
  - (i) specify the centre to which the child must be admitted, with due regard to the information obtained by the probation officer referred to in section 71 (3);
  - (ii) cause the order to be brought to the attention of relevant functionaries in the prescribed manner;

- (iii) give directions where the child is to be placed for any period before being admitted to the centre specified in the order, preferably in another child and youth care centre referred to in section 191 (2) (h) of the Children's Act, but not in a police cell or lock-up; and
  - (iv) direct a probation officer to monitor the movement of the child to the centre specified in the order, in compliance with the order, and to report to the court in writing once the child has been admitted to the centre.
- (c) Where the information referred to in section 71 (3) is, for any reason, not available, the presiding officer may request any official of the rank of Director or above at the Department of Social Development dealing with the designation of children to child and youth care centres to furnish that information, in respect of the availability or otherwise of accommodation for the child in question.
- (d) Where a presiding officer has sentenced a child in terms of this section, he or she must cause the matter to be retained on the court roll for one month, and must, at the re-appearance of the matter, inquire whether the child has been admitted to the child and youth care centre.
- (e) If the child has not been admitted to a child and youth care centre, the presiding officer must hold an inquiry and take appropriate action, which may, after consideration of the evidence recorded, include the imposition of an alternative sentence, unless the child has been sentenced in terms of subsection (3).
- (f) If the presiding officer finds that the failure to admit the child is due to the fault of any official, he or she must cause a copy of the finding to this effect to be brought to the attention of the appropriate authority to take the necessary action.

## 77 Sentence of imprisonment

(1) A child justice court-

(a) may not impose a sentence of imprisonment on a child who is under the age of 14 years at the time of being sentenced for the offence; and

(b) when sentencing a child who is 14 years or older at the time of being sentenced for the offence, must only do so as a measure of last resort and for the shortest appropriate period of time.

(2) .....

[Sub-s. (2) deleted by s. 4 (a) of Act 14 of 2014 (wef 19 May 2014).]

(3) A child who is 14 years or older at the time of being sentenced for the offence may only be sentenced to imprisonment, if the child is convicted of an offence referred to in-

(a) Schedule 3;

(b) Schedule 2, if substantial and compelling reasons exist for imposing a sentence of imprisonment;

(c) Schedule 1, if the child has a record of relevant previous convictions and substantial and compelling reasons exist for imposing a sentence of imprisonment.

[Sub-s. (3) substituted by s. 4 (b) of Act 14 of 2014 (wef 19 May 2014).]

(4) A child referred to in subsection (3) may be sentenced to a sentence of imprisonment-

(a) for a period not exceeding 25 years; or

(b) envisaged in section 276 (1) (i) of the Criminal Procedure Act.



[Sub-s. (4) substituted by s. 4 (c) of Act 14 of 2014 (wef 19 May 2014).]

- (5) A child justice court imposing a sentence of imprisonment must take into account the number of days that the child has spent in prison or a child and youth care centre prior to the sentence being imposed.

[Sub-s. (5) substituted by s. 4 (d) of Act 14 of 2014 (wef 19 May 2014).]

- (6) In compliance with the Republic's international obligations, no law, or sentence of imprisonment imposed on a child, including a sentence of imprisonment for life, may, directly or indirectly, deny, restrict or limit the possibility of earlier release of a child sentenced to any term of imprisonment.

## **78 Postponement or suspension of passing of sentence**

- (1) The provisions of section 297 of the Criminal Procedure Act apply in relation to the postponement or suspension of passing of sentence by a child justice court in terms of this Act.

[Sub-s. (1) substituted by s. 5 of Act 14 of 2014 (wef 19 May 2014).]

- (2) In addition to the provisions of section 297 of the Criminal Procedure Act, the following may be considered as conditions:
  - (a) Fulfilment of or compliance with any option referred to in section 53 (3) (a) to (m), (q) and (7) of this Act; and
  - (b) a requirement that the child or any other person designated by the child justice court must again appear before that child justice court on a date or dates to be determined by the child justice court for a periodic progress report.
- (3) A child justice court that has postponed the passing of sentence in terms of subsection (1) on one or more conditions must

request the probation officer concerned to monitor the child's compliance with the conditions imposed and to provide the court with progress reports indicating compliance.

## **79 Failure to comply with certain sentences**

- (1) If a probation officer reports to a child justice court that a child has failed to comply with a community-based sentence imposed in terms of section 72, or a restorative justice sentence imposed in terms of section 73, or has failed to pay a fine, restitution or compensation provided for in section 74, the child may, in the prescribed manner, be brought before the child justice court which imposed the original sentence for the holding of an inquiry into the failure of the child to comply.
- (2) If, upon the conclusion of the inquiry, it is found that the child has failed to comply with the sentence provided for in subsection (1), the child justice court may confirm, amend or substitute the sentence.

## **CHAPTER 11 LEGAL REPRESENTATION (ss 80-83)**

### **80 Requirements to be complied with by legal representatives**

- (1) A legal representative representing a child must-
  - (a) allow the child, as far as is reasonably possible, to give independent instructions concerning the case;
  - (b) explain the child's rights and duties in relation to any proceedings under this Act in a manner appropriate to the age and intellectual development of the child;
  - (c) promote diversion, where appropriate, but may not unduly influence the child to acknowledge responsibility;

- (d) ensure that the assessment, preliminary inquiry, trial or any other proceedings in which the child is involved, are concluded without delay and deal with the matter in a manner to ensure that the best interests of the child are at all times of paramount importance; and
  - (e) uphold the highest standards of ethical behaviour and professional conduct.
- (2) (a) If a presiding officer is of the opinion that a legal representative at any stage during the conduct of any proceedings under this Act, acted contrary to subsection (1), he or she must record his or her displeasure by way of an order which includes an appropriate remedial action or sanction.
- (b) A presiding officer who has made any order referred to in paragraph (a) must immediately direct the clerk or the registrar of the court to notify-
- (i) the relevant law society referred to in section 56 of the Attorneys Act, 1979 (Act 53 of 1979);
  - (ii) in the case where the legal representative concerned has been employed by Legal Aid South Africa, the Board of Directors of Legal Aid South Africa; or

[Sub-para. (ii) substituted by s. 25 (1) of Act 39 of 2014 (wef 1 March 2015).]

- (iii) in the case of an advocate, the controlling body of which the advocate is a member, of the order.

## **81 Legal representation at preliminary inquiry**

Nothing in this Act precludes a child from being represented by a legal representative at a preliminary inquiry.

## **82 Child to be provided with legal representation at State expense in certain instances**

- (1) Where a child appears before a child justice court in terms of Chapter 9 and is not represented by a legal representative of his or her own choice, at his or her own expense the presiding officer must refer the child to Legal Aid South Africa for the matter to be evaluated by the Board as provided for in section 22 (1) (b) of the Legal Aid South Africa Act, 2014.

[Sub-s. (1) substituted by s. 25 (1) of Act 39 of 2014 (wef 1 March 2015).]

- (2) No plea may be taken until a child referred to in subsection (1) has been granted a reasonable opportunity to obtain a legal representative or a legal representative has been appointed.

## **83 Child may not waive legal representation in certain circumstances**

- (1) No child appearing before a child justice court may waive his or her right to legal representation.
- (2) If a child referred to in subsection (1) does not wish to have a legal representative or declines to give instructions to an appointed legal representative, the court must enter this on the record of the proceedings and a legal representative must, subject to the provisions of the Legal Aid Manual referred to in section 24 (1) of the Legal Aid South Africa Act, 2014, be appointed by Legal Aid South Africa to assist the court in the prescribed manner.

[Sub-s. (2) substituted by s. 25 (1) of Act 39 of 2014 (wef 1 March 2015).]

**CHAPTER 12**  
**APPEALS AND AUTOMATIC REVIEW OF CERTAIN CONVICTIONS**  
**AND SENTENCES (ss 84-86)**

**84 Appeals**

- (1) An appeal by a child against a conviction, sentence or order as provided for in this Act must be noted and dealt with in terms of the provisions of Chapters 30 and 31 of the Criminal Procedure Act: Provided that if that child was, at the time of the commission of the alleged offence-
  - (a) under the age of 16 years; or
  - (b) 16 years or older but under the age of 18 years and has been sentenced to any form of imprisonment that was not wholly suspended,

he or she may note the appeal without having to apply for leave in terms of section 309B of that Act in the case of an appeal from a lower court and in terms of section 316 of that Act in the case of an appeal from a High Court: Provided further that the provisions of section 302 (1) (b) of that Act apply in respect of a child who duly notes an appeal against a conviction, sentence or order as provided for in section 302 (1) (a) of that Act.

- (2) A child referred to in subsection (1) must be informed by the presiding officer of his or her rights in respect of appeal and legal representation and of the correct procedures to give effect to these rights.

**85 Automatic review in certain cases**

- (1) The provisions of Chapter 30 of the Criminal Procedure Act dealing with the review of criminal proceedings in the lower courts apply in respect of all children convicted in terms of this Act: Provided that if a child has been sentenced to any form of

imprisonment or any sentence of compulsory residence in a child and youth care centre providing a programme provided for in section 191 (2) (j) of the Children's Act, the sentence is subject to review in terms of section 304 of the Criminal Procedure Act by a judge of the High Court having jurisdiction, irrespective of-

- (a) the duration of the sentence;
- (b) the period the judicial officer who sentenced the child in question has held the substantive rank of magistrate or regional magistrate;
- (c) whether the child in question was represented by a legal representative; or
- (d) whether the child in question appeared before a district court or a regional court sitting as a child justice court.

[Sub-s. (1) substituted by s. 39 of Act 42 of 2013 (wef 22 January 2014).]

- (2) The provisions of subsection (1) do not apply if an appeal has been noted in terms of section 84.

## **86 Release on bail pending review or appeal**

Whenever the release of a child on bail is considered, pending-

- (a) the review of a sentence as provided for in section 307 of the Criminal Procedure Act; or
- (b) the appeal against a sentence as provided for in sections 309(4) and 316 of the Criminal Procedure Act,

the provisions of section 25 of this Act, dealing with the release of children on bail, apply.

**CHAPTER 13**  
**RECORDS OF CONVICTION AND SENTENCE (s 87)**

**87 Expungement of records of certain convictions and diversion orders**

- (1) (a) Where a court has convicted a child of an offence referred to in Schedule 1 or 2, the conviction and sentence in question fall away as a previous conviction and the criminal record of that child must, subject to subsections (2), (3) and (5), on the written application of the child, his or her parent, appropriate person or guardian (hereafter referred to as the applicant), in the prescribed form, be expunged after a period of-
- (i) five years has elapsed after the date of conviction in the case of an offence referred to in Schedule 1; or
  - (ii) 10 years has elapsed after the date of conviction in the case of an offence referred to in Schedule 2,
- unless during that period the child is convicted of a similar or more serious offence.
- (b) In the case of a dispute or uncertainty as to whether another offence of which a child is convicted during the period is similar to or more serious than the offence in respect of which a record exists, the opinion of the Cabinet member responsible for the administration of justice prevails.
- (2) The Director-General: Justice and Constitutional Development must, on receipt of the written application of an applicant referred to in subsection (1), issue a prescribed certificate of expungement, directing that the conviction and sentence of the child be expunged, if the Director-General is satisfied that the child complies with the criteria set out in subsection (1).
- (3) Notwithstanding the provisions of subsection (1), the Cabinet

member responsible for the administration of justice may, on receipt of an applicant's written application in the prescribed form, issue a prescribed certificate of expungement, directing that the conviction and sentence of the child be expunged, if he or she is satisfied that exceptional circumstances exist which justify expungement, where, in the case of the child-

- (a) the period of five years, referred to in subsection (1) (a) (i); or
- (b) the period of 10 years, referred to in subsection (1) (a) (ii),

has not yet elapsed, if the Cabinet member responsible for the administration of justice is satisfied that the child otherwise complies with the criteria set out in subsection (1).

- (4) An applicant to whom a certificate of expungement has been issued as provided for in subsection (2) or (3) must, in the prescribed manner, submit the certificate to the head of the Criminal Record Centre of the South African Police Service, to be dealt with in accordance with subsection (5).
- (5) (a) The head of the Criminal Record Centre of the South African Police Service or a senior person or persons at the rank of Director or above, employed at the Centre, who has or have been authorised, in writing, by the head of the Centre to do so, must expunge the criminal record of a child if he or she is furnished by the applicant with a certificate of expungement as provided for in subsection (2) or (3).
- (b) The head of the Criminal Record Centre of the South African Police Service must, on the written request of an applicant, in writing, confirm that the criminal record of the child has been expunged.
- (c) Any person who-
  - (i) without the authority of a certificate of expungement as provided for in this section; or



(ii) intentionally or in a grossly negligent manner,

expunges the criminal record of any child, is guilty of an offence and is, if convicted, liable to a fine or to a sentence of imprisonment for a period not exceeding 10 years or to both a fine and the imprisonment.

- (6) The Director-General: Social Development must, in the prescribed manner, expunge the record of any diversion order made in respect of a child in terms of this Act on the date on which that child turns 21 years of age, unless the child has been convicted of any other offence before that date or has failed to comply with the diversion order in question.
- (7) Where the Director-General: Justice and Constitutional Development, in terms of subsection (2), or the Minister, in terms of subsection (3), has issued a certificate of expungement and it subsequently appears that the applicant did not qualify for the expungement of his or her criminal record, the Director-General must-
- (a) inform the applicant in writing of the information that has come to his or her attention and that he or she or the Minister intends to revoke the certificate of expungement;
- (b) afford the applicant an opportunity to furnish compelling written reasons to him or her or the Minister within 90 working days after he or she is informed of the intention to revoke, why his or her record should remain expunged;
- (c) inform the applicant in writing within 30 working days after a decision is made of-
- (i) his or her or the Minister's decision; and
- (ii) the reasons for revoking the certificate of expungement; and

- (d) inform the head of the Criminal Record Centre of the South African Police Service, in writing within 14 working days after the decision was made, to revoke the certificate of expungement and to reinstate the convictions and sentences in question.

[Sub-s. (7) added by s. 40 of Act 42 of 2013 (wef 22 January 2014).]

- (8) If the applicant fails to furnish compelling reasons contemplated in subsection (1) (b), the Director-General or Minister, as the case may be, may, subject to the Promotion of Administrative Justice Act, 2000 (Act 2 of 2000), revoke the certificate of expungement.

[Sub-s. (8) added by s. 40 of Act 42 of 2013 (wef 22 January 2014).]

- (9) (a) The Director-General: Justice and Constitutional Development may delegate any power or assign any duty conferred upon or assigned to him or her in terms of subsection (2) to an appropriately qualified official in the employ of the Department of Justice and Constitutional Development at the rank of Deputy Director-General.

- (b) A delegation or assignment in terms of paragraph (a)-

- (i) is subject to any limitation, condition and direction which the Director-General may impose;
- (ii) must be in writing; and
- (iii) does not divest the Director-General of the responsibility concerning the exercise of the power or the performance of the duty.

- (c) The Director-General may-

- (i) confirm, vary or revoke any decision taken in consequence of a delegation or assignment in terms of this

subsection, subject to any rights that may have accrued to a person as a result of the decision; and

- (ii) at any time, in writing, withdraw a delegation or assignment.

[Sub-s. (9) added by s. 40 of Act 42 of 2013 (wef 22 January 2014).]

**CHAPTER 14**  
**GENERAL PROVISIONS (ss 88-100)**  
**88 Rules of Court**

- (1) The Cabinet member responsible for the administration of justice may, after due consideration of any proposal put forward by the Rules Board for Courts of Law, established by section 2 of the Rules Board for Courts of Law Act, 1985 (Act 107 of 1985), make and implement rules in respect of any aspect of this Act.
- (2) Any rule made in terms of subsection (1) must, before publication in the *Gazette*, be approved by Parliament.

**89 Establishment and jurisdiction of One-Stop Child Justice Centres**

- (1) The Cabinet member responsible for the administration of justice, in consultation with the Cabinet members responsible for social development, safety and security and correctional services, may establish centres to be known as One-Stop Child Justice Centres.
- (2) Each Cabinet member referred to in subsection (1) is severally responsible for the provision of resources and services by their respective departments as may be agreed to enable a One-Stop Child Justice Centre to function effectively.
- (3) The objective of a One-Stop Child Justice Centre is to promote

co-operation between government departments, and between government departments and the non-governmental sector and civil society, to ensure an integrated and holistic approach in the implementation of this Act.

- (4) A One-Stop Child Justice Centre must have a child justice court and may include-
- (a) offices for use by members of the South African Police Service;
  - (b) offices for use by probation officers;
  - (c) facilities to accommodate children temporarily, pending the conclusion of a preliminary inquiry;
  - (d) offices for use by a child's legal representative;
  - (e) offices for use by persons who are able to provide diversion and prevention services;
  - (f) offices for use by persons authorised to trace the families of a child;
  - (g) offices for use by persons who are able to provide correctional supervision;
  - (h) a children's court; and
  - (i) any other relevant facility.
- (5) (a) Each One-Stop Child Justice Centre must establish a management committee, consisting of senior officials of the Departments of Justice and Constitutional Development, Social Development and Correctional Services and the South African Police Service, Legal Aid South Africa and other relevant organs of state.

[Para. (a) amended by s. 25 (1) of Act 39 of 2014 (wef 1 March 2015).]

- (b) The management committee may invite persons to its meetings, when necessary, for technical assistance, support or advice.
- (c) The management committee referred to in paragraph (a) must meet at least once every three months.
- (6) For purposes of subsection (1), the Cabinet member responsible for the administration of justice may, by notice in the *Gazette*-
  - (a) define the area of jurisdiction of a One-Stop Child Justice Centre, which may consist of any number of districts, sub-districts or any other areas of jurisdiction created in terms of section 2 of the Magistrates' Courts Act, 1944 (Act 32 of 1944);
  - (b) increase or reduce the area of jurisdiction of each One-Stop Child Justice Centre; and
  - (c) withdraw or vary any notice under this subsection.

## **90 Referral of information relating to age to Department of Home Affairs**

- (1) If an inquiry magistrate, child justice court or any other court makes a determination of age as provided for in section 14 or 15 that is not supported by a valid birth certificate, identity document or passport, a copy of the record of the determination must be forwarded to the Department of Home Affairs to consider the issuing of an identification document to the person concerned.
- (2) The Department of Home Affairs must report back to the inquiry magistrate or child justice court, the probation officer in question, the child and his or her parent, appropriate person or guardian, in the manner prescribed by the Cabinet member responsible for the administration of justice, in consultation with the Cabinet member responsible for home affairs, that the age has been registered.

## **91 Liability for patrimonial loss arising from execution of diversion order**

Section 297A of the Criminal Procedure Act applies, with the changes required by the context, in the case of any patrimonial loss suffered by any person as a result of a delict committed by a child during the execution of a diversion order made in terms of this Act.

## **92 Persons using children to commit crime**

If it comes to the attention of any court official or probation officer that a child has been used by another person to commit a crime referred to in Schedule 1 or 2 of the Criminal Procedure Act, that person must be reported to the South African Police Service for the consideration of a prosecution as provided for in section 141 (1) (d), read with section 305 (1) (c), of the Children's Act, and the fact of the person's involvement must be taken into account when determining the treatment of the child in the child justice system.

[S. 92 substituted by s. 22 of Act 28 of 2019 (wef 19 August 2022).]

## **93 National policy framework**

- (1) The Cabinet member responsible for the administration of justice must, after consultation with the Cabinet members responsible for safety and security, correctional services, social development, education and health, adopt a national policy framework, relating to all matters dealt with in this Act, in order to-
  - (a) ensure a uniform, co-ordinated and cooperative approach by all government departments, organs of state and institutions in dealing with matters relating to child justice;
  - (b) guide the implementation and administration of this Act;

- (c) promote cooperation and communication with the non-governmental sector and civil society in order to ensure effective partnerships for the strengthening of the child justice system; and
  - (d) enhance service delivery as envisaged in this Act by the development of a plan within available resources.
- (2) The Cabinet member responsible for the administration of justice must-
- (a) within two months after the commencement of this Act, adopt and table the policy framework in Parliament;
  - (b) publish the policy framework in the *Gazette* for public comment two months after it has been tabled in Parliament;
  - (c) review the policy framework within three years after its publication in the *Gazette* and at least once every five years thereafter; and
  - (d) amend the policy framework when required, in which case the amendments must be tabled in Parliament and published in the *Gazette* for public comment, as provided for in paragraph (b).

#### **94 Establishment of Intersectoral Committee**

- (1) There is hereby established a Committee to be known as the Intersectoral Committee for Child Justice.
- (2) The Intersectoral Committee must consist of-
  - (a) the Director-General: Justice and Constitutional Development, who is the chairperson of the Committee;
  - (b) the National Director of Public Prosecutions;

- (c) the National Commissioner of the South African Police Service;
  - (d) the National Commissioner of Correctional Services;
  - (e) the Director-General: Social Development;
  - (f) the Director-General: Education; and
  - (g) the Director-General: Health.
- (3) A member of the Intersectoral Committee may designate a senior official in his or her Department as an alternate to attend a meeting of the Committee in his or her place.
- (4) (a) The Intersectoral Committee must designate one of its members as deputy chairperson of the Intersectoral Committee, and when the chairperson is not available, the deputy chairperson acts as chairperson.
- (b) If neither the chairperson nor deputy chairperson is available, the members present at a meeting must elect a person from among their number to preside at that meeting.
- (5) The Intersectoral Committee may invite-
- (a) representatives from the non-governmental sector and civil society to its meetings with the view to fostering co-operation between government and civil society in the implementation of this Act; and
  - (b) persons to its meetings, when necessary, for technical assistance, support or advice.

## **95 Meetings of Intersectoral Committee**

The Intersectoral Committee must-

- (a) meet at least twice every year on a date and at the time and



place determined by the chairperson; and

- (b) report in writing to the Cabinet member responsible for the administration of justice within one month of every meeting.

## **96 Responsibilities, functions and duties of Intersectoral Committee**

- (1) The Intersectoral Committee is responsible for developing a draft national policy framework, referred to in section 93 (1), which must include guidelines for-
  - (a) the implementation of the priorities and strategies contained in the national policy framework;
  - (b) measuring progress on the achievement of the national policy framework objectives;
  - (c) ensuring that the different organs of state comply with the primary and supporting roles and responsibilities allocated to them in terms of the national policy framework and this Act;
  - (d) monitoring the implementation of the national policy framework and this Act; and
  - (e) the establishment of an integrated information management system to enable effective monitoring, analysis of trends and interventions, to map the flow of children through the child justice system and to provide quantitative and qualitative data relating, among others, to-
    - (i) arrest or methods of securing attendance at criminal proceedings;
    - (ii) assessment;
    - (iii) preliminary inquiries;

- (iv) diversion;
  - (v) children awaiting trial;
  - (vi) bail and placement;
  - (vii) trials;
  - (viii) sentencing;
  - (ix) appeals and reviews;
  - (x) sexual offences committed by children;
  - (xi) children who lack criminal capacity as provided for in section 7 (1); and
  - (xii) any other relevant factor.
- (2) The Intersectoral Committee may make recommendations to the Cabinet member responsible for the administration of justice with regard to the amendment of the national policy framework.
- (3) The Cabinet member responsible for the administration of justice must, after consultation with the Cabinet members responsible for safety and security, correctional services, social development, education and health-
- (a) within one year after the commencement of this Act, submit reports to Parliament, by each Department or institution referred to in section 94 (2), on the implementation of this Act; and
  - (b) every year thereafter submit those reports to Parliament.

**[NB: Sub-s. (3) has been substituted by s. 19 of the Judicial Matters Amendment Act 24 of 2015, a provision which will be put into operation by proclamation. See PENDLEX.]**

- (4) In order for Parliament to review the minimum age of criminal capacity, as provided for in section 8, the Intersectoral Committee must, not later than five years after the commencement of section 5 of the Child Justice Amendment Act, 2019, submit a report to the Cabinet member responsible for the administration of justice, setting out the following:
- (a) The statistics of the following categories of children who are alleged to have committed an offence and the offences they are alleged to have committed:
- (i) and (ii) .....

[Sub-paras. (i) and (ii) omitted by s. 23 of Act 28 of 2019.]

- (iii) children who are 12 years at the time of the commission of the alleged offence;
- (iv) children who are 13 years at the time of the commission of the alleged offence;
- (b) sentences imposed on the children in the categories referred to in paragraph (a), if they were convicted;
- (c) the number of children referred to in paragraph (a) whose matters did not go to trial, as provided for in section 10 (2) (b) on the grounds that the prosecutor was of the view that criminal capacity would not be proved and reasons for that decision in each case;
- (d) the number of children referred to in paragraph (a) whose matters were dealt with in accordance with section 11, whether expert evidence was led, and the outcome of each matter regarding the establishment of criminal capacity;
- (e) an analysis of the statistics referred to in paragraphs (a) to (d); and

- (f) a recommendation based on the analysis as to whether the minimum age of criminal capacity should remain at 12 years as provided for in section 7 (1) or whether the minimum age of criminal capacity should be raised.

[Sub-s. (4) substituted by s. 23 of Act 28 of 2019 (wef 19 August 2022).]

- (5) The Cabinet member responsible for the administration of justice must, on receipt of the report referred to in subsection (4), submit the report to Cabinet for approval, and thereafter to Parliament for consideration.

## **97 Regulations, directives, national instructions and register**

- (1) The Cabinet member responsible for the administration of justice, after consultation, where appropriate, with the Cabinet members responsible for social development, safety and security, education, correctional services and health, may make regulations regarding any matter which is required or permitted by this Act to be prescribed by regulation or any other matter which is necessary or expedient to prescribe in order to achieve the objects of this Act.
- (2) The regulations referred to in subsection (1) must be tabled in Parliament for approval.
- (3) (a) The Cabinet member responsible for the administration of justice must by notice in the *Gazette*-
  - (i) determine the persons or the category or class of persons who are competent to conduct the evaluation of the criminal capacity of a child referred to in section 11 (3); and
  - (ii) in consultation with the Cabinet member responsible for finance, determine the allowances and remuneration of those persons.

- (b) Different categories or classes of persons may be determined for the purposes of the different aspects of development of a child referred to in section 11 (2) (b).
- (c) Different allowances and tariffs of remuneration may be determined for the persons referred to in paragraph (a), according to their calling, occupation and stations in life.

[Sub-s. (3) substituted by s. 6 of Act 14 of 2014 (wef 1 December 2017).]

- (4) (a) The National Director of Public Prosecutions must, in consultation with the Cabinet member responsible for the administration of justice, issue directives-
  - (i) regarding all matters which are reasonably necessary or expedient to be provided for in order to achieve the objectives of this Act, including diversion, the minimum standards applicable thereto and the factors to be considered when selecting a diversion option, and in particular the following:
    - (aa) The diversion of matters in the case of accused persons who, at the time referred to in section 4 (1) (b), were 18 years or older but under the age of 21 years, as provided for in section 4 (2); and
    - (bb) the diversion of matters by a prosecutor in respect of minor offences before a preliminary inquiry in terms of Chapter 6;
  - (ii) regarding the manner in which matters must be dealt with where an error as to age has been discovered subsequent to the matter being diverted as referred to in section 16; and
  - (iii) determining the exceptional circumstances in which a matter may be diverted, as provided for in section 52 (3).

- (b) The Cabinet member responsible for the administration of justice must submit directives issued under this subsection to Parliament for approval, before publication in the *Gazette*.
- (c) The first directives so issued must be submitted to Parliament before the commencement of this Act.
- (d) Any directive issued under this subsection may be amended or withdrawn.
- (e) The National Director of Public Prosecutions must develop training courses which must-
  - (i) include training on the directives referred to in this subsection;
  - (ii) include social context training in respect of child justice; and
  - (iii) provide for and promote the use of uniform norms, standards and procedures,

to ensure that all prosecutors are able to deal with child justice matters in an appropriate, efficient and sensitive manner.

- (5) (a) The National Commissioner of the South African Police Service must, after consultation with the Directors-General: Social Development, Justice and Constitutional Development and Education and the National Commissioner of Correctional Services, issue national instructions regulating-
  - (i) the attendance of and assistance by a parent, an appropriate person or a guardian when a child makes a confession, an admission, during a pointing-out or during the holding of an identity parade;
  - (ii) all aspects relating to the arrest of a child which are not regulated in section 20 and which, in the opinion of the

National Commissioner, require regulation in order to give full effect to that section, including what constitutes compelling reasons justifying an arrest in the case of offences referred to in Schedule 1 and the procedures to be followed when notifying a child's parent, an appropriate person or a guardian of the arrest;

- (iii) all aspects relating to the service of a summons which are not regulated in section 19 and which, in the opinion of the National Commissioner, require regulation in order to give full effect to that section;
- (iv) all aspects relating to a written notice by a police official which are not regulated in sections 18 and 23 and which, in the opinion of the National Commissioner, require regulation in order to give full effect to that section;
- (v) all aspects relating to the protection of children detained in police custody which are not regulated in section 28 and which, in the opinion of the National Commissioner, require regulation in order to give full effect to that section;
- (vi) all aspects relating to the treatment and conditions of children while in detention at a police cell or lock-up, preliminary inquiry or at a court which are not regulated in sections 28 and 33 and which, in the opinion of the National Commissioner, require regulation in order to give full effect to that section, including the provision of adequate exercise at police cells and the transportation of children to and from court;
- (vii) all aspects relating to locating a parent, appropriate person or guardian for purposes of attending an assessment as provided for in section 38 (6) in order to give full effect to that section;

- (viii) the manner in which police officials must furnish a report as provided for in section 22 (2); and
  - (ix) the issuing of a certificate expunging the criminal record of a child referred to in section 87 (5) (b).
- (b) The Cabinet member responsible for safety and security must-
- (i) submit any national instructions provided for in this subsection to Parliament 30 days before they are issued; and
  - (ii) after the expiry of the 30-day period publish them in the *Gazette*.
- (c) The first national instructions so issued must be submitted to Parliament before the commencement of this Act.
- (d) Any national instructions issued under this subsection may be amended or withdrawn.
- (e) The National Commissioner of the South African Police Service must develop training courses which must-
- (i) include training on the national instructions referred to in this subsection;
  - (ii) include social context training in respect of child justice; and
  - (iii) provide for and promote the use of uniform norms, standards and procedures,
- to ensure that all police officials are able to deal with child justice matters in an appropriate, efficient and sensitive manner.
- (6) (a) The Director-General: Social Development or any person



designated by him or her must keep a register, as prescribed, of children in respect of whom a decision has been made and recorded by a probation officer in terms of section 9 (6).

- (b) The register referred to in paragraph (a) must include the following:
    - (i) The personal details of each child;
    - (ii) details of the offence in relation to which the decision was made;
    - (iii) the decision that was made in respect of the child; and
    - (iv) particulars of the child's compliance with the decision, if applicable.
  - (c) Access to the register must be limited, as prescribed, to persons or organisations requiring the information for the purposes of record-keeping, monitoring and research.
- (7) For the purposes of section 29, the Director-General: Social Development must, from time to time, provide the Director-General: Justice and Constitutional Development and the National Commissioner of the South African Police Service with all relevant information relating to-
- (a) the location of all child and youth care centres in South Africa;
  - (b) the amenities and features of each centre; and
  - (c) the level of security offered by each centre.
- (8) The Directors-General: Social Development and Health and the National Commissioner of Correctional Services must each develop training courses which must-
- (i) include training on issues relevant to the respective departments as provided for in this Act;

- (ii) include social context training in respect of child justice; and
- (iii) provide for and promote the use of uniform norms, standards and procedures,

to ensure that all officials in their departments are able to deal with child justice matters in an appropriate, efficient and sensitive manner.

- (9) The directives or national instructions provided for in this section must ensure that adequate steps are taken against any functionary who fails to comply with any duty imposed on him or her in terms of this Act.
- (10) If Parliament is required in terms of any provision of this Act to approve any regulations, directives or national instructions, Parliament must do so within six months of those being tabled in Parliament, failing which they will be deemed to have been approved by Parliament.

## **98 Transitional arrangements**

- (1) All criminal proceedings in which children are accused of having committed an offence, which were instituted prior to the commencement of this Act and which are not concluded before the commencement of this Act, must be continued and concluded in all respects as if this Act had not been passed.
- (2) Every diversion programme and diversion service provider which existed at the time of the commencement of this Act may continue to operate until it has been informed of the decision in respect of its application as provided for in section 56 (2) (c) (iii).
- (3) The initial regulations referred to in section 97 (1) must be tabled in Parliament for approval by no later than 1 December

2009, and must be approved before the commencement of this Act, failing which they will be deemed to have been approved by Parliament.

- (4) Despite the provisions of section 4, a child who, before the commencement of this Act, was convicted of-
- (a) an offence referred to in Schedule 1 or 2; or
  - (b) any other offence under the common law or statute which has been repealed by the Acts referred to in-
    - (i) items 2, 13, 14 or 15 of Schedule 1; or
    - (ii) items 2, 13, 14, 15, 16, 17 or 21 of Schedule 2, may apply for the expungement of his or her criminal record in terms of section 87 of this Act.

[Sub-s. (4) added by s. 20 of Act 24 of 2015 (wef 8 January 2016).]

## **99 Repeal or amendment of laws**

- (1) The laws specified in Schedule 4 are hereby repealed or amended to the extent set out in the third column of that Schedule.
- (2) (a) The Cabinet member responsible for the administration of justice may amend the amounts determined in Schedules 1, 2 and 3 of this Act by notice in the *Gazette*.
- (b) Any amount amended as provided for in paragraph (a) must, before publication in the *Gazette*, be submitted to and approved by Parliament.

## **100 Short title and commencement**

This Act is called the Child Justice Act, 2008, and takes effect on 1 April 2010, or any earlier date fixed by the President by proclamation in the *Gazette*.

## Schedule 1

(Sections 6 (1) (a), 10 (2) (a) (i), 18 (1), 20 (1), 21 (2) (a) and (b) and (3) (b), 22 (1), 24 (2) (b), 27 (a) (ii), 30 (5) (a), 41 (1), 52 (2), 53 (2) (a), 54 (2) (a), 71 (1) (b), 77 (3) (c), 87 (1) (a) (i), 92 and 99 (2) (a))

1. Theft, whether under the common law or a statutory provision, receiving stolen property knowing it to have been stolen or theft by false pretences, where the amount involved does not exceed R2 500.
2. Fraud, extortion, forgery and uttering or an offence referred to in the Prevention and Combating of Corrupt Activities Act, 2004 (Act 12 of 2004), where the amount involved does not exceed R1 500.
3. Malicious injury to property, where the amount involved does not exceed R1 500.
4. Common assault where grievous bodily harm has not been inflicted.
5. Perjury.
6. Contempt of court.
7. Blasphemy.
8. Compounding.
9. *Crimen iniuria*.
10. Defamation.
11. Trespass.
12. Public Indecency.

13. Engaging sexual services of persons 18 years or older, referred to in section 11 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act 32 of 2007).
14. Bestiality, referred to in section 13 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007.
15. Acts of consensual sexual penetration with certain children (statutory rape) and acts of consensual sexual violation with certain children (statutory sexual assault), referred to in and subject to sections 15 and 16 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, respectively.
16. Any offence under any law relating to the illicit possession of dependence producing drugs, other than any offence referred to in Item 17 of this Schedule, where the quantity involved does not exceed R500 in value.
17. Any other statutory offence where the maximum penalty determined by that statute is imprisonment for a period of no longer than three months or a fine for that period, calculated in accordance with the Adjustment of Fines Act, 1991 (Act 101 of 1991).
18. Any conspiracy, incitement or attempt to commit any offence referred to in this Schedule.

## Schedule 2

(Sections 6 (1) (b), 21 (2) (b) and (3) (b), 24 (2) (b), 27 (a) (ii) and (b), 52 (2), 53 (2) (b), 54 (2) (b), 77 (3) (b), 87 (1) (a) (ii), 92 and 99 (2) (a))

[Schedule 2 amended by s. 58 of Act 19 of 2020 (wef 1 December 2021).]

1. Theft, whether under the common law or a statutory provision, receiving stolen property knowing it to have been stolen, or theft by false pretences, where the amount involved exceeds R2 500.
2. Fraud, extortion, forgery and uttering or an offence referred to in the Prevention and Combating of Corrupt Activities Act, 2004 (Act 12 of 2004), where the amount involved exceeds R1 500.
3. Robbery, other than robbery with aggravating circumstances.
4. Malicious injury to property, where the amount involved exceeds R1 500.
5. Assault, involving the infliction of grievous bodily harm.
6. Public violence.
7. Culpable homicide.
8. Arson.
9. Housebreaking, whether under the common law or a statutory provision, with the intent to commit an offence.
10. Administering poisonous or noxious substance.
11. *Crimen expositionis infantis*.

12. Abduction.
13. Sexual assault, compelled sexual assault or compelled self-sexual assault referred to in sections 5, 6 and 7 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act 32 of 2007), respectively, where grievous bodily harm has not been inflicted.
14. Compelling or causing persons 18 years or older to witness sexual offences, sexual acts or self-masturbation, referred to in section 8 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007.
15. Exposure or display of or causing exposure or display of child pornography or pornography as referred to in sections 10 or 19 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, respectively.
16. Incest and sexual acts with a corpse, referred to in sections 12 and 14 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, respectively.
17. Exposure or display of or causing exposure or display of genital organs, anus or female breasts to any person ('flashing'), referred to in sections 9 or 22 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007.
18. Violating a dead body or grave.
19. Defeating or obstructing the course of justice.
20. Any offence referred to in section 1 or 1A of the Intimidation Act, 1982 (Act 72 of 1982).
21. Any offence relating to criminal gang activities referred to in Chapter 4 of the Prevention of Organised Crime Act, 1998 (Act 121 of 1998).

22. Any contravention of section 2 of the Animals Protection Act, 1962 (Act 71 of 1962).
23. Any offence under any law relating to the illicit possession of dependence producing drugs, other than any offence referred to in Item 24 of this Schedule, where the quantity involved exceeds R500 but does not exceed R5 000 in value.
24. Any other statutory offence where the maximum penalty determined by that statute is imprisonment for a period exceeding three months but less than five years or a fine for that period, calculated in accordance with the Adjustment of Fines Act, 1991 (Act 101 of 1991).
25. Any conspiracy, incitement or attempt to commit any offence referred to in this Schedule.
26. Any offence contemplated in-
  - (a) section 2, 3 or 4 of the Cybercrimes Act, 2020;
  - (b) section 5, 6, 7 or 11 (1) of the Cybercrimes Act, 2020, where the damage caused does not exceed an amount of R5 000;
  - (c) section 14, 15 or 16 of the Cybercrimes Act, 2020; or
  - (d) section 8, 9 or 10 of the Cybercrimes Act, 2020, where the amount involved does not exceed R1 500.

[Item 26 added by s. 58 of Act 19 of 2020 (wef 1 December 2021).]

27. An offence contemplated in section 11A (1) and (2) of Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007.

[Item 27 added by s. 58 of Act 19 of 2020 (wef 1 December 2021).]



### Schedule 3

(Sections 6 (1) (c), 30 (1) (c), (2) and (5) (a), 52 (3) (a), 53 (2) (b), 54 (2) (b), 76 (3), 77 (3) (a) and 99 (2) (a))

[Schedule 3 amended by s. 48 of Act 7 of 2013 (wef 9 August 2015) and by s. 58 of Act 19 of 2020 (wef 1 December 2021).]

1. Treason.
2. Sedition.
3. Murder.
4. Extortion, where there are aggravating circumstances present.
5. Kidnapping.
6. Robbery-
  - (a) where there are aggravating circumstances; or
  - (b) involving the taking of a motor vehicle.
7. Rape or compelled rape referred to in sections 3 and 4 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act 32 of 2007), respectively.
8. Sexual assault, compelled sexual assault or compelled self-sexual assault referred to in sections 5, 6 and 7 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, respectively, involving the infliction of grievous bodily harm.
9. Sexual exploitation of children, sexual grooming of children and using children for or benefiting from child pornography, referred to in sections 17, 18 and 20 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, respectively.

10. Exposure or display of or causing exposure or display of child pornography or pornography to children referred to in section 19 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, if that exposure or display is intended to facilitate or promote-
  - (a) the sexual exploitation or sexual grooming of a child referred to in section 17 or 18 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, respectively; or
  - (b) the use of a child for purposes of child pornography or in order to benefit in any manner from child pornography, as provided for in section 20 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007.
11. Compelling or causing children to witness sexual offences, sexual acts or self-masturbation referred to in section 21 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007.
12. Sexual exploitation of persons who are mentally disabled, sexual grooming of persons who are mentally disabled, exposure or display of or causing exposure or display of child pornography or pornography to persons who are mentally disabled or using persons who are mentally disabled for pornographic purposes or benefiting therefrom, referred to in sections 23, 24, 25, and 26 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, respectively.
13. Any offence provided for in sections 4, 5, 6, or 7 or involvement in these offences as provided for in section 10 of the Prevention and Combating of Trafficking in Persons Act, 2013.

[Item 13 substituted by s. 48 of Act 7 of 2013 (wef 9 August 2015).]

14. Any offence referred to in Parts 1, 2 and 3 of Chapter 2 of the Protection of Constitutional Democracy against Terrorist and Related Activities Act, 2004 (Act 33 of 2004).
15. Any offence relating to-
  - (a) racketeering activities referred to in Chapter 2; or
  - (b) the proceeds of unlawful activities referred to in Chapter 3, of the Prevention of Organised Crime Act, 1998 (Act 121 of 1998).
16. The crimes of genocide, crimes against humanity and war crimes referred to in the Implementation of the Rome Statute of the International Criminal Court Act, 2002 (Act 27 of 2002).
17. Any offence under any law relating to-
  - (a) the dealing in or smuggling of ammunition, firearms, explosives or armament;
  - (b) the possession of firearms, explosives or armament.
18. Any offence referred to in section 13 (*f*) of the Drugs and Drug Trafficking Act, 1992 (Act 140 of 1992).
19. Any offence of a serious nature if it is alleged that the offence was committed by a person, group of persons, syndicate or any enterprise, acting in the execution or furtherance of a common purpose or conspiracy.
20. Any offence under any law relating to the illicit possession of dependence producing drugs, other than an offence referred to in Item 21 of this Schedule, where the quantity involved exceeds R5 000 in value.

21. Any other statutory offence where the maximum penalty determined by that statute is imprisonment for a period exceeding five years or a fine for that period, calculated in accordance with the Adjustment of Fines Act, 1991 (Act 101 of 1991).
22. Any conspiracy, incitement or attempt to commit any offence referred to in this Schedule.
23. Any offence contemplated in-
- (a) section 5, 6, 7 or 11 (1) of the Cybercrimes Act, 2020, where the damage caused exceeds an amount of R5 000;
- (b) section 8, 9 or 10 of the Cybercrimes Act, 2020, where the amount involved exceeds R1 500; or
- (c) section 11 (2) of the Cybercrimes Act, 2020.
- [Item 23 added by s. 58 of Act 19 of 2020 (wef 1 December 2021).]
24. An offence contemplated in section 11A (3) of Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007.
- [Item 24 added by s. 58 of Act 19 of 2020 (wef 1 December 2021).]

#### **Schedule 4**

(Section 99 (1))

No. and year of law	Short title	Extent of repeal or amendment
Act 8 of 1959	Correctional Services Act, 1959	Repeals section 29.

No. and year of law	Short title	Extent of repeal or amendment
Act 71 of 1968	Dangerous Weapons Act, 1968	Amends section 4 by substituting subsection (2).
Act 51 of 1977	Criminal Procedure Act, 1977	(a) Amends section 7 by substituting subsection (1).
Act 51 of 1977	Criminal Procedure Act, 1977	(b) Substitutes section 38.
		(c) Amends section 50 by deleting subsections (4) and (5).
		(d) Amends section 55; as follows: paragraph (i) substitutes subsection (1); and paragraph (ii) inserts subsection (1A).
		(e) Repeals section 71.
		(f) Amends section 72; as follows: paragraph (i) substitutes the introductory part of subsection (1); and paragraph (ii) deletes subsections (1) (b) and (2) (b).
		(g) Amends section 73 by substituting subsection (3).
		(h) Repeals section 74.

No. and year of law	Short title	Extent of repeal or amendment
		<p>(i) Amends section 153; as follows: paragraph (i) substitutes subsection (1); and paragraph (ii) deletes subsection (4).</p> <p>(j) Substitutes section 211.</p>
Act 51 of 1977	Criminal Procedure Act, 1977	<p>(k) Repeals section 254.</p> <p>(l) Amends section 276A by substituting subsections (1) and (2).</p> <p>(m) Repeals section 290.</p> <p>(n) Repeals section 291.</p> <p>(o) Amends section 297; as follows: paragraph (i) deletes subsection (1A); and paragraph (ii) substitutes the words following on subsection (9) (a) (ii).</p> <p>(p) Amends section 302 (1) (a) by substituting paragraph (i).</p>

No. and year of law	Short title	Extent of repeal or amendment
		(q) Amends section 309 (1) by substituting paragraph (a).
		(r) Amends section 309B (1) by substituting paragraph (a).
Act 51 of 1977	Criminal Procedure Act, 1977	(s) Amends section 309D (1) by substituting paragraph (a).
		(t) Amends section 316 (1); as follows: paragraph (i) substitutes paragraph (a); and paragraph (ii) deletes paragraph (c).
		(u) Substitutes section 337.

No. and year of law	Short title	Extent of repeal or amendment
Act 116 of 1991	Probation Services Act, 1991	(a) Amends section 1 by the substitution for the definition of 'assessment'.

No. and year of law	Short title	Extent of repeal or amendment
		(b) Amends section 1 by substituting the definition of 'diversion'.
		(c) Amends section 1 by substituting the definition of 'diversion programme'.
Act 116 of 1991	Probation Services Act, 1991	(d) Amends section 1 by substituting the definition of 'family group conferencing'.
Act 116 of 1991	Probation Services Act, 1991	(e) Amends section 3 (e) and (f) by substituting the expression 'child and youth care centre providing a programme contemplated in section 191 (2) (j) of the Children's Act, 2005 (Act 38 of 2005)' for the expression 'reform school', wherever it appears.
		(f) Amends section 4 by substituting subsection (3).
		(g) Repeals section 4B.



<b>No. and year of law</b>	<b>Short title</b>	<b>Extent of repeal or amendment</b>
Act 13 of 2004	Social Assistance Act, 2004	Amends in section 1 the definitions of 'foster child' and 'foster parent' by substituting the expression 'section 72 or 76 of the Child Justice Act, 2008' for the expression 'section 290 of the Criminal Procedure Act, 1977'.
Act 111 of 1998	Correctional Services Act, 1998	(a) Amends section 43 by substituting subsection (4).
Act 111 of 1998	Correctional Services Act, 1998	<p>(b) Amends-</p> <p>(i) section 50 (1); and</p> <p>(ii) section 52 (2) (b),</p> <p>by substituting the expression 'section 24 (4) (d) or 26 of the Child Justice Act, 2008' for the expression 'section 71 of the Criminal Procedure Act' wherever it appears.</p> <p>(c) Amends section 51 (1) by substituting paragraph (e).</p>
Act 38 of 2005	Children's Act, 2005	(a) Amends section 167 (1) by substituting paragraph (b).
		(b) Amends section 191 (2) by substituting paragraph (j).

## Schedule 5

### AUDIT OF THE PROVISIONS OF THE CRIMINAL PROCEDURE ACT AND THEIR RELATIONSHIP WITH THE CHILD JUSTICE BILL

(Section 4 (3) (b))

#### Explanatory notes:

This Schedule contains an exposition of the interface between the Criminal Procedure Act, 1977, and the Child Justice Act, 2008. It provides guidelines for persons involved in the application of the Child Justice Act. **This Schedule does not form part of the Act and does not have the force of law.** It is intended only to provide guidance and clarity in respect of the procedures contained in both Acts.

This Schedule should be seen in the context that the Child Justice Act creates numerous new procedures which are not evident from the exposition. The blank spaces in the third column indicate those sections of the Criminal Procedure Act (the CPA) which have not been affected by the Child Justice Act (the CJA) and which would still apply in respect of children.

Moreover, section 4 of the Child Justice Act provides that the Criminal Procedure Act applies in relation to children, except in so far as the Child Justice Act provides for amended, additional or different procedures.

Section no.	Criminal Procedure Act section heading	Extent to which affected by Child Justice Act (CJA)
1	Definitions	
6	Power to withdraw charge or stop prosecution	

Section no.	Criminal Procedure Act section heading	Extent to which affected by Child Justice Act (CJA)
7	Private prosecution on certificate <i>nolle prosequi</i>	Subsection (1) amended by Schedule 4 CJA (item (a) under amendments to the CPA)
8	Private prosecution under statutory right	
9	Security by private prosecutor	
10	Private prosecution in name of private prosecutor	
11	Failure of private prosecutor to appear	
12	Mode of conducting private prosecution	
13	Attorney-general may intervene in private prosecution	
14	Costs in respect of process	
15	Costs of private prosecution	
16	Costs of accused in private prosecution	
17	Taxation of costs	
18	Prescription of right to institute prosecution	

<b>Section no.</b>	<b>Criminal Procedure Act section heading</b>	<b>Extent to which affected by Child Justice Act (CJA)</b>
19	Saving as to certain powers conferred by other laws	
20	State may seize certain articles	
21	Article to be seized under search warrant	
22	Circumstances in which article may be seized without search warrant	
23	Search of arrested person and seizure of article	
24	Search of premises	
25	Power of police to enter premises in connection with State security or any offence	
26	Entering of premises for purposes of obtaining evidence	
27	Resistance against entry or search	
28	Wrongful search an offence, and award of damages	
29	Search to be conducted in decent and orderly manner	

Section no.	Criminal Procedure Act section heading	Extent to which affected by Child Justice Act (CJA)
30	Disposal by police official of article after seizure	
31	Disposal of article where no criminal proceedings are instituted or where it is not required for criminal proceedings	
32	Disposal of article where criminal proceedings are instituted and admission of guilt fine is paid	
33	Article to be transferred to court for purposes of trial	
34	Disposal of article after commencement of criminal proceedings	
35	Forfeiture of article to State	
36	Disposal of article concerned in an offence committed outside Republic	
37	Powers in respect of prints and bodily appearance of accused	
38	Methods of securing attendance of accused in court	Amended by Schedule 4 CJA (item (b) under amendments to the CPA) Section 17 CJA applies

<b>Section no.</b>	<b>Criminal Procedure Act section heading</b>	<b>Extent to which affected by Child Justice Act (CJA)</b>
39	Manner and effect of arrest	
40	Arrest by peace officer without warrant	
41	Name and address of certain persons and power of arrest by peace officer without warrant	
42	Arrest by private person without warrant	
43	Warrant of arrest may be issued by magistrate or justice	To be read with section 20 (2) CJA
44	Execution of warrants	
45	Arrest on telegraphic authority	
46	Non-liability for wrongful arrest	
47	Private persons to assist in arrest when called upon	
48	Breaking open premises for purpose of arrest	
49	Use of force in effecting arrest	

Section no.	Criminal Procedure Act section heading	Extent to which affected by Child Justice Act (CJA)
50	Procedure after arrest	*Subsections (4) and (5) to be deleted by Schedule 4 CJA (item (c) under amendments to the CPA) *Subsection (1) (d) referred to in section 20 (5) CJA *Section referred to in clause 43 (3) (c) CJA *Subsection (1) (d) referred to in section 48 (6) CJA *Subsection (6) (d) referred to in section 66 (2)
51	Escaping and aiding escaping before incarceration, and penalties therefore	
52	Saving of other powers of arrest	
53	Saving of civil law rights and liability	
54	Summons as method of securing attendance of accused in magistrate's court	To be read with section 19 (1) CJA
55	Failure of accused to appear on summons	Subsection (1) amended by Schedule 4 CJA (item (d) under amendments to the CPA)
56	Written notice as method of securing attendance of accused in magistrate's court	To be read with section 18 (1) and (2) CJA

<b>Section no.</b>	<b>Criminal Procedure Act section heading</b>	<b>Extent to which affected by Child Justice Act (CJA)</b>
57	Admission of guilt and payment of fine without appearance in court	To be read with section 18 (2) CJA
58	Effect of bail	To be read with section 25 CJA
59	Bail before first appearance of accused in lower court	To be read with section 25 (1) CJA
59A	Attorney-general may authorise release on bail	To be read with sections 21 (2) (b) and 25 (1) CJA
60	Bail application of accused in court	To be read with section 25 CJA
62	Court may add further conditions of bail	
63	Amendment of conditions of bail	
63A	Release or amendment of bail conditions of accused on account of prison conditions	
64	Proceedings with regard to bail and conditions to be recorded in full	
65	Appeal to superior court with regard to bail	



Section no.	Criminal Procedure Act section heading	Extent to which affected by Child Justice Act (CJA)
65A	Appeal by attorney-general against decision of court to release accused on bail	
66	Failure by accused to observe condition of bail	
67	Failure of accused on bail to appear	
67A	Criminal liability of a person who is on bail on the ground of failure to appear or to comply with a condition of bail	
68	Cancellation of bail	
68A	Cancellation of bail at request of accused	
69	Payment of bail money by third person	
70	Remission of bail money	
71	Juvenile may be placed in place of safety or under supervision in lieu of release on bail or detention in custody	*To be repealed by Schedule 4 CJA (item (e) under amendments to the CPA) *Section 27 CJA applies

Section no.	Criminal Procedure Act section heading	Extent to which affected by Child Justice Act (CJA)
72	Accused may be released on warning in lieu of bail	Subsections (1) and (2) amended by Schedule 4 CJA (item <i>f</i> ) under amendments to the CPA) Clauses 22 and 24 CJA apply
72A	Cancellation of release on warning	
73	Accused entitled to assistance after arrest and at criminal proceedings	Subsection (3) amended by Schedule 4 CJA (item <i>g</i> ) under amendments to the CPA)
74	Parent or guardian of accused under eighteen years to attend proceedings	*To be repealed by Schedule 4 CJA (item <i>h</i> ) under amendments to the CPA) *Sections 3 ( <i>g</i> ), 38 (2), 44 (1) ( <i>b</i> ) and 65 CJA apply
75	Summary trial and court of trial	
76	Charge-sheet and proof of record of criminal case	
77	Capacity of accused to understand proceedings	Referred to in section 48 (5) ( <i>b</i> ) CJA
78	Mental illness or mental defect and criminal responsibility	Referred to in section 48 (5) ( <i>b</i> ) CJA

<b>Section no.</b>	<b>Criminal Procedure Act section heading</b>	<b>Extent to which affected by Child Justice Act (CJA)</b>
79	Panel for purposes of enquiry and report under sections 77 and 78	
80	Accused may examine charge	
81	Joinder of charges	To be read with section 6 (2) and (3) CJA
82	Several charges to be disposed of by same court	
83	Charge where it is doubtful what offence committed	
84	Essentials of charge	
85	Objection to charge	
86	Court may order that charge be amended	
87	Court may order delivery of particulars	
88	Defect in charge cured by evidence	
89	Previous conviction not to be alleged in charge	

Section no.	Criminal Procedure Act section heading	Extent to which affected by Child Justice Act (CJA)
90	Charge need not specify or negative exception, exemption, proviso, excuse or qualification	
91	Charge need not state manner or means of act	
92	Certain omissions or imperfections not to invalidate charge	
93	Alibi and date of act or offence	
94	Charge may allege commission of offence on divers occasions	
95	Rules applicable to particular charges	
96	Naming of company, firm or partnership in charge	
97	Naming of joint owners of property in charge	
98	Charge of murder or culpable homicide sufficient if it alleges fact of killing	
99	Charge relating to document sufficient if it refers to document by name	

<b>Section no.</b>	<b>Criminal Procedure Act section heading</b>	<b>Extent to which affected by Child Justice Act (CJA)</b>
100	Charge alleging theft may allege general deficiency	
101	Charge relating to false evidence	
102	Charge relating to insolvency	
103	Charge alleging intent to defraud need not allege or prove such intent in respect of particular person or mention owner of property or set forth details of deceit	
104	Reference in charge to objectionable matter not necessary	
105	Accused to plead to charge	
105A	Plea and sentence agreements	
106	Pleas	
107	Truth and publication for public benefit of defamatory matter to be specially pleaded	
108	Issues raised by plea to be tried	
109	Accused refusing to plead	

<b>Section no.</b>	<b>Criminal Procedure Act section heading</b>	<b>Extent to which affected by Child Justice Act (CJA)</b>
110	Accused brought before court which has no jurisdiction	
111	Minister may remove trial to jurisdiction of another attorney-general	
112	Plea of guilty	
113	Correction of plea of guilty	
114	Committal by magistrate's court of accused for sentence by regional court after plea of guilty	
115	Plea of not guilty and procedure with regard to issues	
115A	Committal of accused for trial by regional court	
116	Committal of accused for sentence by regional court after trial in magistrate's court	
117	Committal to superior court in special case	
118	Non-availability of judicial officer after plea of not guilty	

<b>Section no.</b>	<b>Criminal Procedure Act section heading</b>	<b>Extent to which affected by Child Justice Act (CJA)</b>
119	Accused to plead in magistrate's court on instructions of attorney-general	
120	Charge-sheet and proof of record	
121	Plea of guilty	
122	Plea of not guilty	
122A	Accused to plead in magistrate's court on charge to be tried in regional court	
122B	Charge-sheet and proof of record	
122C	Plea of guilty	
122D	Plea of not guilty	
123	Attorney-general may instruct that preparatory examination be held	
124	Proceedings preceding holding of preparatory examination to form part of preparatory examination record	
125	Attorney-general may direct that preparatory examination be conducted at a specified place	

<b>Section no.</b>	<b>Criminal Procedure Act section heading</b>	<b>Extent to which affected by Child Justice Act (CJA)</b>
126	Procedure to be followed by magistrate at preparatory examination	
127	Recalling of witnesses after conversion of trial into preparatory examination	
128	Examination of prosecution witnesses at preparatory examination	
129	Recording of evidence at preparatory examination and proof of record	
130	Charge to be put at conclusion of evidence for prosecution	
131	Accused to plead to charge	
132	Procedure after plea	
133	Accused may testify at preparatory examination	
134	Accused may call witnesses at preparatory examination	
135	Discharge of accused at conclusion of preparatory examination	



<b>Section no.</b>	<b>Criminal Procedure Act section heading</b>	<b>Extent to which affected by Child Justice Act (CJA)</b>
136	Procedure with regard to exhibits at preparatory examination	
137	Magistrate to transmit record of preparatory examination to attorney-general	
138	Preparatory examination may be continued before different judicial officer	
139	Attorney-general may arraign accused for sentence or trial	
140	Procedure where accused arraigned for sentence	
141	Procedure where accused arraigned for trial	
142	Procedure where attorney-general declines to prosecute	
143	Accused may inspect preparatory examination record and is entitled to copy thereof	
144	Charge in superior court to be laid in an indictment	
145	Trial in superior court by judge sitting with or without assessors	

Section no.	Criminal Procedure Act section heading	Extent to which affected by Child Justice Act (CJA)
146	Reasons for decision by superior court in criminal trial	
147	Death or incapacity of assessor	
149	Change of venue in superior court after indictment has been lodged	
150	Prosecutor may address court and adduce evidence	
151	Accused may address court and adduce evidence	
152	Criminal proceedings to be conducted in open court	
153	Circumstances in which criminal proceedings shall not take place in open court	*Subsection (4) to be deleted by Schedule 4 CJA (item (i) under amendments to the CPA) *Subsection (1) amended by Schedule 4 CJA
154	Prohibition of publication of certain information relating to criminal proceedings	Referred to in sections 45 (1) and 63 (6) CJA
155	Persons implicated in same offence may be tried together	Referred to in section 63 (2) CJA

<b>Section no.</b>	<b>Criminal Procedure Act section heading</b>	<b>Extent to which affected by Child Justice Act (CJA)</b>
156	Persons committing separate offences at same time and place may be tried together	Referred to in section 63 (2) CJA
157	Joinder of accused and separation of trials	Referred to in section 63 (2) CJA
158	Criminal proceedings to take place in presence of accused	
159	Circumstances in which criminal proceedings may take place in absence of accused	
160	Procedure at criminal proceedings where accused is absent	
161	Witness to testify <i>viva voce</i>	
162	Witness to be examined under oath	
163	Affirmation in lieu of oath	
164	When unsworn or unaffirmed evidence admissible	
165	Oath, affirmation or admonition may be administered by or through interpreter or intermediary	

<b>Section no.</b>	<b>Criminal Procedure Act section heading</b>	<b>Extent to which affected by Child Justice Act (CJA)</b>
166	Cross-examination and re-examination of witnesses	
167	Court may examine witness or person in attendance	
168	Court may adjourn proceedings to any date	
169	Court may adjourn proceedings to any place	
170	Failure of accused to appear after adjournment or to remain in attendance	
170A	Evidence through intermediaries	
171	Evidence on commission	
172	Parties may examine witness	
173	Evidence on commission part of court record	
174	Accused may be discharged at close of case for prosecution	
175	Prosecution and defence may address court at conclusion of evidence	

<b>Section no.</b>	<b>Criminal Procedure Act section heading</b>	<b>Extent to which affected by Child Justice Act (CJA)</b>
176	Judgment may be corrected	
177	Court may defer final decision	
178	Arrest of person committing offence in court and removal from court of person disturbing proceedings	
179	Process for securing attendance of witness	
180	Service of subpoena	
181	Pre-payment of witness expenses	
182	Witness from prison	
183	Witness to keep police informed of whereabouts	
184	Witness about to abscond and witness evading service of summons	
185	Detention of witness	
186	Court may subpoena witness	
187	Witness to attend proceedings and to remain in attendance	

<b>Section no.</b>	<b>Criminal Procedure Act section heading</b>	<b>Extent to which affected by Child Justice Act (CJA)</b>
188	Failure by witness to attend or to remain in attendance	
189	Powers of court with regard to recalcitrant witness	
190	Impeachment or support of credibility of witness	
191	Payment of expenses of witness	
191A	Witness services	
192	Every witness competent and compellable unless expressly excluded	
193	Court to decide upon competency of witness	
194	Incompetency due to state of mind	
195	Evidence for prosecution by husband or wife of accused	
196	Evidence of accused and husband or wife on behalf of accused	
197	Privileges of accused when giving evidence	

<b>Section no.</b>	<b>Criminal Procedure Act section heading</b>	<b>Extent to which affected by Child Justice Act (CJA)</b>
198	Privilege arising out of marital state	
199	No witness compelled to answer question which the witness's husband or wife may decline	
200	Witness not excused from answer establishing civil liability on his part	
201	Privilege of legal practitioner	
202	Privilege from disclosure on ground of public policy or public interest	
203	Witness excused from answering incriminating question	
204	Incriminating evidence by witness for prosecution	
205	Judge, regional court magistrate or magistrate may take evidence as to alleged offence	
206	The law in cases not provided for	
207	Saving of special provisions in other laws	

<b>Section no.</b>	<b>Criminal Procedure Act section heading</b>	<b>Extent to which affected by Child Justice Act (CJA)</b>
208	Conviction may follow on evidence of single witness	
209	Conviction may follow on confession by accused	
210	Irrelevant evidence inadmissible	
211	Evidence during criminal proceedings of previous convictions	Amended by Schedule 4 CJA (item (j) under amendments to the CPA)
212	Proof of certain facts by affidavit or certificate	
212A	Proof of certain facts by affidavit from person in foreign country	
212B	Proof of undisputed facts	
213	Proof of written statement by consent	
214	Evidence recorded at preparatory examination admissible at trial in certain circumstances	
215	Evidence recorded at former trial admissible at later trial in certain circumstances	
217	Admissibility of confession by accused	



<b>Section no.</b>	<b>Criminal Procedure Act section heading</b>	<b>Extent to which affected by Child Justice Act (CJA)</b>
218	Admissibility of facts discovered by means of inadmissible confession	
219	Confession not admissible against another	
219A	Admissibility of admission by accused	
220	Admissions	Referred to in section 58 (4) (b) CJA
221	Admissibility of certain trade or business records	
222	Application to criminal proceedings of certain provisions of Civil Proceedings Evidence Act, 1965, relating to documentary evidence	
224	Judicial notice of laws and other published matter	
225	Evidence of prints or bodily appearance of accused	
226	Evidence of no sexual intercourse between spouses admissible	
227	Evidence of character	

<b>Section no.</b>	<b>Criminal Procedure Act section heading</b>	<b>Extent to which affected by Child Justice Act (CJA)</b>
228	Evidence of disputed writing	
229	Evidence of times of sunrise and sunset	
230	Evidence and sufficiency of evidence of appointment to public office	
231	Evidence of signature of public officer	
232	Article may be proved in evidence by means of photograph thereof	
233	Proof of public documents	
234	Proof of official documents	
235	Proof of judicial proceedings	
236	Proof of entries in accounting records and documentation of banks	
236A	Proof of entries in accounting records and documentation of banks in countries outside Republic	
237	Evidence on charge of bigamy	

<b>Section no.</b>	<b>Criminal Procedure Act section heading</b>	<b>Extent to which affected by Child Justice Act (CJA)</b>
238	Evidence of relationship on charge of incest	
239	Evidence on charge of infanticide or concealment of birth	
240	Evidence on charge of receiving stolen property	
241	Evidence of previous conviction on charge of receiving stolen property	
242	Evidence on charge of defamation	
243	Evidence of receipt of money or property and general deficiency on charge of theft	
244	Evidence on charge relating to seals and stamps	
245	Evidence on charge of which false representation is element	
246	Presumptions relating to certain documents	
247	Presumptions relating to absence from Republic of certain persons	

Section no.	Criminal Procedure Act section heading	Extent to which affected by Child Justice Act (CJA)
248	Presumption that accused possessed particular qualification or acted in particular capacity	
249	Presumption of failure to pay tax or to furnish information relating to tax	
250	Presumption of lack of authority	
251	Unstamped instrument admissible in criminal proceedings	
252	The law in cases not provided for	
252A	Authority to make use of traps and undercover operations and admissibility of evidence so obtained	
253	Saving of special provisions in other laws	
254	Court may refer juvenile accused to children's court	<p>*To be repealed by Schedule 4 CJA (item (k) under amendments to the CPA)</p> <p>*Sections 50 and 64 CJA apply</p>

<b>Section no.</b>	<b>Criminal Procedure Act section heading</b>	<b>Extent to which affected by Child Justice Act (CJA)</b>
255	Court may order enquiry under Prevention and Treatment of Drug Dependency Act, 1992	
256	Attempt	
257	Accessory after the fact	
258	Murder and attempted murder	
259	Culpable homicide	
260	Robbery	
261	Rape and indecent assault	
262	Housebreaking with intent to commit an offence	
263	Statutory offence of breaking and entering or of entering premises	
264	Theft	
265	Receiving stolen property knowing it to have been stolen	
266	Assault with intent to do grievous bodily harm	
267	Common assault	
268	Statutory unlawful carnal intercourse	

Section no.	Criminal Procedure Act section heading	Extent to which affected by Child Justice Act (CJA)
269	Sodomy	
270	Offences not specified in this Chapter	
271	Previous convictions may be proved	
271A	Certain convictions fall away as previous convictions after expiration of 10 years	
272	Finger-print record <i>prima facie</i> evidence of conviction	
273	Evidence of further particulars relating to previous conviction	
274	Evidence on sentence	To be read with sections 70 and 71 CJA
275	Sentence by judicial officer or judge other than judicial officer or judge who convicted accused	
276	Nature of punishments	Chapter 10 CJA applies
276A	Imposition of correctional supervision, and conversion of imprisonment into correctional supervision and <i>vice versa</i>	Subsections (1) and (2) amended by Schedule 4 CJA (item (1) under amendments to the CPA). To be read with section 75 CJA

<b>Section no.</b>	<b>Criminal Procedure Act section heading</b>	<b>Extent to which affected by Child Justice Act (CJA)</b>
280	Cumulative or concurrent sentences	
281	Interpretation of certain provisions in laws relating to imprisonment and fines	
282	Antedating sentence of imprisonment	To be read with section 77 (5) CJA
283	Discretion of court as to punishment	
284	Minimum period of imprisonment four days	
285	Periodical imprisonment	
286	Declaration of certain persons as habitual criminals	
286A	Declaration of certain persons as dangerous criminals	
286B	Imprisonment for indefinite period	
287	Imprisonment in default of payment of fine	Sections 74 and 79 CJA apply
288	Recovery of fine	Sections 74 and 79 CJA apply
289	Court may enforce payment of fine	Section 79 CJA applies

Section no.	Criminal Procedure Act section heading	Extent to which affected by Child Justice Act (CJA)
290	Manner of dealing with convicted juvenile	*To be repealed by Schedule 4 CJA (item <i>m</i> ) under amendments to the CPA *Sections 72 and 76 CJA apply
291	Duration of orders under section 290	To be repealed by Schedule 4 CJA (item <i>n</i> ) under amendments to the CPA
296	Committal to treatment centre	Chapter 9 CJA applies
297	Conditional or unconditional postponement or suspension of sentence, and caution or reprimand	*Subsection (1A) to be deleted by Schedule 4 CJA (item <i>o</i> ) under amendments to the CPA *Subsection (9) (a) (ii) amended by Schedule 4 CJA *To be read with section 78 CJA.
297A	Liability for patrimonial loss arising from performance of community service	To be read with section 91 CJA
297B	Agreement on operation of suspended sentences	
298	Sentence may be corrected	



<b>Section no.</b>	<b>Criminal Procedure Act section heading</b>	<b>Extent to which affected by Child Justice Act (CJA)</b>
299	Warrant for the execution of sentence	
300	Court may award compensation where offence causes damage to or loss of property	
301	Compensation to innocent purchaser of property unlawfully obtained	
302	Sentences subject to review in the ordinary course	*Referred to in section 84 (1) CJA *To be read with section 85 CJA *Subsection (1) (a) (i) amended by Schedule 4 CJA (item (p) under amendments to the CPA)
303	Transmission of record	Referred to in sections 16 (2) and 85 (1) CJA
304	Procedure on review	Referred to in sections 16 (2) and 81 (1) CJA
304A	Review of proceedings before sentence	To be read with Chapter 12 CJA

<b>Section no.</b>	<b>Criminal Procedure Act section heading</b>	<b>Extent to which affected by Child Justice Act (CJA)</b>
306	Accused may set down case for argument	To be read with Chapter 12 CJA

<b>Section no.</b>	<b>Criminal Procedure Act section heading</b>	<b>Extent to which affected by Child Justice Act (CJA)</b>
307	Execution of sentence not suspended unless bail granted	Referred to in section 86 (a) CJA
308A	Correctional supervision not suspended unless bail granted	
309	Appeal from lower court by person convicted	*Referred to in section 86 (b) CJA *Subsection (1) (a) amended by Schedule 4 CJA (item (q) under amendments to the CPA)
309A	Appeal against conviction and sentence of chiefs, headmen and chiefs' deputies	
309B	Application for leave to appeal	*Referred to in section 84 (1) CJA *Subsection (1) (a) amended by Schedule 4 CJA (item (r) under amendments to the CPA)
309C	Petition procedure	
309D	Explanation of certain rights to unrepresented accused	*Subsection (1) (a) amended by Schedule 4 CJA (item (s) under amendments to the CPA)
310	Appeal from lower court by prosecutor	

Section no.	Criminal Procedure Act section heading	Extent to which affected by Child Justice Act (CJA)
310A	Appeal by attorney-general against sentence of lower court	
311	Appeal to Appellate Division	
312	Review or appeal and failure to comply with subsection (1) (b) or (2) of section 112	
313	Institution of proceedings <i>de novo</i> when conviction set aside on appeal or review	
314	Obtaining presence of convicted person in lower court after setting aside of sentence or order	
315	Court of appeal in respect of superior court judgments	
316	Applications for condonation, for leave to appeal and for leave to lead further evidence	*Referred to in sections 84 (1) and 86 (b) CJA *Subsection (1) (a) amended by Schedule 4 CJA (item (t) under amendments to the CPA) *Subsection (1) (c) amended by Schedule 4 CJA
316B	Appeal by attorney-general against sentence of superior court	

Section no.	Criminal Procedure Act section heading	Extent to which affected by Child Justice Act (CJA)
317	Special entry of irregularity or illegality	
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325	Saving of power of State President to extend mercy	
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334	Minister may declare certain persons peace officers for specific purposes	
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335B	Medical examination of minors towards or in connection with whom certain offences have been committed	

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338	Production of document by accused in criminal proceedings	
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340	Prison list of unsentenced prisoners and witnesses detained	
341	Compounding of certain minor offences	
342	Conviction or acquittal no bar to civil action for damages	
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	Schedule 6	
	Schedule 7	

*PENDLEX: Child Justice Act 75 of 2008* **after amendment by the Judicial Matters Amendment Act 24 of 2015**

**Section 96 (3)**

The Cabinet members responsible for the administration of justice, safety and security, correctional services, social development, education and health must, not later than 30 September of every year-

- (a) after the commencement of section 19 of the Judicial Matters Amendment Act, 2015, each submit reports, as prescribed, to Parliament by each Department or institution referred to in section 94 (2) on the implementation of this Act; and
- (b) report thereon to a committee or committees of Parliament, sitting jointly or separately, as determined by Parliament.

# REGULATIONS



## REGULATIONS

**GNR.251 of 31 March 2010: Regulations relating to Child Justice**  
**(Government Gazette No. 33067)**

### **Published under**

GN R251 in GG 33067 of 31 March 2010

[with effect from 1 April 2010]

### **as amended by**

GN R1337 in GG 41288 of 1 December 2017

### **as amended by**

GN R2399 in GG46751 of 19 August 2022

### DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

The Minister of Justice and Constitutional Development has, under section 97 of the Child Justice Act, 2008 (Act No. 75 of 2008),  
and—

(a)

after consultation, where appropriate, with the Cabinet members responsible for social development, safety and security, education, correctional services and health; and

(b)

in consultation with the Cabinet member responsible for home affairs for purposes of section 90 (2) of the said Act, made the regulations in the Schedule.

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## CHAPTER 1 GENERAL PROVISIONS

**1. Definitions.**—In these regulations, any word or expression to which a meaning has been assigned in the Act shall bear the meaning so assigned and, unless the context indicates otherwise—

**“clerk of the child justice court”** means—

- (a) a clerk and assistant clerk of the court appointed under section 13 of the Magistrates’ Courts Act, 1944 (Act No. 32 of 1944);
- (b) a registrar and assistant registrar appointed under section 34 of the Supreme Court Act, 1959 (Act No. 59 of 1959); or
- (c) a registrar appointed under any other law not yet repealed by a competent authority and, immediately before the commencement of the Constitution, in force in any area which forms part of the national territory; and

**“the Act”** means the Child Justice Act, 2008 (Act No. 75 of 2008).

**2. Designation of probation officers.**—(1) (a) The Director-General: Social Development must, within three months of

the commencement of the Act, designate a probation officer for every police station for the purposes of receiving notices in terms of sections 9, 18, 19 and 20 of the Act, and compliance with any obligation conferred upon a designated probation officer in terms of these Regulations.

- (b) Until such time as the Director-General has appointed a designated probation officer, any probation officer in the province where the police station is situated, may receive the notices referred to in paragraph (a) and carry out the obligations conferred upon a designated probation officer in terms of these Regulations.
- (c) The Director-General: Social Development must, if a designated probation officer can no longer carry out the obligations of a designated probation officer, designate another probation officer for the purposes referred to in paragraph (a).
- (2) The Director-General: Social Development must—
  - (a) provide the National Commissioner of Police with the contact particulars of the designated probation officers and the police stations in respect of which they have been designated; and
  - (b) in writing inform the National Commissioner of Police of any changes to the particulars.

## **CHAPTER 2**

### **CRIMINAL CAPACITY OF CHILDREN UNDER THE AGE OF 14 YEARS AND MATTERS RELATED TO AGE**

- 3. Handing over of child under the age of 12 years.—**(1) A police official must, for the purposes of handing a child over in terms of section 9 (1) of the Act—
  - (a) introduce himself or herself to the child and person who is to receive the child;

- (b) establish the identity of the person who is to receive the child;
- (c) introduce the child, if the child is handed to a child and youth care centre, to the person who is to receive the child;
- (d) establish, if the child is handed to a parent, appropriate person or guardian, the relationship, if any, between the person who is to receive the child and the child;
- (e) inform the child and the person who is to receive the child of—
  - (i) the nature of the alleged offence;
  - (ii) the reasons why the child cannot be prosecuted; and
  - (iii) the procedures to be followed in terms of the Act; and
- (f) explain to the person who is to receive the child—
  - (i) what is expected from the child and the person in relation to the procedures to be followed in terms of the Act;
  - (ii) the implications of receiving the child; and
  - (iii) the implications if the child fails to comply with an obligation imposed in terms of section 9 of the Act.
- (2) A police official must inform the person who is to receive the child of any injuries the child may have sustained.
- (3) A police official must ensure that the information and explanations given are understood by the child and the person who is to receive the child by—
  - (a) using a language that is understood by them;
  - (b) using simple vocabulary;

- (c) encouraging or allowing them to ask questions and responding to the questions asked; and
  - (d) verifying or confirming their understanding of the information and explanations given.
- (4) A police official must address the child and the person who is to receive the child in a manner that is conducive to their participation and without intimidating them or publicly humiliating the child.
- (5) A police official must, after having complied with subregulations (1) and (2), ascertain whether the parent, appropriate person or guardian is prepared to—
- (a) accept responsibility for the child; and
  - (b) co-operate in ensuring compliance with section 9 of the Act.
- (6) A police official must—
- (a) obtain the physical address and, if applicable, the work address of the parent, appropriate person or guardian; and
  - (b) obtain the contact particulars of the parent, appropriate person or guardian or any other person who is to receive the child or that of any other person through whom the person who is to receive the child can be contacted.
- (7) A police official must inform the person who is to receive the child at the child and youth care centre of the reasons why the child was not handed over to his or her parents, appropriate person or guardian.
- (8) (a) The person in charge of the child and youth care centre must receive the child at any time of the day or any day of the week, and if the child requires medical treatment take the necessary steps to ensure that the child receives treatment.

- (b) The person in charge of the child and youth care centre may only refuse to receive the child if it is impossible to accommodate the child as a result of the unavailability of accommodation at the centre.
- (9) A police official must complete and sign any documents relating to the admission of the child at the child and youth care centre, if required to do so.
- (10) A police official must hand to the person who is to receive the child an information note containing—
  - (a) the information and explanations referred to in subregulation (1) (e) and ( f );
  - (b) the name and contact particulars of the police official who handed over the child;
  - (c) the name of the police station where the police official is stationed;
  - (d) the name and contact particulars of the designated probation officer;
  - (e) the name and age of the child; and
  - ( f ) the name and contact particulars of the person or the child and youth care centre to whom or which the child was handed over.

**4. Notice to designated probation officer regarding handing over of child under the age of 12 years.**—(1) A police official must notify the designated probation officer of the handing over of a child in terms of section 9 (1) of the Act by handing or faxing a copy of the information note referred to in regulation 3 (10) to the designated probation officer.

- (2) A police official who notifies the designated probation officer by facsimile must ensure that the designated probation officer has received the notice.

**5. Referral of child under the age of 12 years to children's court.**

- (1) (a) The probation officer must refer a child to the children's court in terms of section 9 (3) (a) (i) of the Act in writing on a form which corresponds substantially with Form 1 of the Annexure.
- (b) The probation officer must attach to Form 1 all relevant documents used in the assessment of the child, including the assessment report referred to in section 40 of the Act.
- (c) The probation officer must ensure that Form 1 and all the attachments are received by the children's court.
- (2) The probation officer must—
  - (a) inform—
    - (i) the parents of the child of the referral, if the parents' whereabouts are known and they are not aware of the referral;
    - (ii) the appropriate person or guardian of the referral, if the child was handed to an appropriate person or a guardian and if the person in question is not aware of the referral; and
    - (iii) the parents, appropriate person or guardian that they must ensure that the child appears at the children's court; or
  - (b) submit a copy of Form 1 and the documents referred to in subregulation (1) (b) to the child and youth care centre if the child was handed to the centre.

## **6. Referral of child under the age of 12 years for counselling or therapy.**

- 1) (a) The probation officer must refer a child for counselling or therapy in terms of section 9 (3) (a) (ii) of the Act in writing on a form which corresponds substantially with Form 1 of the Annexure.
  - (b) The probation officer must attach to Form 1 copies of all relevant documents used in the assessment of the child, including the assessment report referred to in section 40 of the Act.
  - (c) The probation officer must ensure that Form 1 and all the attachments are received by the person who or institution which will provide the counselling or therapy.
- (2) The probation officer must—
- (a) inform—
    - (i) the parents of the child of the referral, if the parents' whereabouts are known and they are not aware of the referral;
    - (ii) the appropriate person or guardian of the referral, if the child was handed to an appropriate person or guardian and if the person in question is not aware of the referral; and
    - (iii) the parents, appropriate person or guardian that they must ensure that the child attends the counselling or therapy; or
  - (b) submit a copy of Form 1 and the documents referred to in subregulation (1) (b) to the child and youth care centre if the child was handed to the centre.
- (3) The probation officer who referred a child for counselling or therapy must request the person or institution providing

counselling or therapy to submit to the probation officer reports on the child's progress and compliance with the decision on the dates specified by the probation officer.

- (4) The person or institution providing counselling or therapy must record the progress made by the child for purposes of compiling the reports in terms of subregulation (3).
- (5) The probation officer must maintain contact with the child in order to be able to assess and evaluate the outcome of the counselling or therapy and the child's compliance with the decision.
- (6) The probation officer must, after the conclusion of the counselling or therapy, if he or she is of the opinion that the child may be in need of care and protection, make the necessary arrangements for the child to be dealt with in terms of the Children's Act.

**7. Referral of child under the age of 12 years to accredited programme.—**

- (1) (a) The probation officer must refer a child to an accredited programme in terms of section 9 (3) (a) (iii) of the Act in writing on a form which corresponds substantially with Form 1 of the Annexure.
  - (b) The probation officer must attach to Form 1 all relevant documents used in the assessment of the child, including the assessment report referred to in section 40 of the Act.
  - (c) The probation officer must ensure that Form 1 and all the attachments thereto are received by the person who or the institution which will provide the programme.
- (2) The probation officer must—
    - (a) inform—



- (i) the parents of the child of the referral, if the parents' whereabouts are known and they are not aware of the referral;
  - (ii) the appropriate person or guardian of the referral, if the child was handed to an appropriate person or guardian and if the person in question is not aware of the referral; and
  - (iii) the parents, appropriate person or guardian that they must ensure that the child attends the accredited programme; or
- (b) submit a copy of Form 1 and the documents referred to in subregulation (1) (b) to the child and youth care centre if the child was handed to the centre.
- (3) The probation officer who referred a child for an accredited programme must request the person or institution providing the programme to submit to the probation officer reports on the child's progress and compliance with the decision on the dates specified by the probation officer.
- (4) The person or institution providing the programme must record the progress made by the child for the purposes of compiling reports in terms of subregulation (3).
- (5) The probation officer must maintain contact with the child in order to be able to assess and evaluate the outcome of the programme and the child's compliance with the decision.
- (6) The probation officer must, after the conclusion of the programme, if he or she is of the opinion that the child may be in need of care and protection, make the necessary arrangements for the child to be dealt with in terms of the Children's Act.

- 8. Arranging support services for child under the age of 12 years.**—(1) The designated probation officer must, for the purposes of arranging support services for a child under the age of 12 years in terms of section 9 (3) (a) (iv) of the Act—
- (a) enquire from relevant service providers, including religious and community-based organisations, sport and recreational clubs and schools in the area, which support services are available and suitable for children under the age of 12 years;
  - (b) obtain particulars relating to the available services; and
  - (c) enquire about conditions, if any, for the rendering of the services.
- (2) (a) The designated probation officer must, from the information obtained in terms of subregulation (1), compile a database of the support services available in the area.
- (b) The database must reflect—
- (i) the services available;
  - (ii) the name of the service provider;
  - (iii) the location where the service will be rendered;
  - (iv) the name of the person who can be contacted; and
  - (v) the contact particulars of the person who is to be contacted.
- (c) The database must be updated regularly.
- (3) The probation officer, when arranging support services in terms of section 9 (3) (a) (iv) of the Act for a child, must—
- (a) select from the database possible service providers which may render the required support services;

- (b) contact the service provider selected from the database to enquire about the availability of the services;
  - (c) inform and explain to the child and the parent, appropriate person or guardian, the services that are available to support the child; and
  - (d) finalise the arrangements with the service provider and confirm the dates and time when and the place where the services will be rendered and the period for which the services will be rendered.
- (4) The probation officer must, after the arrangements have been made in terms of subregulation (3)—
- (a) inform the parents, the appropriate person or guardian in writing and, if their contact particulars are available, orally, of the arrangements made;
  - (b) inform the parents, appropriate person or guardian that they must ensure that the child attends the support services arranged; and
  - (c) confirm the arrangements made in writing with the service provider who is to render the support services.
- (5) The probation officer must ensure that the support services commence at the earliest possible date.
- (6) The probation officer who arranged the support services for the child may request the person or institution rendering the support services to submit to the probation officer reports on the child's progress and compliance with the decision on the dates specified by the probation officer.
- (7) The person or institution rendering the support services must record the progress made by the child for purposes of compiling reports in terms of subregulation (6).

- (8) The probation officer must, for the duration of the support services, maintain regular contact with the child and the service provider in order to be able to assess the child's progress and compliance with the decision.

**9. Arranging a meeting relating to circumstances surrounding allegations and formulation of written plan.—**

(1) The probation officer, when arranging a meeting in terms of section 9 (3) (a) (v) of the Act, must—

- (a) contact the persons who must attend the meeting in any manner—
- (i) taking into account the contact particulars that are available;
  - (ii) having regard to their place of residence;
  - (iii) having regard to the time period within which the assessment must be done; and
  - (iv) ensuring their attendance;
- (b) give sufficient notice of the meeting;
- (c) inform the persons who must attend the meeting of the particulars of the child and the nature of the allegation, if these particulars are not known to the persons;
- (d) indicate to the persons who must attend the meeting—
- (i) the date, time and place of the meeting;
  - (ii) the purpose of the meeting;
  - (iii) what information, if any, will be required at the meeting;
  - (iv) who will attend the meeting; and

- (v) where he or she can be contacted; and
- (e) inform the parent, appropriate person or guardian that attendance of the meeting by the child and the parent, appropriate person or guardian is compulsory.
- (2) The probation officer must request a person who is required to attend a meeting to inform the probation officer immediately if, due to circumstances beyond his or her control, that person can no longer attend the meeting or wishes to arrange an alternative date.
- (3) The meeting must be conducted in an atmosphere conducive to the full participation by the child and the other participants and must allow sufficient opportunity for the child to express his or her views.

**10. Written plan for child under the age of 12 years.**—(1) A written plan referred to in section 9 (4) (b) of the Act must contain the following details of the services and assistance to be provided for the child—

- (a) the name under which the services or assistance to be provided is generally known;
  - (b) an indication as to what the services or assistance entail;
  - (c) behavioural changes that may be caused by the services or assistance, if any; and
  - (d) the expected outcome or result of the services and assistance.
- (2) A written plan must specify the following details of the person or organisation to provide the services or assistance—
- (a) the name, main business and profile;
  - (b) the physical address;

- (c) the contact particulars, including the telephone numbers and e-mail address; and
- (d) the office hours.

**11. Probation officer taking no action in respect of child under the age of 12 years.—(1) The probation officer must, in deciding to take no action in terms of section 9 (3) (a) (vi) of the Act—**

- (a) ensure that all the relevant information has been obtained;
  - (b) ensure that the relevant information has been considered properly;
  - (c) ensure that contradictory information, if any, has been clarified;
  - (d) ensure that the personal circumstances of the child have been considered properly;
  - (e) ensure that the circumstances surrounding the commission of the alleged offence have been considered properly;
  - (f) have regard to the reasons why the other measures referred to in section 9 (3) of the Act are not suitable;
  - (g) have considered the implications of not taking any action; and
  - (h) have engaged the parent, appropriate person or guardian or a representative of the child and youth care centre or any other person qualified to express an opinion regarding his or her proposed decision.
- (2) The probation officer who decides to take no action, must immediately, after having taken the decision, inform—
- (a) the child and his or her parents, an appropriate person or guardian of the decision in writing and orally, if their contact particulars are available; or

- (b) the child and youth care centre to which the child was handed over, in writing, of the decision.
- (3) The child and youth care centre must, upon receipt of the information, release the child in the care of the parent, appropriate person or guardian, if available, or take appropriate steps in terms of the Children's Act.

## **12. Recording the outcome of the assessment and decision**

**taken.**—(1) The probation officer must, for the purposes of section 9 (6) of the Act, record the outcome of the assessment and the decision made—

- (a) in writing;
  - (b) immediately after concluding the assessment and making the decision;
  - (c) with sufficient detail;
  - (d) in a manner that reveals the information that was considered; and
  - (e) in a manner that explains how he or she arrived at the outcome of the assessment and at the decision.
- (2) The record of the outcome of the assessment and the decision made must be filed in the personal file of the child.

## **13. Proof of criminal capacity**

- (1) In order by a child justice court in terms of section 11(3) of the Act for an evaluation of the criminal capacity of a child must correspond substantially with Form 2 of the Annexure.
- (2) Form 2 must be submitted to the person who must conduct the evaluation, together with any documents handed in at the preliminary inquiry or in the child justice court, including the

charge sheet and the probation officer's assessment report.

- (3) The clerk of the child justice court must notify—
  - (a) the parent of the child of the order, if the parent was not present when the order was made;
  - (b) the appropriate person or guardian of the order, if the child was handed to an appropriate person or guardian and if that person was not present when the order was made; or
  - (c) the child and youth care centre, if the child was handed to a centre, in writing and orally, if the contact particulars are available.
- (4) The notification by the clerk of the child justice court must be done immediately after the order has been made in any manner but the clerk must ensure that the persons receive the notice.
- (5) The Director-General: Health must annually compile and keep a list of private psychiatrists and clinical, counselling and educational psychologists who are prepared to conduct the evaluation in respect of a child's criminal capacity in terms of section 11(3) of the Act and must provide the Director-General of the Department of Justice and Constitutional Development with a copy thereof for distribution to the registrars of the High Court and all the clerks of the magistrates' courts.

[Reg (6) substituted by GN R2399 of 19 August 2022]

**14. Age estimation by probation officer.**—The probation officer must make an estimation of the age of the child in terms of section 13 (1) of the Act on a form which corresponds substantially with Form 3 of the Annexure.

**15. Age determination by inquiry magistrate or child justice court.**—(1) The presiding officer at a preliminary inquiry or



of a child justice court who refers a child for age estimation in terms of section 14 (2) (d) of the Act, must do so in writing on a form which corresponds substantially with Form 4 of the Annexure.

- (2) The clerk of the child justice court must, in writing and orally, notify—
  - (a) (i) the parent of the child of the referral, if the parent was not present when the child was referred; and
  - (ii) the appropriate person or guardian of the referral, if the child was handed to an appropriate person or guardian and if that person was not present when the child was referred; or
- (b) the child and youth care centre of the referral, if the child was handed to a centre, if the contact particulars of the person in question are available.
- (3) The notification by the clerk of the child justice court must be done immediately after the referral in any manner and the clerk must ensure that any of the persons referred to in subregulation (2) receives the notice.
- (4) The medical practitioner who estimated the age of the child must complete Part C of Form 4 of the Annexure.

### CHAPTER 3

## SECURING ATTENDANCE OF CHILD AT PRELIMINARY INQUIRY

- 16. Written notice to appear at preliminary inquiry.**—(1) A police official, in determining a date on which a child must appear at a preliminary inquiry, must allow a reasonable period for the probation officer to assess the child before the child appears at the inquiry.

- (2) (a) A police official must in terms of section 18 (4) (a) (i) and (ii) of the Act inform the child and the parent, appropriate person or guardian of the nature of the allegations against the child and of the rights of the child—
- (i) in a language that they understand and preferably in a language of their choice;
  - (ii) in plain language by using simple vocabulary; and
  - (iii) in a manner appropriate to the age, maturity and stage of development of the child and the intellectual capacity of the parent, appropriate person or guardian.
- (b) A police official must, when informing the child and the parent, appropriate person or guardian of the nature of the allegations against the child and of the rights of the child—
- (i) treat the child with care and understanding;
  - (ii) ensure that other persons, whose presence is not required, are not in close proximity;
  - (iii) give enough detail about the matters;
  - (iv) allow sufficient time so that the child and the other persons can absorb the information;
  - (v) encourage and allow the child and the other persons to ask questions; and
  - (vi) elicit responses from the child and the other persons by asking questions in order to ensure that they understand the information.
- (3) The police official must in terms of section 18 (4) (a) (iii) of the Act explain to the child and the parent, appropriate person or guardian the immediate procedures to be followed—

- (a) in accordance with subregulations (2) and (3);
- (b) in a step-by-step manner; and
- (c) taking into account the level of knowledge of the persons in respect of the functioning of the courts and the court procedures.
- (4) The police official must in terms of section 18 (4) (a) (iv) and (v) of the Act warn—
  - (a) the child about the importance of his or her appearance at the preliminary inquiry; and
  - (b) the parent, appropriate person or guardian to bring or cause the child to be brought to the preliminary inquiry, in accordance with subregulation (2) and by indicating the seriousness of the matter and the implications of failure to appear at or to bring the child to the preliminary inquiry.
- (5) A police official must obtain the physical address and, if applicable, the work address and contact particulars of the parent, appropriate person or guardian.
- (6) A police official must hand to the parent of the child, appropriate person or guardian an information note containing—
  - (a) the information, explanations and warnings referred to in section 18 (4) of the Act;
  - (b) the name and contact particulars of the police official who handed the written notice;
  - (c) the name of the police station where the police official is stationed;
  - (d) the name and contact particulars of the designated probation officer;

- (e) the name and age of the child; and
  - (f) the name and contact particulars of the parent, appropriate person or guardian who was present when the written notice was handed to the child, or who was handed a copy of the written notice.
- (7) (a) A police official must notify the designated probation officer in terms of section 18 (4) (b) of the Act by handing or faxing a copy of the information note referred to in subregulation (6) to the designated probation officer.
- (b) A police official who notifies the designated probation officer by facsimile must ensure that the designated probation officer has received the notice.

**17. Summons to appear at preliminary inquiry.**—A police official must, when serving a summons on a child in terms of section 19 (2) of the Act, comply with regulation 16 with the changes required by the context.

**18. Arrest to secure attendance at preliminary inquiry.**—(1) A police official who has arrested a child to secure his or her attendance at a preliminary inquiry must, when acting in terms of section 20 (3) (a) to (c) of the Act, comply with regulation 16 (2) to (5), with the necessary changes required by the context.

- (2) (a) A police official who has arrested a child must notify the child's parent, appropriate person or guardian of the arrest and give enough information relating to—
- (i) the alleged offence for which the child was arrested;
  - (ii) the date and time of arrest of the child;
  - (iii) the circumstances surrounding the arrest;
  - (iv) the place where the child is detained;

- (v) the procedures regarding the release of a child;
  - (vi) the date on which the child will appear at the preliminary enquiry; and
  - (vii) the place where the child will appear,
    - to ensure that the persons are fully informed of the circumstances.
- (b) A police official must, after notifying the child's parent, appropriate person or guardian in terms of paragraph (a) hand to the parent, appropriate person or guardian an information note containing—
- (i) the information, explanations and warnings referred to in section 20 (3) of the Act;
  - (ii) the information referred to in subregulation (2) (a) (iv) to (vii);
  - (iii) the name and contact particulars of the police official who arrested the child;
  - (iv) the name of the police station where the police official is stationed;
  - (v) the name and contact particulars of the designated probation officer; and
  - (vi) the name and age of the child.
- (3) (a) A written report to a presiding officer referred to in section 20 (3) (d) of the Act by a police official who was unable to inform the child's parent, appropriate person or guardian of the arrest, must contain the following information—
- (i) the particulars of the child;

- (ii) the date and time of arrest;
  - (iii) the alleged offence;
  - (iv) the place of detention;
  - (v) particulars of the parent, appropriate person or guardian, if known;
  - (vi) full details of the attempts made to notify the parent, appropriate person or guardian, including the manner and the time each attempt was made; and
  - (vii) reasons as to why the police official was unable to notify the parent, appropriate person or guardian.
- (b) The police official must sign the written report.
- (4) (a) A police official must, after a child has been arrested, in terms of section 20 (4) (a) of the Act, inform the designated probation officer of the arrest in writing.
- (b) The notice to the designated probation officer in terms of paragraph (a) must contain the following information—
- (i) The particulars of the police official;
  - (ii) the particulars of the child;
  - (iii) the date and time of the arrest;
  - (iv) the alleged offence;
  - (v) the police station or place where the child is detained; and
  - (vi) the name, address and contact particulars of the parent, appropriate person or guardian.

- (c) The police official must sign the notice to the designated probation officer.
- (d) The notice must be—
  - (i) handed;
  - (ii) submitted electronically; or
  - (iii) submitted by facsimile,  
to the designated probation officer.
- (e) A police official who notifies the designated probation officer electronically or by facsimile must ensure that the designated probation officer has received the notice.
- (5) The written report to the inquiry magistrate referred to in section 20 (4) (b) of the Act must contain—
  - (a) the particulars of the designated probation officer;
  - (b) particulars of the child;
  - (c) the date and time of arrest;
  - (d) the alleged offence;
  - (e) the police station or place where the child is detained;
  - (f) full details of the attempts made to notify the designated probation officer, including the manner and time each attempt was made; and
  - (g) reasons as to why the police official was unable to notify the designated probation officer.

**CHAPTER 4**  
**RELEASE, DETENTION AND PLACEMENT OF CHILD PRIOR**  
**TO SENTENCE**

- 19. Detention of child before preliminary inquiry.**—The written report referred to in section 22 (2) of the Act, relating to the non-release of a child detained for a Schedule 1 offence, must contain—
- (a) the particulars of the child;
  - (b) the date and time of arrest of the child;
  - (c) the police station or place where the child is detained;
  - (d) the reasons why the child was not released;
  - (e) full details of the attempts made to locate the parent, appropriate person or guardian, if he or she could not be located;
  - (f) the reasons why the parent, appropriate person or guardian was not available to receive the child into his or her care, if applicable; and
  - (g) full details of the risk, if there was a substantial risk that the child may be a danger to any other person or himself or herself.
- 20. Failure of child to appear at preliminary inquiry or to comply with conditions of release.**—(1) (a) The presiding officer must, if a child fails to appear on the date and at the time and place referred to in section 24 (4) or (6) of the Act or to comply with any condition imposed in terms of section 24 (4) of the Act, be notified of the failure by way of an affidavit which must be accompanied, where appropriate, by supporting documents.
- (2) The affidavit and supporting documents, if any, must be submitted—



- (a) by hand;
  - (b) electronically; or
  - (c) by facsimile,
- to the investigating police official or the clerk of the child justice court to be handed to the presiding officer, together with the court documents.

(3) A person who submitted the affidavit electronically or by facsimile must—

- (a) ensure that the investigating police official or the clerk of the child justice court has received the document; and
- (b) forward the original document by registered post or hand it to the clerk of the child justice court to be attached to the court documents.

**21. Complaint about injury or trauma of child in detention.—**

- (1) (a) A complaint or observation about an injury sustained or severe psychological trauma suffered by a child referred to in section 28 (2) of the Act must be recorded in writing in the form of a report.
- (b) The report referred to in paragraph (a) must contain the following particulars—
    - (i) Full particulars of the police official receiving the complaint or making the observation;
    - (ii) full particulars of the child;
    - (iii) date and time of the arrest of the child;
    - (iv) particulars of the person who made the complaint, if not the child; and

- (v) full details of the complaint or observation.
- (c) Upon recording the complaint or observation, the police official must number the complaint or observation with a consecutive number for the year.
- (d) The police official who received the complaint or made the observation must, upon completion of the actions required in terms of this regulation, ensure that the following details are entered in the register referred to in section 28 (3) of the Act—
  - (i) the number allocated to the complaint;
  - (ii) the date on which the complaint was lodged;
  - (iii) the nature of the injury sustained or severe psychological trauma suffered;
  - (iv) the circumstances surrounding the injury or trauma;
  - (v) the signature and particulars of the complainant,
  - (vi) the date on which the report was handed to the station commissioner;
  - (vii) the particulars of the medical treatment which the child received, if any;
  - (viii) the date on which the report referred to in subregulation (1) (a) was submitted to the Provincial Commissioner of Police and a copy thereof to the National Commissioner;
  - (ix) the nature of the instructions, if any, given by the Provincial Commissioner of Police; and
  - (x) the steps taken to comply with the instructions of the Provincial Commissioner of Police.

[Para. (d) substituted by GN R1337 of 1 December 2017.]

- (e) The person who lodged the complaint must, for the purposes of future enquiries, be informed of the number allocated to the complaint.
- (f) The person who lodged the complaint or the police official who made the observation must affix his or her signature next to the particulars, referred to in paragraph (d), which have been recorded in the register.
- (2) The police official who recorded the complaint or observation in the register must hand the report to the station commissioner and record the date on which it was done in the register.
- (3) (a) The station commissioner must, on receipt of the report, investigate the complaint or observation and make the necessary arrangements for appropriate medical treatment, if satisfied that the circumstances referred to in section 28 (2) (a) of the Act exist.
- (b) The station commissioner must, after the investigation of the complaint or observation and for the purposes of the report referred to in section 28 (2) (b) of the Act, record his or her findings.
- (c) When recording his or her findings the station commissioner must indicate the following—
  - (i) The details and the extent of the injuries or conduct indicative of severe trauma;
  - (ii) full details of a sexual offence as defined in section 1 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007), if such an allegation is made;

- (iii) the circumstances surrounding the injury;
- (iv) full details of the medical treatment received by the child, if any;
- (v) if the child did not receive medical treatment, the reasons why; and
- (vi) any action taken or recommendation made regarding the circumstances surrounding the injury or severe trauma.

(4) The station commissioner must—

- (a) after having investigated the matter and, if necessary, after ensuring that the child received medical treatment, submit the report together with the medical report, if any, to the Provincial Commissioner of Police in an appropriate manner;
- (b) ensure that the Provincial Commissioner of Police has received the report; and
- (c) file a copy of the report and its attachments in the docket.

[Subreg. (4) substituted by GN R1337 of 1 December 2017.]

- (5) The Provincial Commissioner of Police may, after considering the report and recommendations made by the station commissioner, issue any instruction he or she deems fit.

[Subreg. (5) substituted by GN R1337 of 1 December 2017.]

- (6) (a) The station commissioner must, upon submission to the Provincial Commissioner of Police of the documents referred to in subregulation (4), submit a copy thereof to the Independent Complaints Directorate, established by section 50 (1) of the South African Police Service Act, 1995 (Act No. 68 of 1995).
- (b) The station commissioner may submit the documents in any

manner he or she deems fit but must keep proof of the manner of submission.

[Subreg. (6) substituted by GN R1337 of 1 December 2017.]

**22. Register regarding detention of children.**—(1) A register regarding the detention of children in police cells or lock-ups referred to in section 28 (3) of the Act must, in addition to the particulars required in terms of regulation 21 (1) (d), contain the following information—

- (a) The full names of the child and any alias or nickname;
  - (b) the nature of the offence alleged to have been committed;
  - (c) the age of the child;
  - (d) the date and time of arrest;
  - (e) the reasons why the child cannot be released;
  - (f) the physical and psychological condition of the child, as observed by a police official, at the time of arrest; and
  - (g) the names, addresses and telephone numbers of the parents or next of kin, if known.
- (2) The register may be examined in terms of section 28 (4) of the Act by—
- (a) a member of the South African Police Service in the performance of his or her functions;
  - (b) a social worker, health care practitioner or probation officer in the performance of his or her functions;
  - (c) the prosecutor involved in the case;

- (d) a member of the Intersectoral Committee for Child Justice established in terms of section 94 of the Act;
  - (e) an independent observer appointed in terms of section 65 (6) of the Act;
  - (f) a person who is by law empowered or mandated to take care of the interests of a child;
  - (g) a parent of the child or the appropriate person or guardian;
  - (h) a staff member of the child and youth care centre where the child is placed;
  - (i) the presiding officer involved in the case; and
  - (j) the legal representative of the child.
- (3) A person, other than the persons referred to in subregulation (2), who wishes to examine the register must—
- (a) make a request in writing stating the reason for his or her access to the register;
  - (b) hand the request to the station commissioner or the person designated in writing by the station commissioner; and
  - (c) identify himself or herself, if requested to do so by the station commissioner or designated police official.
- (4) The station commissioner or the person designated in writing by the station commissioner must immediately after receiving the request, take a decision which must be communicated to the person making the request.
- (5) The register must be examined in the presence of a police official.

- (6) A person who has examined the register must treat the information obtained as confidential.
- 23. Placement in a child and youth care centre.**—The sworn statement of the functionary responsible for the management of a child and youth care centre referred to in section 29 (4) of the Act must correspond substantially with Form 5 of the Annexure.
- 24. Error regarding placement.**—(1) (a) The person admitting a child at a child and youth care centre, police cell, lock-up or prison in terms of section 31 of the Act must, in writing, refer a child, in respect of whom an error has been made regarding placement, to the presiding officer for the error to be corrected.
- (b) The written referral to the presiding officer must contain the following information—
- (i) full particulars of the child;
  - (ii) the case number and the alleged offence;
  - (iii) the particulars of the person and the institution admitting the child;
  - (iv) the date on which the child was admitted; and
  - (v) reasons for referring the child back to the presiding officer.
- (c) A person referring a child back to court must attach to the referral a copy of the court order relating to the placement of the child.
- (2) (a) A child referred to in subregulation (1) must be taken back to the presiding officer by—
- (i) a police official, if the child is placed in a police cell or lock-up;

- (ii) a correctional official, if the child is placed in a prison; or
  - (iii) a police official at the request of the head of the child and youth care centre, if the child is placed in a child and youth care centre.
- (b) The person in charge of a child and youth care centre must—
- (i) immediately upon becoming aware of the error regarding placement, arrange with a police official to take the child to a presiding officer to correct the error; and
  - (ii) hand to a police official the written referral, referred to in subregulation (1).
- (3) The written referral must be handed to the presiding officer when the child appears before the presiding officer.

**25. Written report relating to transport of child to or from preliminary inquiry or child justice court.**—(1) A written report, referred to in section 33 (2) (c) of the Act, by a police official relating to the reasons for non-compliance with that section must contain the following information—

- (a) full particulars of the child;
- (b) the date of arrest and the alleged offence;
- (c) the date and time on which the child was transported;
- (d) the place from which and to which the child was transported;
- (e) the particulars of other persons transported with the child;
- (f) attempts made to transport the child separately;
- (g) the reasons why the child was not transported separately; and



- (h) any measures taken to protect the child, where the child was transported with persons.
- (2) A written report may be submitted in any manner to the presiding officer having regard to the period of 48 hours within which it must be submitted.
- (3) The police official must keep record of the manner of submission and make sure that the clerk of the court has received the written report.

## **CHAPTER 5**

### **ASSESSMENT OF CHILD**

#### **26. Powers and duties of probation officer at assessment.—**

- (1) (a) A probation officer must inform the child of his or her rights in terms of section 39 (1) of the Act—
  - (i) in a language that the child understands and preferably in a language of his or her choice, or through an interpreter, if necessary;
  - (ii) in plain language and using simple vocabulary; and
  - (iii) in a manner appropriate to the age, maturity and stage of development of the child.
- (b) A probation officer must when informing the child about his or her rights—
  - (i) give enough detail about the rights of the child;
  - (ii) allow sufficient time so that the child can absorb the information;
  - (iii) encourage and allow the child to ask questions and to respond to the questions asked; and

- (iv) elicit responses from the child by asking questions in order to ensure that he or she understands the information.
  - (c) The probation officer must conduct the assessment in an atmosphere conducive to participation of the child and his or her parent, the appropriate person or guardian and elicit the views of the child.
  - (d) The probation officer must, in ensuring a conducive atmosphere for participation, consider all possible venues for the assessment as referred to in section 37 of the Act, including the place of residence of the child or the child and youth care centre where the child has been placed.
- 27. Assessment report of probation officer.**—(1) The probation officer, when completing an assessment report referred to in section 40 (1) of the Act, must—
- (a) provide enough information so as to enable the recipient of the report to understand the conclusions reached and the recommendations made;
  - (b) indicate the information that was considered;
  - (c) explain how he or she arrived at the outcome of the assessment or his or her recommendations;
  - (d) include the sources of the information;
  - (e) in a logical manner reflect the recommendations made;
  - (f) motivate any recommendation made in a matter that is appropriate pursuant to the information that was available and considered; and
  - (g) indicate, in the case of conflicting information, which information he or she relied on and the reasons.

- (2) The probation officer must, when completing the assessment report—
  - (a) have regard to the purpose of the assessment referred to in section 35 of the Act;
  - (b) ensure that the report contains information about the child's development and competencies, the child's history, the family circumstances, the circumstances surrounding the offence and the impact of the offence on the victim;
  - (c) express an opinion as to the possible reasons for the child having committed the offence;
  - (d) express an opinion as to the behaviour of the child and the extent to which the child has been influenced by persons or peers;
  - (e) indicate the child's ability to be reintegrated into society; and
  - (f) indicate whether the child acknowledges responsibility for the offence.
- (3) The assessment report must, where a recommendation referred to in section 40 (1) (d) relating to the placement of a child has been made, be accompanied by Form 5 in which the information referred to in section 40 (2) of the Act relating to accommodation and features of the child and youth care centre must be set out.
- (4) The probation officer must, after having completed the assessment report, file a copy of the report and any attachments in the personal file of the child in question.

## CHAPTER 6 PRELIMINARY INQUIRY

### **28. Procedure relating to holding of preliminary inquiry.—**

(1) (a) The presiding officer must, at the start of the preliminary inquiry, inform the child about and explain to the child, the matters referred to in section 47 (2) of the Act—

- (i) in a language of his or her choice or through an interpreter;
- (ii) in plain language by using simple vocabulary and by avoiding technical terms; and
- (iii) in a manner appropriate to the age, maturity and stage of development of the child.

(b) The presiding officer must, when informing the child about or explaining to the child, the matters in question—

- (i) give enough detail so that the child understands the information;
- (ii) allow sufficient time so that the child can absorb the information;
- (iii) encourage and allow the child to ask questions and express his or her views;
- (iv) elicit responses from the child by asking questions in order to ensure that he or she understands the information;
- (v) ensure that the atmosphere is conducive to participation by the child and the parent, appropriate person or guardian; and
- (vi) be sensitive to the needs of the child and the fact that the child may be confused and may be experiencing anxiety and may feel intimidated.

- (2) The proceedings at the preliminary inquiry must be conducted in a manner that sets the child at ease.
- (3) The child should be treated with care and understanding.

## **CHAPTER 7**

### **DIVERSION**

- 29. Diversion options.**—(1) A magistrate, inquiry magistrate or child justice court must, when issuing a diversion order, explain to the child and the parent, appropriate person or guardian in full detail—
- (a) what the order entails;
  - (b) what the order seeks to achieve;
  - (c) what is expected of the child and the parent, appropriate person or guardian; and
  - (d) the importance of compliance with the order,  
and confirm that they understand the explanation.
- (2) A diversion order referred to in section 53 (1) of the Act must contain enough information and be formulated in plain language by using simple vocabulary in order to ensure that the child and the parent, appropriate person or guardian fully understand what is expected of them and in order to facilitate the monitoring of compliance with the order and to deal with non-compliance effectively.
- (3) (a) A compulsory school attendance order referred to in section 53 (1) (a) of the Act must correspond substantially with Part A of Form 6 of the Annexure.
- (b) A family time order referred to in section 53 (1) (b) of the Act

must correspond substantially with Part B of Form 6 of the Annexure.

- (c) A good behaviour order referred to in section 53 (1) (c) of the Act must correspond substantially with Part C of Form 6 of the Annexure.
- (d) A peer association order referred to in section 53 (1) (d) of the Act must correspond substantially with Part D of Form 6 of the Annexure.
- (e) A reporting order referred to in section 53 (1) (e) of the Act must correspond substantially with Part E of Form 6 of the Annexure.
- (f) A supervision and guidance order referred to in section 53 (1) (f) of the Act must correspond substantially with Part F of Form 6 of the Annexure.

**30. Provision of resources to implement diversion programmes.—**

The Cabinet member responsible for social development must, in order to ensure that resources are available to implement diversion programmes as referred to in section 56 (2) of the Act—

- (a) make sure that sufficient funds are allocated specifically for this purpose;
- (b) set up systems and procedures to obtain external funding for the implementation of diversion programmes, if necessary;
- (c) in compiling a budget for the implementation of the programmes, take into account—
  - (i) possible increases in the number of diversion orders issued;
  - (ii) increases in the cost of implementing programmes;

- (iii) possible extensions of the duration of diversion programmes; and
  - (iv) any other expenditure relating to activities directly related to the implementation of diversion programmes;
- (d) monitor the expenditure on a regular basis, among others by—
- (i) determining the patterns of expenditure; and
  - (ii) determining the amount available on the budget and any outstanding commitments;
- (e) take the necessary steps to reduce or eliminate unnecessary expenditure;
- (f) consider patterns relating to the increase in the number of diversion orders issued with a view to determining the amount required for future funding; and
- (g) ensure that funds allocated for the implementation of diversion programmes are not utilised for another purpose.

**31. Certificate of accreditation.**—(1) A certificate of accreditation of a diversion service provider referred to in section 56 (2) (e) of the Act must correspond substantially with Form 7 of the Annexure.

- (2) A certificate of accreditation of a diversion programme referred to in section 56 (2) (e) of the Act must correspond substantially with Form 8 of the Annexure.

**32. Quality assurance in respect of diversion programmes and diversion service providers.**—(1) (a) A quality assurance process referred to in section 56 (2) (g) of the Act must be conducted by a quality assurance panel appointed by the Cabinet member responsible for social development.

- (b) The panel must consist of not less than three and not more than seven members but at least one member must be an independent person.
  - (c) The members of the panel must have knowledge and experience relating to diversion programmes and children's issues.
  - (d) An official employed in the State may be appointed as a member of the panel.
  - (e) The panel must determine its own procedures having regard to sound administrative practices and just administrative action.
- (2) In conducting the quality assurance process the panel must—
- (a) give the diversion service provider reasonable notice of the intention to conduct the process;
  - (b) hold a preliminary meeting with the management and relevant staff of the diversion service provider to discuss the objective of the quality assurance, the methods, mechanisms and criteria which will be used in the process;
  - (c) invite the diversion service provider to submit any written evidence on self-review and recommendations;
  - (d) receive oral evidence where necessary and consider and assess the evidence received;
  - (e) begin fieldwork which must include site-visits and interviews with the children who are attending or who have attended diversion programmes;
  - (f) prepare a preliminary report which must contain the proposed findings and recommendations supported by reasons for the findings;



- (g) give the diversion service provider an opportunity to respond to the preliminary report;
  - (h) consider the response, if any, of the diversion service provider on the preliminary report; and
  - (i) compile a final report.
- (3) The preliminary and final report must—
- (a) provide enough information so as to enable the diversion service provider and the Cabinet member responsible for social development to understand its conclusions and findings;
  - (b) reveal the information that was considered;
  - (c) explain how the panel arrived at the conclusions and findings;
  - (d) include the sources of the information;
  - (e) in a logical manner reflect the recommendations made, if any;
  - (f) motivate any recommendation made in an appropriate manner, pursuant to the information that was available and considered; and
  - (g) indicate, in the case of conflicting information, which information was relied upon and the reasons.
- (4) (a) The panel must submit the final report to the Cabinet member responsible for social development to be dealt with in terms of the policy framework and system referred to in section 56 (2) (c) of the Act.
- (b) A copy of the final report must be submitted to the diversion service provider in question.
- (5) A quality assurance process must be conducted in respect of

each diversion service provider at least once a year or upon receipt of a complaint.

- 33. Failure of child to comply with diversion order.**—(1) The probation officer or the person identified in terms of section 57 (1) of the Act must, within seven days after becoming aware of the child's failure to comply with the diversion order, notify the magistrate, inquiry magistrate or child justice court of the child's failure in a form which corresponds substantially with Form 9 of the Annexure.
- (2) (a) The probation officer or the identified person must immediately, upon completion of Form 9, submit the form and the supporting documents, if any, to the clerk of the child justice court—
- (i) by hand;
  - (ii) electronically; or
  - (iii) by facsimile.
- (b) The probation officer or identified person must, if Form 9 and the attachments were submitted electronically or by facsimile—
- (i) keep proof of the manner in which the documents were submitted;
  - (ii) ensure that the clerk of the child justice court has received the documents; and
  - (iii) send the original documents by registered post to the clerk of the child justice court.
- (3) The clerk of the child justice court must, on receipt of Form 9, obtain the court documents and place the matter before the magistrate, inquiry magistrate or the child justice court, as the case may be.

- (4) (a) The clerk of the child justice court must, on receipt of Form 9, submit to the official designated in terms of regulation 35, a certified copy of the form.
- (b) The official designated in terms of regulation 35 must, on receipt of the copy of Form 9, make the necessary entries in the register referred to in section 60 of the Act.
- (5) (a) The clerk of the child justice court must inform the official designated in terms of regulation 35 in writing of the outcome of the proceedings before the magistrate, the inquiry magistrate or child justice court and attach any supporting documents.
- (b) The designated official must make the necessary entries in the register referred to in section 60 of the Act.

**34. Compliance by child with diversion order.**—(1) (a) The report referred to in section 57 (5) of the Act by the probation officer or the person identified in terms of section 57 (1) of the Act must correspond substantially with Form 9 of the Annexure.

- (b) A prosecutor who receives a report in terms of paragraph (a) must, on receipt thereof, consider the report.
- (c) The prosecutor may clarify any aspect of the report with or obtain further information from the probation officer or the identified person.
- (d) The prosecutor must submit a certified copy of the report to the clerk of the child justice court in question and the official designated in terms of regulation 35.
- (2) The clerk of the child justice court must, on receipt of the copy of the report, attach it to the court documents in respect of the child.
- (3) The official designated in terms of regulation 35 must, on

receipt of the copy of the report, make the necessary entries in the register referred to in section 60 of the Act.

- 35. Establishment and maintenance of register of children in respect of whom diversion order has been made.**—(1) (a) The Director-General: Social Development must designate an official to make entries in, update and maintain the register of children in respect of whom a diversion order has been made as referred to in section 60 (1) of the Act.
- (b) The Director-General: Social Development must, forward the particulars of the designated official to the Director-General: Justice and Constitutional Development, for distribution to the National Director of Public Prosecutions and the courts, and the National Commissioner of Police.
- (2) (a) An entry in the register or any amendment to an entry in the register may only be made on receipt of documents which purport to be received from the persons referred to in these Regulations.
- (b) Every entry recorded or any amendment of an entry must be verified by the supervisor of the designated official.
- (3) The register must, in addition to the information referred to in section 60 (1) (a) to (d) of the Act, contain the following particulars—
- (a) the reference number allocated in terms of subregulation (4);
- (b) a reference to the appropriate section in the Act;
- (c) the date on which the diversion order was made; and
- (d) the date on which the diversion order lapses.
- (4) (a) The register must be maintained in the following manner—

- (i) The clerk of the child justice court must, upon the receipt of a diversion order issued by a magistrate, inquiry magistrate or presiding officer of the child justice court, notify the designated official of the order;
  - (ii) the clerk of the child justice court must attach a certified copy of the order to the notice;
  - (iii) the designated official must, on receipt of the notification, number the notice with a consecutive number for the year and enter the required information in the register;
  - (iv) the designated official must file the notice and attachments received from the clerk of the child justice court, which may only be disposed of in the case of expungement in terms of section 87 (6) of the Act;
  - (v) the clerk of the child justice court must notify the designated official of any order made in terms of section 58 (3) or (4) of the Act and attach a certified copy thereof to the notice; and
  - (vi) the designated official must deal with a notice received in terms of subparagraph (v) in accordance with subparagraph (iv).
- (b) The clerk of the child justice court must submit the notice referred to in paragraph (a)—
- (i) by hand;
  - (ii) electronically; or
  - (iii) by facsimile.
- (c) The clerk of the child justice court must, if the notice was submitted electronically or by facsimile—

- (i) keep proof of the manner in which the notice was submitted;
  - (ii) ensure that the designated official has received the documents; and
  - (iii) send the original documents by registered post to the designated official.
- (5) The clerk of the child justice court, must, upon submission of a notice referred to in subregulation (4), indicate in the criminal record book opposite the name of the child that the notice was submitted, the date of submission and affix his or her signature to the entry.
- (6) The Director-General: Social Development must, on a regular basis, inspect the register with a view to identifying possible interventions and the issuing of the necessary instructions.
- 36. Access to register of children in respect of whom diversion order has been made.**—(1) The register referred to in section 60 of the Act must be secured and only be accessible to authorised persons.
- (2) A person who wishes to access the register must—
- (a) complete Part A of Form 10 of the Annexure;
  - (b) hand Form 10 to the designated official referred to in regulation 35 (1); and
  - (c) identify himself or herself, if requested to do so by the designated official.
- (3) The designated official must ensure that the person requesting access to the register is a person referred to in section 60 (2) of the Act and must record his or her decision and the reasons for the decision in Part B of Form 10 of the Annexure.

- (4) Form 10 must be filed in accordance with the general prescripts applicable to official documents.
- (5) The register must be examined in the presence of the designated official.
- (6) A person who has examined the register must treat the information obtained as confidential.

## **CHAPTER 8**

### **TRIAL IN CHILD JUSTICE COURT**

#### **37. Duty of presiding officer before plea in child justice court.—**

- (1) (a) A presiding officer must inform the child of and explain to the child, the matters referred to in section 63 (3) of the Act—
  - (i) in the language of the child's choice or through an interpreter;
  - (ii) in plain language, using simple vocabulary and avoiding technical words; and
  - (iii) in a manner appropriate to the age, maturity, stage of development of the child and the special needs of the child.
- (b) A presiding officer, when acting in terms of section 63 (3) of the Act, must—
  - (i) treat the child with care;
  - (ii) set the child and the parent, appropriate person or guardian at ease;
  - (iii) give enough detail about the matters;

- (iv) allow sufficient time so that the child can absorb the information;
- (v) encourage and allow the child to ask questions; and
- (vi) elicit responses from the child by asking questions in order to ensure that the child understands the information.

**38. Drawing up of list of independent observers.**—(1) (a) The magistrate of the district must, for the purposes of compiling a list of independent observers in terms of section 1 of the Act—

- (i) invite the community, an organisation or the community police forum to nominate persons to serve as independent observers in terms of section 65 of the Act; and
  - (ii) allow a person from the community, an organisation or the community police forum to nominate himself or herself to serve as an independent observer.
- (b) An invitation for a nomination as independent observer must be posted on the notice board at the magistrate's office, published in a local newspaper, broadcast over a local radio station or be extended in any other manner the magistrate deems appropriate.
- (2) A nomination for appointment as independent observer must be done on Part A of Form 11 of the Annexure.
- (3) (a) A person nominated to serve as an independent observer, must complete Part B of Form 11 of the Annexure.
- (b) A person who has been nominated as an independent observer in terms of subregulation (1) (a) and who is willing to accept the nomination and a person who has nominated himself or herself, must indicate on Part B of Form 11 any information which reflects his or her background and profile which may be



relevant for the purposes of deciding whether the nominee is suitable to assist a particular child.

- (4) (a) The magistrate of the district may obtain further information from any person nominated to serve as an independent observer and the community, organisation or community police forum which nominated the person in order to clarify any uncertainty.
- (b) The magistrate must, subject to paragraph (c), enrol on the list of independent observers—
- (i) the name of the person who nominated himself or herself to serve as independent observer; and
  - (ii) the name of the person who was nominated in terms of subregulation (1) (a) if he or she has accepted the nomination,
- if Form 11 has been completed to the satisfaction of the magistrate.
- (c) The magistrate, if he or she has reason to believe that a person whose name is to be enrolled on the list of independent observers in terms of paragraph (b), is not a suitable person, must inform the person in question and obtain further information from him or her.
- (d) The magistrate may, if he or she still believes that the nominated person is not a suitable person after having complied with paragraph (c), refuse to enrol the name of the person on the list of independent observers.
- (e) A magistrate who has refused to enrol the name of a person on the list of independent observers, must record the reasons for the refusal and give reasons for the refusal when requested by the person involved.

- (5) The list of independent observers may be kept manually or electronically.
- (6) The magistrate of the district must update the list on a regular basis to ensure that the contact details of persons whose names appear on the list are correct.
- (7) (a) The magistrate of the district must ensure that there are sufficient persons listed for appointment as independent observers.
- (b) In the event of a shortage of persons to be appointed as independent observers, the magistrate of the district must invite further nominations in the manner referred to in this regulation.

**39. Particulars of list of independent observers.**—The list of independent observers referred to in section 1 of the Act must contain the following particulars—

- (a) the surname and full names of the person;
- (b) the residential address of the person;
- (c) his or her identity number;
- (d) the language proficiency of the person;
- (e) the occupation of the person;
- (f) the social interests of the person; and
- (g) the cultural background of the person.

**40. Appointment of independent observer.**—(1) The presiding officer must, for the purposes of appointing an independent observer in terms of section 65 (6) of the Act, consider the names of the persons whose particulars appear on the list and select from that list the person best suited to assist the child.

- (2) The clerk of the child justice court must, on the instruction of the presiding officer, notify, as directed by the presiding officer, the person selected of his or her proposed appointment to assist the child.
- (3) The presiding officer must ascertain from the child whether he or she is willing to be assisted by the person selected.
- (4) (a) The presiding officer may obtain from the person selected any further information he or she deems fit for purposes of determining whether the person selected is suitable to assist the child.  
  
(b) The presiding officer must inform the person selected of his or her responsibilities in assisting the child and ascertain whether the person is willing to assist the child.
- (5) The presiding officer must, if he or she is satisfied that—
  - (a) the child is willing to be assisted by the person selected;
  - (b) the person selected is willing to assist the child; and
  - (c) the person selected is suitable to assist the child,appoint the person selected by recording his or her personal particulars on the court record.

## **CHAPTER 9 SENTENCING**

### **41. Progress report regarding community-based sentences.—**

- (1) (a) The child justice court must give directions to the probation officer regarding—
  - (i) the frequency of submitting progress reports referred to in section 72 (2) (a) of the Act, to the court; and

- (ii) the dates on which the first and subsequent progress reports must be provided to the court.
- (b) The last progress report must be provided to the child justice court within seven days after the date on which the child has complied with the order.
- (2) The probation officer must, if the child justice court fails to give the directions referred to in subregulation (1) (a), provide to the child justice court a progress report—
  - (a) within seven days after the date on which the conditions of the sentence have been complied with; and
  - (b) whenever the probation officer deems it necessary, taking into account the period of the sentence imposed, the nature of the offence, the extent to which monitoring of the child's compliance is required and the date on which the last progress report must be provided in terms of subregulation (1) (b).
- (3) The progress report must—
  - (a) be in writing;
  - (b) indicate the—
    - (i) case number;
    - (ii) name, age and the date of birth of the child;
    - (iii) particulars of the offence convicted of;
    - (iv) particulars of the sentence imposed; and
    - (v) sources of information;
  - (c) set out the information obtained regarding compliance with the order;

- (d) clearly indicate the progress made in complying with the order, with specific reference to the objectives of the sentencing option in question;
  - (e) reflect the views of the child regarding his or her progress;
  - (f) indicate the conclusions reached and the basis thereof or reasons;
  - (g) contain recommendations, if applicable, supported by motivation; and
  - (h) be accompanied by supporting documents, if applicable.
- (4) (a) The probation officer must closely monitor the child's compliance with the order to ensure that he or she is in a position to compile a progress report.
- (b) The probation officer must, to the extent necessary, obtain feedback in writing from any person who may have information on the child's compliance.
- (c) The probation officer must keep record—
- (i) of any oral or written information received in respect of the child's compliance with the order; and
  - (ii) of any observation made by the probation officer in respect of the child's compliance with the order.
- (d) In compiling a progress report, the probation officer must have regard to the information referred to in paragraphs (b) and (c).
- (5) The progress report must be submitted to the clerk of the child justice court in question in the manner provided for in regulation 35 (4) (b) and (c).
- (6) The clerk of the child justice court must, on receipt of the

progress report, attach the report to the case record and place it before the presiding officer who imposed the sentence.

- (7) The presiding officer must direct the clerk of the court how to deal with the matter and, in the case of a child who has failed to comply with a sentence referred to in section 79 of the Act, indicate the date on which the child must appear before the child justice court for an inquiry.

**42. Progress report regarding restorative justice sentences.—**

- (1) Regulation 41 applies with the changes required by the context to a progress report referred to in section 73 (4) of the Act.
- (2) The progress report must also indicate—
- (a) the manner in, and the extent to which, the child complied with the sentence imposed;
- (b) whether there were any impediments in complying with the sentence and how these were overcome;
- (c) the patterns of behaviour of the child when carrying out the sentence; and
- (d) any positive outcome for the child or the victim.

**43. Progress report regarding fines or alternative to fine.—**

- (1) Regulation 41 applies with the changes required by the context to a progress report referred to in section 74 (3) of the Act,
- (2) The probation officer must also include in the report information about—
- (a) the amount of compensation paid, the date on which and person to whom the payment was made;

- (b) the person or group to whom, or organisation, or institution to which, the service or benefit was provided and the dates on which it was done;
  - (c) views of the child relating to his or her sentence and responsibilities; and
  - (d) any positive outcome for the child or the victim.
- (3) The probation officer must, where applicable, attach supporting documents.

**44. Report on completion of sentence of compulsory residence in child and youth care centre.**—(1) A report referred to in section 76 (3) the Act by the head of the child and youth care centre to which a child has been sentenced must correspond substantially with Form 12 of the Annexure.

- (2) The report must clearly indicate—
- (a) which of the objectives referred to in section 69 of the Act have been achieved and the basis for the view which must be substantiated by supporting information;
  - (b) which of the objectives have not been achieved and the possible reasons for that which must be substantiated by supporting information; and
  - (c) the possibility of the child's re-integration into society without serving the additional term of imprisonment with reference to—
    - (i) the pattern of behaviour of the child during his or her term in the child and youth care centre;
    - (ii) any positive or negative incidents in which the child was involved and, in the event of a negative incident, the

- circumstances surrounding the incident which may have had an impact on the child;
- (iii) interventions of the centre in instances where the child behaved in an unacceptable manner and the child's response to that;
  - (iv) the extent to which the child has adjusted to the new environment;
  - (v) the child's relationship with his or her peers, including new entrants;
  - (vi) the child's relationship with the staff of the centre when the child was disciplined;
  - (vii) the extent to which the child has carried out his or her duties or assigned tasks;
  - (viii) the extent to which the child has acknowledged responsibility for any wrongdoing in which he or she was involved;
  - (ix) his or her scholastic progress; and
  - (x) any other relevant information.
- (3) The head of the child and youth care centre must ensure that the views expressed on the issues referred to in section 76 (3) (b) of the Act provide the presiding officer with sufficient detail.
- (4) The head of the child and youth care centre must submit Form 12, together with supporting documents, if any, to the clerk of the child justice court in question not later than six weeks before the child completes his or her sentence.



- (5) Form 12 must be submitted in a manner referred to in regulation 35 (4) (b) and (c).
- (6) The clerk of the child justice court must, on receipt of the progress report, attach the progress report to the case record and place it before the presiding officer who imposed the sentence for direction.
- (7) If the presiding officer directs the clerk of the child justice court to enrol the matter, he or she must do so and inform all the relevant parties.

**45. Manner of taking child to child and youth care centre for sentence of compulsory residence.**—(1) (a) The investigating police official must, if a child has been sentenced to compulsory residence in terms of section 76 of the Act—

- (i) make the necessary arrangements to ensure that the child is taken to the child and youth care centre; and
  - (ii) ensure, if necessary, that the child is accompanied by a social worker, social service professional or child and youth care worker as defined in the Children’s Act or an escort.
- (b) The persons who take or accompany the child to the centre must, if reasonably possible, include somebody of the same sex as the child.
- (2) A child must be transported—
- (a) in a manner that ensures proper control over the child;
  - (b) using the least invasive means to control the child and with due regard to the child’s right to bodily integrity;
  - (c) in a manner that takes into account the safety and security of the child and members of society;

- (d) in a manner that takes into account the age, dignity and level of maturity of the child;
  - (e) in a manner that is appropriate to the nature of the offence of which the child has been convicted;
  - (f) in any vehicle other than a marked police vehicle; and
  - (g) in the cabin of a vehicle and not in the back.
- (3) (a) The person responsible for transporting the child must, when a long distance has to be travelled to the centre, ensure that the child is allowed reasonable breaks and has access to water, food and, if necessary, overnight accommodation.
- (b) The person responsible for the transporting of the child must at all times ensure that he or she has proper control over the child without humiliating the child in public.
- (4) The person transporting the child must hand the child to the person in charge of the centre specified in the order and provide the person with the court order.

**46. Manner of bringing court order to attention of functionaries in case of sentence of compulsory residence in child and youth care centre.**—(1) A copy of the court order made in terms of section 76 (1) of the Act must accompany the child to the centre or institution where the child is to be detained until he or she is admitted in the centre specified in the order.

- (2) (a) The clerk of the child justice court must, on receipt of the court order—
- (i) record the date on which the child will complete the sentence at the child and youth care centre;
  - (ii) inform, by telephone, the person in charge of the child and youth care centre specified in the order of the order

and fax a copy of the order to that person; and

(iii) advise the head of the child and youth care centre to submit the report referred to in regulation 44 within six weeks before the date on which the child completes the sentence.

(b) The clerk of the child justice court must ensure that the report referred to in regulation 44 is received within the period referred to in paragraph (a).

**47. Failure of child to comply with certain sentences.**—(1) The probation officer must provide the child justice court with a report on the failure of a child to comply with a sentence referred to in section 79 (1) of the Act within seven days after becoming aware of the child's failure.

(2) The presiding officer to whom a report was made regarding the failure of a child to comply with a sentence, must indicate to the clerk of the child justice court a date on which the child must be brought before the child justice court.

(3) (a) The clerk of the child justice court must inform the person or the institution in whose care the child is of the date and time on which the child must be brought before a child justice court for an inquiry referred to in section 79 of the Act.

(b) The clerk of the child justice court must provide to the person or institution particulars of the court and its location.

(c) The clerk of the child justice court must notify the person or institution of the particulars referred to in paragraph (a) in the manner referred to in regulation 35 (4) (b) and proof of the manner in which the notice was submitted must be attached to the court record.

(4) The person or institution in whose care the child is, must,

subject to subregulation (5), take the child to the child justice court in question.

- (5) A police official, must, if the person or institution referred to in subregulation (4) is not in a position to bring the child to the child justice court, take the child to the child justice court.

## **CHAPTER 10**

### **LEGAL REPRESENTATION**

**48. Legal representative appointed to assist court.**—(1) A legal representative appointed in terms of section 83 of the Act to assist the court must—

- (a) attend all the court proceedings in respect of the case unless, excused by the court;
- (b) address the court on any matter requested by the court;
- (c) have access to the documents and statements in the docket to the extent permissible in criminal proceedings; and
- (d) ensure that the best interests of the child are upheld at all times.

(2) A legal representative appointed to assist the court may—

- (a) address the court on the merits and procedural aspects of the case;
- (b) address the court on the sentence to be imposed;
- (c) cross-examine a witness in relation to the evidence adduced by the witness;
- (d) discredit the evidence of a witness;

- (e) raise an objection to a question posed to the child or state witness;
  - (f) question the admissibility of evidence led by the state;
  - (g) present evidence that will be in the best interests of a child; or
  - (h) assist in any other manner as the court may request.
- (3) A legal representative may attend the proceedings of a preliminary inquiry if so requested by the inquiry magistrate.

## **CHAPTER 11**

### **EXPUNGEMENT OF RECORDS**

#### **49. Application for expungement of conviction and sentence.—**

- (1) An application in terms of—
- (a) section 87 (1) (a) of the Act to the Director-General: Justice and Constitutional Development; or
  - (b) section 87 (3) of the Act to the Cabinet member responsible for the administration of justice,
- for the expungement of a conviction and sentence must correspond substantially with Form 13 of the Annexure.
- (2) (a) Form 13 must be available at every magistrate's office and on the website of the Department of Justice and Constitutional Development.
- (b) Copies of section 87 and Schedules 1, 2 and 3 of the Act must be made available to every applicant who requests an application form.

- (3) The applicant must attach to Form 13 a certified copy of his or her criminal record obtained from the Criminal Record Centre of the South African Police Service, indicating the date of the conviction and the sentence, and the type of offence convicted of.
- (4) The applicant must submit a completed Form 13 to the Department of Justice and Constitutional Development—
  - (a) by post to Private Bag X 81, Pretoria, 0001; or
  - (b) by handing it in at the National Office of the Department of Justice and Constitutional Development.

**50. Consideration of application for expungement by Director-General.**—(1) An official of the Department of Justice and Constitutional Development who has been designated to deal with applications relating to the expungement of convictions and sentences in terms of the Act may, if the information in Form 13 is inadequate or not clear, request further information from the applicant or any organ of state.

- (2) The Cabinet member responsible for the administration of justice must express his or her opinion in terms of section 87 (1) (b) of the Act in writing and record his or her reasons for the opinion.
- (3) The Director-General: Justice and Constitutional Development must, if he or she intends to refuse the application on the basis that the application does not meet the requirements of section 87 (2) of the Act, notify the applicant in writing of—
  - (a) his or her intention; and
  - (b) the requirements which have not been met and why not,

and specify a date on or before which the applicant may respond to the Director-General on the information submitted.

- (4) The Director-General must, after expiry of the date specified in the notice, consider the response by the applicant, if any, and make a decision regarding the application for expungement.
- (5) The Director-General must, if an application has been refused, within 15 working days thereafter inform the applicant in writing—
  - (a) of the decision;
  - (b) of the reasons for the refusal of the application;
  - (c) of the remedies available to the applicant in terms of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000).
- (6) The Director-General must, if he or she is satisfied that the child complies with the criteria set out in section 87 (1) of the Act, issue a certificate of expungement which corresponds substantially with Form 14 of the Annexure.
- (7) An applicant to whom a certificate of expungement has been issued in terms of section 87 (2) of the Act must hand, or submit by registered post, the certificate to the Head of the Criminal Record Centre of the South African Police Service.

**51. Consideration of application for expungement by Cabinet member.**—(1) Regulation 50 (1), (4), (5) and (7) applies in respect of the consideration of an application by the Cabinet member responsible for the administration of justice in terms of this regulation, with the necessary changes required by the context.

- (2) The Cabinet member responsible for the administration of justice must, if he or she intends to refuse the application on the basis that there are no exceptional circumstances justifying the expungement of the conviction and sentence as referred to in section 87 (3) of the Act or that the child does not otherwise comply with the criteria in section 87 (1) of the Act, notify the applicant in writing of—
- (a) his or her intention; and
  - (b) the requirements which have not been met and why not, and specify a date on or before which the applicant may respond to the Cabinet member on the information submitted.
- (3) The Cabinet member responsible for the administration of justice must, if he or she is satisfied that the child complies with the criteria set out in section 87 (1) and (3) of the Act, issue a certificate of expungement which corresponds substantially with Form 15 of the Annexure.

**52. Expungement of record of diversion order.**—(1) The Director-General: Social Development may, for the purposes of determining whether the criteria referred to in section 87 (6) of the Act have been complied with, obtain information relating thereto from any person, organ of state or private body.

- (2) (a) The Director-General must, if information has been received to the effect that the criteria have not been met, inform the child in writing about the information and the implications thereof.
- (b) The Director-General must indicate in the notice a date on or before which the child may submit a response to the information received from the Director-General.



- (3) The Director-General must, after having considered any response from the child, make a decision on the expungement of the record of a diversion order.
- (4) The Director-General must record in writing his or her decision relating to the expungement of the diversion order.
- (5) The designated official referred to in regulation 35 (1) must, if the Director-General has decided to expunge the record, remove the child's particulars from the diversion register and archive all documents relating to that child.
- (6) The designated official must, within 15 working days after having removed the child's particulars from the diversion register, inform the child of the expungement.
- (7) The Director-General must, within 15 working days after having refused to expunge the record of a diversion order, inform the child in writing—
  - (a) of the decision;
  - (b) of the reasons for refusal; and
  - (c) of the remedies available to the child in terms of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000).

## **CHAPTER 12 MISCELLANEOUS**

- 53. Registration of age of child.**—(1) The Department of Home Affairs must, upon receipt of a copy of the age determination referred to in section 90 (1) of the Act, contact the child, the parents, appropriate person or guardian, or the probation officer involved in the matter to obtain further information,

and for purposes of completing an application form for an identification document as referred to in the Identification Act, 1997 (Act No. 68 of 1997).

- (2) The Department of Home Affairs must, for the purposes of section 90 (2) of the Act, report back to the inquiry magistrate, child justice court or probation officer in question about the registration of the age of the child—
  - (a) in writing;
  - (b) within 30 days after receipt of a copy of the record of the age determination referred to in section 90 (1) of the Act;
  - (c) by indicating what steps have been taken regarding the registration of the age of the child;
  - (d) by giving reasons why the age has not been registered, if that is the case;
  - (e) by advising what can be done further to have the age registered; and
  - (f) by attaching a copy of any document confirming the registration of the age of the child, if applicable.

**54. Register of children lacking criminal capacity.**—(1) The probation officer must, after having recorded the outcome of the assessment and the decision in terms of section 9 (6) of the Act, submit for inclusion in the register referred to in section 97 (6) of the Act to the Director-General: Social Development or a person designated by him or her, the particulars required in that section.

- (2) The probation officer must inform the Director-General or a person designated by him or her of any failure by a child to comply with any obligation imposed in terms of section 9 of

the Act and the manner in which the matter was dealt with.

- (3) The probation officer must, upon compliance by the child with the obligations imposed on the child in terms of section 9, inform the Director-General or a person designated by him or her of the particulars of the child's compliance.
- (4) The Director-General or a person designated by him or her must, on receipt of the information from the probation officer in terms of subregulations (1), (2) and (3), record the information in the register referred to in section 97 (6) (a) of the Act, and file any document so received in the personal file of the child.

**55. Access to register of children lacking criminal capacity.—**

- (1) The register referred to in section 97 (6) of the Act may be accessed by—
  - (a) a person or an official involved in the administration of justice;
  - (b) a probation officer or a social worker in the exercise of his or her official duties;
  - (c) a prosecutor in the exercise of his or her official duties;
  - (d) a presiding officer in the exercise of his or her official duties;
  - (e) a person who is by law empowered or mandated to take care of the interests of a child, including a legal representative;
  - (f) a parent of the child or the appropriate person or guardian;
  - (g) officials of the child and youth care centre involved in the matter;
  - (h) members of non-governmental organisations or community-based organisations whose core business is the interest and welfare of the child;

- (i) any researcher conducting research relating to the criminal justice system for children or the interests of a child; and
  - (j) a member of the Intersectoral Committee established in terms of section 94 of the Act.
- (2) A person referred to in subregulation (1) (h) or (i) who wishes to access the register must—
- (a) complete Part A of Form 10 of the Annexure;
  - (b) hand Form 10 to the Director-General: Social Development or the person designated by him or her; and
  - (c) identify himself or herself, if requested to do so by the Director-General or designated official.
- (3) The Director-General or the designated official must—
- (a) ensure that the person requesting access to the register is a person referred to in subregulation (1);
  - (b) immediately after receiving the request to examine the register take a decision and record his or her decision and the reasons for the decision in Part B of Form 10; and
  - (c) ensure that the decision is communicated immediately to the person making the request.
- (4) Form 10 must be filed in accordance with the general prescripts applicable to official documents.
- (5) The register must be examined in the presence of the Director-General or designated official.
- (6) A person who has examined the register must treat the information obtained as confidential.

**56. Manner of notification.**—(1) Any notice required to be submitted in terms of these Regulations may be submitted—

- (a) by hand;
- (b) by registered post;
- (c) by facsimile; or
- (d) electronically,

unless these Regulations provide otherwise.

- (2) The person who is to submit the notice must, in determining the manner in which the notice must be submitted, have due regard to the importance of the notice and any actions required in terms of the Act or these Regulations which must be concluded within a specified time period.
- (3) The person who submitted the notice must ensure that the person who is to receive the notice has indeed received it, if the notice is submitted in terms of subregulation (1) (c) or (d) and must submit the original notice thereafter by registered post.
- (4) The person who submitted the notice must keep proof of the manner in which the notice was submitted.

**57. Short title and commencement.**—These Regulations are called the Regulations relating to Child Justice and come into operation on 1 April 2010.

**Annexure**

**FORM 1**

**REFERRAL OF CHILD UNDER THE AGE OF 12 YEARS**

**SECTION 9(3)(a)(i), (ii) AND (iii) OF THE CHILD JUSTICE ACT,  
2008 (ACT NO. 75 OF 2008) REGULATIONS RELATING TO  
CHILD JUSTICE**

[Regulations 5, 6 and 7]

Ref/File no.:

CAS No.	
Police Station	

**TO:**

<b>The Clerk of the Children's Court</b>

**AND**

<b>Particulars of the person/Centre where child is</b>

Particulars of Probation Officer			
Full names and Surname:			
Stationed at:			
Contact Number:			
Home:		Business:	
Cellular:		Fax:	
E-mail address:			

Particulars of child and person or Centre where child is	
Full names and surname of child:	
Full names and surname of person where child is ( <i>if not at a centre</i> ):	
Name of the Centre where child is ( <i>if not with a person</i> ):	
Physical address of person or Centre:	

## REFERRAL

Please mark appropriate referral with X:

Referral to children's court in terms of section 9(3)(a)(i) of the Act  
(Complete Part A of Referral)

Referral of child to counselling or therapy in terms of section 9(3)(a)(ii) of the Act  
(Complete Part B of Referral)

Referral of child to an accredited programme in terms of section 9(3)(a)(iii) of the Act  
(Complete Part C of referral)

<b>PART A</b>	<b>REFERRAL TO CHILDREN'S COURT IN TERMS OF SECTION 9(3)(a)(i) OF THE ACT</b>
After having assessed the above-mentioned child, I am of the view that *he/she (mark with an X)	
	May be a child in need of care and protection as referred to in section 150(1) and (2) of the Children's Act, 2005.
	Does not live at his or her parents' home or in appropriate alternative care.
	Is alleged to have committed a minor offence/offences aimed at meeting his/her basic needs for food or warmth.
I accordingly refer the matter to the children's court to be dealt with in terms of sections 155 and 156 of that Act.	
I attach a copy of the assessment report referred to in section 40 of the Act and other relevant documents	
Signature of Probation officer:	
Date:	



For the purposes of the section 97(6) register, the probation office is required to report to the Director-General: Social Development on the child's compliance with the decision.

**PART B REFERRAL OF CHILD TO COUNSELLING OR THERAPY IN TERMS OF SECTION 9(3)(a)(ii) OF THE ACT**

After having assessed the above-mentioned child, I have decided to refer him or her for counselling/therapy for the reasons set out in the attached assessment report referred to in section 40 of the Act.

The child must receive counselling/therapy:	For a period of: <i>(Specify period)</i>		From:	Until:
You are requested to furnish me with reports on the child's progress and compliance with the decision <i>(Specify how often)</i> :				
Signature of Probation officer:				
Date:				

For the purposes of the section 97(6) register, the probation office is required to report to the Director-General: Social Development on the child's compliance with the decision.

**PART C REFERRAL OF CHILD TO AN ACCREDITED PROGRAMME IN TERMS OF SECTION 9(3)(a)(iii) OF THE ACT**

After having assessed the above-mentioned child, I have decided to refer him or her to an accredited programme for the reasons set out in the attached assessment report referred to in section 40 of the Act.

The child must attend the programme	For a period of: <i>(Specify period)</i>	OR	From:	Until:
You are requested to furnish me with reports on the child's progress and compliance with the decision <i>(Specify how often)</i> :				
Signature: Probation officer:				
Date:				
For the purposes of the section 97(6) register, the probation office is required to report to the Director-General: Social Development on the child's compliance with the decision.				

Copy to: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Official Stamp
-------------------

*(Appropriate persons such as parent)"; and*

(a) by the substitution for Form 2 of the following Form:

## FORM 2

### ORDER FOR THE EVALUATION OF CRIMINAL CAPACITY OF CHILD SECTION 11 OF THE CHILD JUSTICE ACT, 2008 (ACT NO. 75 OF 2008) REGULATIONS RELATING TO CHILD JUSTICE

[Regulation 13]

Ref/File no.:

In the Child Justice Court:	
Held at:	
CAS No:	
Police station:	

<b>A</b>	<b>PARTICULARS OF CHILD</b>			
Full names:				
Identity number/ passport number and date of birth:				
Age of child:				
Sex of child:	Male		Female	
Nature of charges against child:				

<b>B</b>	<b>PARTICULARS OF *PARENT/ APPROPRIATE PERSON/GUARDIAN/ CHILD AND YOUTH CARE  CENTRE WHERE CHILD IS PLACED</b>	
Full names of parent, appropriate person or guardian:		
Name of Child and Youth Care Centre:		
Residential address:		
Business address:		
Contact numbers:	Home:	Business:
	Cellular:	Fax:
E-mail address:		

## ORDER BY PRESIDING OFFICER TO:

TO:

\_\_\_\_\_ *(Particulars of \*person/institution to conduct evaluation)*

In view of the fact that there is doubt about the criminal capacity of the abovementioned child, I

\_\_\_\_\_  
*(full names of presiding officer), hereby make the following order:*

1. Evaluate the following aspects of the criminal capacity of the under mentioned child:

<b>Cognitive development</b>	Yes		No	
<b>Moral development</b>	Yes		No	
<b>Emotional development</b>	Yes		No	
<b>Psychological development</b>	Yes		No	
<b>Social development</b>	Yes		No	

2. You are also ordered to provide this court with a written report on the evaluation of the child within 30 days of this order in terms of section 11(4) of the Child Justice Act, 2008 (Act No. 75 of 2008). The report must contain a brief description of how the evaluation of the cognitive, moral, emotional, psychological and social development of the child was done, and include findings and supporting reasons for the finding.

Signed on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_

\_\_\_\_\_  
*Presiding Officer*

Official  
Stamp

\*Attach documents in terms of Regulation 13(2), including charge sheet and probation officer's report.".

**Form 3**

**AGE ESTIMATION OF CHILD BY PROBATION OFFICER  
SECTION 13 OF THE CHILD JUSTICE ACT, 2008  
(ACT NO. 75 OF 2008)  
REGULATIONS RELATING TO CHILD JUSTICE  
[Regulation 14]**

<b>1. Particulars of the child:</b>	
Full names and surname:	
Sex:	
<b>2. Age estimation</b>	
Indicate with an X which of the following information has been considered and give particulars:	
Previous age determination	
<b>Statement by:</b>	
parent	
appropriate person	
guardian	
community or religious leader	
child	

School registration form	
School report	
Baptismal or religious certificate	
Age estimation by a medical practitioner	
Attach copies of relevant documents, where necessary	
Other relevant information (provide details)	
<b>OPINION:</b>	
Based on the information set out above and the child's general appearance, the age of	
is estimated at:	
<b>Signature: Probation Officer</b>	<b>Date:</b>
Full names and Surname:	<b>Official Stamp</b>
Stationed at:	
Contact details	

**Form 4**

**AGE ESTIMATION OF CHILD BY MEDICAL PRACTITIONER  
SECTION 14 OF THE CHILD JUSTICE ACT, 2008  
(ACT NO. 75 OF 2008)  
REGULATIONS RELATING TO CHILD JUSTICE  
[Regulation 15]**

<b>At the Preliminary Inquiry / In the Child Justice Court held at</b>	
<b>Case no./File no.</b>	
<b>PART A</b>	
<b>Personal particulars of child</b>	
Full names and surname	
Sex	
<b>Particulars of parent, appropriate person or guardian or Child and Youth Care Centre</b>	
Full names and surname / Name of Centre	
Contact details of person / Centre	
Physical address of person / Centre	



**PART B**  
**REFERRAL OF CHILD TO MEDICAL PRACTITIONER**

**TO:**

**Particulars of medical practitioner**

Full names and Surname

Particulars of hospital, clinic or practice

Contact details

Since there is uncertainty as to the age of the child mentioned above, the child is referred to you in terms of section 14 (2) (d) of the Child Justice Act, 2008 for an estimation of age.

Signature: Presiding Officer

**PART C**  
**MEDICAL ASSESSMENT OF CHILD**

Height

Weight

Condition of:

Face

Lungs

Heart

Teeth

Sight

Hearing

Speech

Bone structure

Neurological state

	Intellect	
Any diseases, infection, injuries or impairment. (Indicate degree)		
Nutrition	Adequate/deficient. If deficient, provide details.	
Vaccinations	Yes/No. If yes, provide details.	
Physical development	Normal / abnormal. If abnormal, provide details.	
Sexual organs	Breasts	
	Pubic hair	
	Genitals	
	Auxiliary	
Substance abuse	Yes / No If yes, provide details.	
Other Observations	Provide details	
Medical or other treatment required/ recommended		

Remarks	
Opinion/conclusion	
Based on the above-examination and the child's general appearance:	
(a) The age of the child is assessed at being between _____ and _____  the most probable age is _____	
(b) The possible date of birth could be _____	
<b>Signature: Medical Practitioner</b>	<b>Date</b>

## Form 5

### SWORN STATEMENT IN RESPECT OF PLACEMENT OF CHILD SECTIONS 29 (4) AND 40 (2) OF THE CHILD JUSTICE ACT, 2008 (ACT NO. 75 OF 2008) REGULATIONS RELATING TO CHILD JUSTICE [Regulations 23 and 27]

<b>Particulars of child</b> (furnish particulars to the extent known)					
Full names and surname					
Age		Date of birth:		Sex:	
I, _____ state under oath that:					
1. I am responsible for the management of Child and Youth Care Centre.					
2. I confirm that this Centre has capacity to accommodate children and					
At present the Centre is accommodating _____ children. The Centre is accordingly					
(Tick the appropriate box)					
	<input type="checkbox"/> in a position to accommodate the above-mentioned child.				
	<input type="checkbox"/> not in a position to accommodate the above-mentioned child.				
3. The Centre is equipped with:					
(State features and amenities)					

4. The Centre is safe and secure as :	
(Describe security measures installed at the Centre)	
<b>Signature: Manager</b>	<b>Date</b>
<b>OATH/DECLARATION</b>	
I certify that prior to administering the oath/affirmation I asked the deponent the following questions and recorded his/her answers in his/her presence:	
Do you know and understand the contents of the above statement?	
Do you have any objection to taking the prescribed oath?	
Do you consider the oath to be binding on your conscience?	
I certify that the deponent has acknowledged that he/she understands the contents of this declaration. The deponent uttered the following words—"I swear that the contents of this declaration are true, so help me God"/ "I truly affirm that the contents of the declaration are true". The signature/thumb print/mark of the deponent was placed thereon in my presence.	
Signed at _____ on this _____ day of 20 _____	
<b>Commissioner of Oaths</b>	
<b>Full names:</b>	
<b>Area:</b>	
<b>Business Address:</b>	

**Form 6**

**DIVERSION ORDER SECTION 53 (1) OF THE CHILD JUSTICE  
ACT, 2008 (ACT NO. 75 OF 2008)  
REGULATIONS RELATING TO CHILD JUSTICE  
[Regulation 29]**

<b>At the preliminary inquiry /</b>					
<b>In the Child Justice Court held at:</b>					
Case no. (if applicable):					
<b>TO:</b>					
<b>Particulars of the child</b>					
Full names and Surname:					
Age:		Date of birth:		Sex:	
Physical Address:					
Alleged offence:					
<b>COPY TO:</b>					
*(Any other person/institution affected by the order)					
Name and surname:					
Physical address:					
Contact details:					

## Particulars of the Order

### PART A

#### Compulsory School Attendance Order in terms section 53 (1) (a) of the Act

(i) You are ordered to attend \_\_\_\_\_ school, in \_\_\_\_\_ (place) every school day, from the date of this order until \_\_\_\_\_, unless excused by the school principal/headmaster or the educator appointed by the headmaster for this purpose, for reasons acceptable to the school and the Department of Education.

(ii) Under this order you are required to—

- remain at the school during school hours;
- report to the responsible educator;
- perform school work, including homework, diligently;
- co-operate with the educators;
- abide by the school rules; and
- participate in the following extra curriculum activities (specify):

(iii) Mr/Ms \_\_\_\_\_, in his/her capacity as \_\_\_\_\_ will monitor your compliance with the order and report back.

(iv) Your failure to comply with this order may result in a warrant being issued for your arrest.

**Signature: Presiding officer**

Name of the Presiding officer:

**PART B**

**Family Time Order in terms of section 53 (1) (b) of the Act**

(i) You are ordered to spend at least hours per week /month with your family.

(ii) Under this order you are required to—

- interact with members of your family;
- help with, or perform, household duties;
- do your homework;
- listen to and co-operate with other family members;
- behave in the following manner

\*

\*

\*

\*

(iii) This order will apply from the date of this order until

(iv) Mr/Ms \_\_\_\_\_, in his/her capacity as \_\_\_\_\_, will monitor your compliance with this order and report back.

(v) Your failure to comply with this order may result in a warrant being issued for your arrest.

**Signature: Presiding officer**

Name of the Presiding officer:



**PART C**

**Good Behaviour Order in terms of section 53 (1) (c) of the Act**

(i) From the date of this order until you are ordered to abide by the

following standard of behaviour:


(ii) Stop the following behaviour:


(iii) Under this order you are required to—

- interact with members of your family;
- help with, or perform, household duties;
- do your homework;
- listen to and co-operate with other family members;
- attend community activities approved by your parents, appropriate person or guardian;

(iv) Mr/Ms \_\_\_\_\_ will monitor your compliance with this order and report back.

(v) Your failure to comply with this order may result in a warrant being issued for your arrest.

--	--

**Signature: Presiding officer**

Name of the Presiding officer:

<b>PART D</b>	
<b>Peer Association Order in terms of section 53 (1) (d) of the Act</b>	
(i) You are ordered to associate with the following person/s:	
(Identify the persons with sufficient detail to avoid any confusion on the part of the child)	
(ii) You are further ordered to refrain from associating with the following persons:	
(Identify the persons with sufficient detail to avoid any confusion on the part of the child)	
(iii) The order will apply from the date of this order until	
(iv) Mr/Ms _____ will monitor your compliance with this order and report back.	
(v) Your failure to comply with the order may result in a warrant being issued for your arrest.	
<b>Signature: Presiding officer</b>	Name of the Presiding officer:

**PART E**

**Reporting Order in terms of section 53 (1) (e)**

(i) You are ordered to report—

to Mr/Ms

at

(indicate how often or when)

from the date of this order until

(ii) You must report to Mr/Ms \_\_\_\_\_, on the following:

(iii) Mr/Ms may require you to:

(iv) Mr/Ms \_\_\_\_\_ will monitor your compliance with this order and report back.

(v) Your failure to comply with the order may result in a warrant being issued for your arrest.

**Signature: Presiding officer**

Name of the Presiding officer:

**PART F**

**Supervision and Guidance Order in terms of section 53 (1) ( f )**

(i) You are placed under the supervision and guidance of

a \_\_\_\_\_ based at \_\_\_\_\_  
\_\_\_\_\_, from the date of this order until  
\_\_\_\_\_

(ii) You will be supervised and guided in respect of the following:

(iii) You are required to immediately contact and meet with Mr/Ms \_\_\_\_\_, at \_\_\_\_\_, to develop a supervision and guidance plan. The supervision and guidance plan must include the following:

- details of the sessions; (number, times and place)
- objectives to be achieved; and responsibilities.

(iv) Mr/Ms \_\_\_\_\_ will act as your mentor and assist you to achieve the objectives of the plan. Mr/Ms \_\_\_\_\_ will monitor your compliance with the order and report back.

(iv) Your failure to comply with the order may result in a warrant being issued for your arrest.

**Signature: Presiding officer**

**Date**

Name of the Presiding officer:

**Form 7**

**CERTIFICATE OF ACCREDITATION OF DIVERSION SERVICE PROVIDER**

**SECTION 56 OF THE CHILD JUSTICE ACT, 2008  
(ACT NO. 75 OF 2008)  
REGULATIONS RELATING TO CHILD JUSTICE  
[Regulation 31]**

This is to certify that:		
<i>(Name and physical address)</i>		
Reg No.:		
Accreditation Certificate No.:		
is an accredited diversion service provider to provide diversion programmes, provided that the service provider continues to comply with the minimum standards referred to in <u>section 55</u> of the Act.		
This certificate of accreditation is valid for a period of four years, commencing on _____ and expiring on _____		
<b>Minister: Social Development</b>		<b>Official Stamp</b>
<b>Date:</b>		

## Form 8

**CERTIFICATE OF ACCREDITATION OF DIVERSION PROGRAMME  
SECTION 56 OF THE CHILD JUSTICE ACT, 2008 (ACT NO. 75 OF  
2008)  
REGULATIONS RELATING TO CHILD JUSTICE  
[Regulation 31]**

This is to certify that:		
an accredited service provider,		
Accreditation Certificate No.:		
is accredited to provide the following diversion programme—		
provided that the diversion programme/s continue to comply with the minimum standards referred to in <u>section 55</u> of the Act.		
This certificate of accreditation is valid for a period of four years, commencing on _____ and expiring on _____		
<b>Minister: Social Development</b>		<b>Official Stamp</b>
<b>Date:</b>		

**Form 9**

**REPORT ON COMPLIANCE OR NON-COMPLIANCE WITH  
DIVERSION ORDER  
SECTIONS 57 AND 58 OF THE CHILD JUSTICE ACT, 2008  
(ACT NO. 75 OF 2008)  
REGULATIONS RELATING TO CHILD JUSTICE  
[Regulations 33 and 34]**

<b>To: The Clerk of the Child Justice Court:</b>
<b>Case No.:</b>  <p style="text-align: right;">(if available)</p>
<b>AND</b>
<b>To: The Prosecutor:</b>  
<b>1. Particulars of child</b>
Full names and surname:
Physical Address:  
<b>2. Particulars of the order</b>
Alleged offences:
Diversion order:
Order issued by:
Date:
(attach copy of order if available)

**3. Particulars of the probation officer/person identified to monitor compliance**

Full names and surname:

Stationed at:

Contact details:

**4. Notification on non-compliance in terms of section 57 (2)**

Provide full details of the nature and the extent of the failure to comply, including dates and times, and the implications thereof:

Indicate whether any corrective measures were taken, if yes, indicate the results thereof

Recommendations:



(Provide facts and if an opinion is expressed, it must be motivated)		
(Attach supporting documents, if any)		
<b>5. Report on successful compliance in terms of <u>section 57 (5)</u></b>		
Provide full details of compliance:		
Indicate to what extent the objectives of diversion referred to in <u>section 51</u> of the Act have been met:		
<b>Signature: Probation Officer / Person identified to monitor compliance</b>		<b>Official Stamp</b>
<b>Date</b>		

**Form 10**

**APPLICATION TO ACCESS THE REGISTER OF DIVERSION  
ORDERS OR REGISTER OF CHILDREN LACKING CRIMINAL  
CAPACITY  
SECTION 60 OR SECTION 97 (6) OF THE CHILD JUSTICE ACT,  
2008  
(ACT NO. 75 OF 2008)  
REGULATIONS RELATING TO CHILD JUSTICE  
[Regulations 36 and 55]**

<b>CAS/CR NO.:</b>	
<b>TO: Director-General/Designated official</b>	
<b>Part A</b> (To be completed by applicant)	
<b>1. Particulars of applicant</b>	
Full names and surname	
Identity Number	
Capacity/occupation	
Name of employer/ business	
Physical address	
Contact details	

<b>2. Reasons for examination of register</b>	
Reasons for examination  (The reasons must be for purposes set out in section 60 (2) (a) and (b) or section 97 (6) (c) of the Act)	
<b>Signature: Applicant</b>	
<b>Part B</b> (To be completed by the Director-General or designated official)	
<b>3. Decision on application for examination</b>	
Request granted / refused	
Reasons for decision	
<b>Signature: Director-General / Designated official</b>	<b>Official Stamp</b>
<b>Date</b>	

**Form 11**

**NOMINATION OF INDEPENDENT OBSERVER  
SECTION 1 READ WITH  
SECTION 65 OF THE CHILD JUSTICE ACT, 2008 (ACT NO. 75 OF  
2008)  
REGULATIONS RELATING TO CHILD JUSTICE  
[Regulation 38]**

<b>PART A: NOMINATION</b>	
<b>Personal Particulars of the Nominator</b>	
Full names and surname:	
ID No.	
Physical Address:	
Contact details: (Home, work and cellphone number or email address)	
Name and contact details of institution represented, if applicable	
<b>Particulars of the nominee</b>	
Full names and surname :	
ID No:	

Physical address:	
Contact details: (Home, work and cellphone number or email address)	
Reason for nomination :	
<b>Signature: Nominator</b>	
<b>Date:</b>	
<b>Place:</b>	
<b>PART B: ACCEPTANCE OF NOMINATION</b>	
Full names and surname :	
ID No.	
Physical Address:	
Contact Details: (Home, work and cellphone number or email address)	
Language Proficiency:	
Occupation:	

Have you ever been convicted of an offence?	
Background Information: (Include cultural background and social interest, in particular the welfare and interests of children)	
Membership details: (other membership or positions held)	
Other information relevant for purposes of nomination as an independent observer:	
I declare that the information provided above is to the best of my knowledge and belief true and correct.	
I accept the nomination to serve as an independent observer and declare myself a fit and proper person for nomination.	
I accept that serving as an independent observer is a social responsibility and that I do not expect any payment for services rendered.	
<b>Signature: Nominee</b>	
<b>Date:</b>	
<b>Place:</b>	

**Form 12**

**REPORT BY THE HEAD OF CHILD AND YOUTH CARE CENTRE  
REGARDING THE POSSIBILITY OF CHILD'S REINTEGRATION  
INTO SOCIETY WITHOUT SERVING TERM OF IMPRISONMENT  
SECTION 76 OF THE CHILD JUSTICE ACT, 2008 (ACT NO. 75 OF  
2008)**

**REGULATIONS RELATING TO CHILD JUSTICE**

[Regulation 44]

<b>TO: The Clerk of the Child Justice Court</b>	
<b>1. Particulars of the Child and Youth Care Centre</b>	
Name of the Child and Youth Care Centre:	
Full names and Surname of the head of the Child and Youth Care Centre:	
Contact details:	
<b>2. Particulars of the child and sentence</b>	
Full names and Surname:	
Case No:	
Offence:	
Sentence imposed:	
Presiding officer:	
Date of sentence:	

<b>3. Report</b>
3.1 Details of the programmes referred to in section 191 (2) (j) (i) of the Children’s Act, 2005, attended by the child:
3.2 Child’s overall response to programmes:
3.3 Have the objectives of sentencing referred to in <u>section 69</u> of the Act been achieved? If yes, provide details:
(indicate the basis of your views with reference to the information available)
3.4 Which objectives referred to in <u>section 69</u> of the Act have not been met, if any? What are the possible reasons?



Recommendations:		
(Provide facts, and if an opinion is expressed it must be motivated) Attach supporting documents, if any)		
<b>Signature: Head: Child and Youth Care Centre</b>		<b>Official Stamp</b>
<b>Date:</b>		

## Form 13

**APPLICATION FOR EXPUNGEMENT OF RECORDS OF  
CONVICTION AND SENTENCE BY THE DIRECTOR-GENERAL OR  
CABINET MEMBER  
SECTIONS 87 (1) AND 87 (3) OF THE CHILD JUSTICE ACT, 2008  
(ACT NO. 75 OF 2008)  
REGULATIONS RELATING TO CHILD JUSTICE  
[Regulation 49]**

**Note** Copies of *section 87* and *Schedules 1, 2 and 3* of the Act are available at every magistrate's office and on the Department's website at: <http://www.doj.gov.za>.

*Before submitting this application form you must obtain a copy of your criminal record from the Criminal Record Centre of the South African Police Service. Any police station may assist you in this regard. Attach the copy of the criminal record to this application form.*

### **1. Particulars of the Child**

Full names and surname

Age:

ID No./Date of birth:

Physical address:


Postal address:


### **2. Particulars of the parent(s), appropriate person or guardian**

Full names and surname:

ID No.:	
Relationship to the child:	
Physical address (if different from the child's):	
<b>3. Particulars of Conviction and Sentence</b>	
Offence: Schedule (1 or 2):	
Case No., if known:	
Child Justice Court:	
Date of conviction:	
Sentence:	
<b>4. Expungement by the Director-General in terms of section 87 (1)</b>	
<i>This application can only be made—</i>	
<i>(a) in respect of offences referred to in Schedules 1 and 2 of the Child Justice Act, 2008;</i>	
<i>(b) if a period of 5 years has elapsed after a conviction of a Schedule 1 Offence;</i>	
<i>(c) if a period of 12 years has elapsed after a conviction of a Schedule 2 Offence; and</i>	
<i>(d) if the child has not been convicted of a similar or more serious offence during the period of 5 or 12 years.</i>	
Mark appropriate box with X	
A period of 5 years has elapsed after the date of conviction of a Schedule 1 offence.	
A period of 12 years has elapsed after the date of conviction of a Schedule 2 offence	
Have you been convicted of an offence during the period mentioned above?	

Yes		No		
<p>If yes, provide details of all the offences which you were convicted of during the 5 or 10 year period and also indicate why the offence is not similar or more serious than the offence indicated in paragraph 3 above:</p>				
<p>I request that a certificate of expungement be issued directing the Criminal Record Centre to expunge the records of my conviction and sentence in terms of <u>section 87 (1)</u> of the Child Justice Act, 2008.</p>				
<p><b>5. Expungement by Cabinet member in terms of <u>section 87 (3)</u></b></p>				
<p><b><i>This application can only be made—</i></b></p>				
<p><i>(a) for offences referred to in Schedules 1 and 2 of the Child Justice Act, 2008;</i></p>				
<p><i>(b) in the case where the period of 5 years in respect of a Schedule 1 offence or the period of 19 years in respect of a Schedule 2 offence has not elapsed but where exceptional circumstances exist justifying expungement; and</i></p>				
<p><i>(c) if the child has not been convicted of a similar or more serious offence during the period of 5 or 12 years.</i></p>				
<p>Mark appropriate box with X</p>				
<p>A period of 5 years has not elapsed after the date of conviction of a Schedule 1 offence.</p>				
<p>A period of 12 years has not elapsed after the date of conviction of a Schedule 2 offence.</p>				

Notwithstanding the fact that the period of 5 years for a Schedule 1 offence or a period of 12 years for a Schedule 2 has not elapsed, the following exceptional circumstances justify expungement:			
(Attach supporting documents, if any)			
Have you been convicted of an offence during the period mentioned above?			
<b>Yes</b>		<b>No</b>	
If yes, provide details of all the offences which you were convicted of during the 5 or 10 year period and also indicate why the offence is not similar or more serious than the offence indicated in paragraph 3 above:			
I request that a certificate of expungement be issued directing the Criminal Record Centre to expunge the records of my conviction and sentence in terms of <u>section 87 (3)</u> of the Child Justice Act, 2008.			
<i>I certify that the information provided in this form is to the best of my knowledge true and correct.</i>			
<b>Signature: Applicant</b>		<b>Official Stamp</b>	
<b>Date:</b>			

**Form 14**

**CERTIFICATE OF EXPUNGEMENT OF CONVICTION  
AND SENTENCE BY DIRECTOR-GENERAL; JUSTICE AND  
CONSTITUTIONAL DEVELOPMENT  
SECTION 87 (2) OF THE CHILD JUSTICE ACT, 2008 (ACT NO. 75  
OF 2008)  
REGULATIONS RELATING TO THE CHILD JUSTICE  
[Regulation 50]**

Acting in terms of section 87 (2) of the Child Justice Act, 2008 (Act No. 75 of 2008), I, _____ issue this certificate of expungement in respect of the following		
Applicant:		
Surname:		
Full names:		
ID No./Date of birth:		
in respect of the following:		
<b>OFFENCE</b>	<b>DATE OF CONVICTION</b>	<b>SENTENCE</b>
<b>Signature: Director-General: Department of Justice and Constitutional Development</b>		<b>Official Stamp</b>
<b>Date:</b>		

**Form 15**

**CERTIFICATE OF EXPUNGEMENT OF CONVICTION AND  
SENTENCE BY CABINET MEMBER  
SECTION 87 (3) OF THE CHILD JUSTICE ACT, 2008 (ACT NO. 75  
OF 2008)  
REGULATIONS RELATING TO THE CHILD JUSTICE  
[Regulation 51]**

Acting in terms of section 87 (3) of the Child Justice Act, 2008 (Act No. 75 of 2008), I, _____ issue this certificate of expungement in respect of the following		
Applicant:		
Surname:		
Full names:		
ID No./Date of birth:		
in respect of the following:		
<b>OFFENCE</b>	<b>DATE OF CONVICTION</b>	<b>SENTENCE</b>
<b>Signature: Director-General: Department of Justice and Constitutional Development</b>		<b>Official Stamp</b>
<b>Date:</b>		

**CHILD JUSTICE ACT  
NO. 75 OF 2008**

**(Prior to amendment by Act No. 7 of 2013)**

**Schedule 3, item 13**

13. Trafficking in persons for sexual purposes referred to in section 71 (1) and involvement in trafficking in persons for sexual purposes referred to in section 71 (2) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007.

**(Prior to amendment by Act No. 39 of 2014)**

**Section 1, definition—“Legal Aid Board”**

**“Legal Aid Board”** means the Legal Aid Board established under section 2 of the Legal Aid Act, 1969 (Act No. 22 of 1969);



**NATIONAL INSTRUCTION  
2 OF 2010  
CHILDREN IN CONFLICT  
WITH THE LAW**

## NATIONAL INSTRUCTION 2 OF 2010 CHILDREN IN CONFLICT WITH THE LAW

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## **1. Background**

The Child Justice Act, 2008 (Act No. 75 of 2008) creates a new separate criminal justice system for *children in conflict with the law*.

*The Act* requires that *children* be treated differently from adults, but provides for them to be held responsible and accountable for their actions. The Act provides that children be treated in a manner that will encourage them to turn away from crime.

The purpose of this National Instruction is to ensure that *members* treat *children in conflict with the law* in a child justice system designed to break the cycle of crime, which will contribute to safer communities, and encourage them to become lawabiding and productive adults.

## **2. Purpose**

This Instruction is intended to provide clear direction to a member on how to deal with a child in conflict with the law and in order to comply with the obligations imposed upon him or her in terms of the Act.

## **3. Scope**

This National Instruction is applicable to all members of the South African Police Service (including reservists).

## **4. Regulatory framework**

This National Instruction is *inter alia* informed by the following:

- (a) Child Justice Act, 2008 Act No. 75 of 2008);
- (b) Children's Act, 2005 (Act No. 38 of 2005);
- (c) Constitution of the Republic of South Africa, 1996;

- (d) Criminal Law (Forensic Procedure) Amendment Act, 2010 (Act No. 6 of 2010);
- (e) Criminal Law (Forensic Procedures) Act, Amendment Act, 2013 (Act No. 37 of 2013);
- (f) Criminal Procedure Act, 1977 (Act No. 51 of 1977);
- (g) Forensic DNA Regulations issued in terms of the Criminal Law (Forensic Procedures) Act, Amendment Act, 2013 (Act No. 37 of 2013);
- (h) National Instruction 1 of 2007 (Identification parades);
- (i) National Instruction 3 of 2010 (The care and protection of children in terms of the Children's Act);
- (j) National Instruction 2 of 2012 (Victim Empowerment);
- (k) National Instruction 2 of 2013 (The management of fingerprints, body-prints and photographic images);
- (l) National Instruction 1 of 2016 (Use of force in effecting an arrest);
- (m) National Instruction 3 of 2016 (Bail and the release of persons);
- (n) National Instruction 8 of 2016 (Medical treatment and hospitalisation of a person in custody);
- (o) National Instruction 13 of 2017 (Case docket management);
- (p) National Instruction 11 of 2019: Arrest, treatment and transportation of an arrested person;
- (q) National Instruction 12 of 2019: Arrest and treatment of illegal foreigners;

- (r) National Instruction 13 of 2019: Management of persons in custody of the South African Police Service;
- (s) South African Police Service Act, 1995 (Act No. 68 of 1995); and
- (t) South African Police Service Discipline Regulations, 2016.

## 5. Definitions

In this instruction, unless the context otherwise indicates, —

- (a) **“appropriate person”** means any member of a child’s family, including a sibling who is 16 years or older, or a caregiver of the child, which includes any person other than a parent or *guardian* who factually cares for a child including —
  - (i) a foster parent;
  - (ii) a person who cares for a child with the implied or express consent of a parent or *guardian* of the child;
  - (iii) a person who cares for a child whilst the child is in *temporary safe care*;
  - (iv) the person at the head of a *child and youth care centre* where a child has been placed;
  - (v) the person at the head of a shelter;
  - (vi) a child and youth care worker who cares for a child who is without appropriate family care in the community; and
  - (vii) the child at the head of a child headed household, if such a child is 16 years or older;
- (b) **“arrest”** means the taking into custody of a *child* for an alleged offence in order to secure the presence of that *child* at his or her first appearance at a preliminary inquiry;

- (c) **“assessment”** means an *assessment* of a *child*, who is alleged to have committed an offence, by a *probation officer* to prepare an *assessment* report to recommend steps to be taken in respect of the *child*;
- (d) **“child”** means any person under the age of 18 years;
- (e) **“child and youth care centre”** means a facility established to provide residential care, outside the family environment, to more than 6 *children* at a time;
- (f) **“child in conflict with the law”** means a *child* suspected of having committed an offence;
- (g) **“child justice court”** means any court in which a criminal trial, in which a *child* is the accused, is conducted, or before which any bail application, plea, sentencing or proposal for diversion relating to such a case, is heard;
- (h) **“Children’s Act”** means the Children’s Act, 2005 (Act No. 38 of 2005);
- (i) **“Criminal Procedure Act”** means the Criminal Procedure Act, 1977 (Act No. 51 of 1977);
- (j) **“designated probation officer”** means the *probation officer* designated by the Director-General: Social Development for a specific police station;
- (k) **“detention”** includes confinement of a *child* prior to sentence in a *police cell or lockup*, prison or a *child and youth care centre*;
- (l) **“guardian”** means a parent or other person who has guardianship of a *child*;
- (m) **“member”** means a *member* of the South African Police Service appointed in terms of the South African Police Service Act, 1995 (Act No. 68 of 1995);

- (n) **“police cell or lockup”** means any place which is used for the reception, *detention* or confinement of a person who is being detained by the Police, and includes all land, buildings and premises adjacent to any such place and used in connection therewith;
- (o) **“preliminary inquiry”** means an informal inquiry held by the inquiry magistrate in a *child justice court* to consider the *assessment* report of the *probation officer* and either determine the release or the placement of the *child*;
- (p) **“probation officer”** means any person who has been appointed as a *probation officer* under section 2 of the Probation Services Act, 1991 (Act No. 116 of 1991);
- (q) **“temporary safe care”**, means the care of a *child* in any place where the *child* is accommodated pending a decision or court order concerning the placement of that *child*;
- (r) **“the Act”** means the Child Justice Act, 2008 (Act No. 75 of 2008); and
- (s) **“working days”** excludes Saturdays, Sundays and public holidays.

## 6. Treatment of children

### (1) Background

- (a) *Children* are different from adults and do not have the same knowledge, experience and insight normally expected from an adult. A *child* should therefore be treated differently from an adult. Accordingly, a *child*, who is suspected of having committed an offence, should be treated differently from an adult suspected of having committed the same offence.
- (b) *Children* are impressionable and prone to be influenced by the conduct of adults. *Children* are more likely to follow the



example set by adults rather than to do what adults tell them to do. *Children* exposed to criminal activity by adults are, accordingly, themselves likely to get involved in criminal activity. This is because, generally speaking, *children* yearn to be adults and would like to be treated like adults. Accordingly, if they see adults committing offences, they want to prove to the world that they are adults by also committing offences.

- (c) If a *child* is suspected of having committed an offence, the first contact between the *child* and an official from the Criminal Justice System (normally a *member*) is critical. The manner in which that official (*member*) treats the *child*, may play a decisive role in persuading the *child* to change his or her ways and refrain from further involvement in criminal activities or push him or her to become further and deeper involved in criminal activities. This applies even though a *child* may have committed a heinous crime and may have been acutely aware at the time that what he or she was doing was wrong and that it constitutes a crime.
- (d) A *member* who confronts a *child* who is suspected of having committed an offence, must bear the foregoing in mind when he or she considers how to deal with the *child*.
- (e) A *member* must always treat a *child* in a manner which is in the best interest of the *child* as set out in paragraph 2(3) of the National Instruction on the Care and Protection of Children in terms of the Children's Act.

## **(2) Treatment of a child suspected of having committed an offence**

- (a) During the first contact with a *child* suspected of having committed an offence, the *member* must, if circumstances permit, introduce himself or herself to the *child* and, if a parent, *guardian* or an *appropriate person* is present, to such person.
- (b) The *member* must explain to the *child* that he or she is being

suspected of having committed the offence. The *member* must explain this to the *child* in a language that he or she understands, preferably in the mother tongue of the *child*, using plain and simple vocabulary to assist the *child* to have a better understanding of the child justice system and the procedure that will be followed in his or her case. The *child* must understand that this is a very serious matter.

- (c) The *member* must realise that the *child* may be overwhelmed and scared in the presence of the Police and must therefore patiently explain the nature of the offence and the procedure that will be followed in his or her case. The *member* must give enough detail about the matters and allow sufficient time so that the *child* can absorb the information. The *member* must encourage the *child* to ask questions and respond to the questions and satisfy himself or herself that the *child* understands the information and explanation given. The *member* may elicit responses from the *child* by asking questions in order to ensure that he or she understands the information.
- (d) A *member* must not humiliate or intimidate a *child* and must at all times treat and communicate with the *child* in a manner which is appropriate to the age, maturity and stage of development of the *child*. The younger the *child*, the more patient and understanding the *member* must be while communicating with the *child*. The educational level, age and maturity of the *child* are also relevant when considering what would be an appropriate manner in which to treat and communicate with the *child*.
- (e) The *member* must take steps to protect the privacy and dignity of the *child* and must ensure that discussions with the *child* and his or her parent or *guardian* or an *appropriate person* (whether at the police station or at the crime scene) take place in private, out of sight and hearing of other persons.
- (f) A *member* who explains to a *child* and his or her parent,

*guardian* or an *appropriate person*, the contents of a notice or procedure must take into account the background of the *child*, the parent, *guardian* or *appropriate person* and the fact that they may not be conversant with the functioning of the courts and court procedures. The *member* must explain the contents of the notice or procedure in simple, understandable language and give sufficient details to the *child* and parent, *guardian* or *appropriate person*. The *member* must also encourage the *child*, parent, *guardian* or *appropriate person* to ask questions without interrupting him or her.

### **(3) Language of communication**

- (a) A *child*, parent, *guardian* or *appropriate person* must be addressed in a language that they understand, preferably the language of their choice, using plain and simple vocabulary.
- (b) If a *member* —
  - (i) is unable to establish what language the *child* and parent, *guardian* or *appropriate person* understands; or
  - (ii) cannot speak the language that the *child* and parent, *guardian* or *appropriate person* understands, the *member* must explain the information in English.
- (c) In the event that the *child* and parent, *guardian* or *appropriate person* do not understand English, the *member* must inform the Community Service Centre Commander accordingly. The Community Service Centre Commander must determine what language the *child* and parent, *guardian* or *appropriate person* understands and ensure that the information is conveyed in that language.
- (d) In the event that the *child* and parent, *guardian* or *appropriate person* do not understand English, the Community Service Centre Commander must make an entry in the Occurrence Book (OB) setting out the steps taken to ensure that the

information is conveyed in a language that is understood by the *child* and parent, *guardian* or *appropriate person*.

#### **(4) Arrest and detention of children**

- (a) A *child* should only be *arrested* as a last resort and, if *arrested*, should only be detained for the shortest possible time.
- (b) A *member*, who is authorised to *arrest* a *child* in terms of the *Act* and this *Instruction*, may decide not to *arrest* the *child*, but rather to have the investigation completed and the docket referred to the prosecutor to decide whether the *child* should be prosecuted or not, and if so, to have a summons issued to secure the attendance of the *child* at a *preliminary inquiry*.
- (c) In considering whether the *child* should be *arrested* or whether the investigation should be completed and the docket referred to the prosecutor to decide whether the *child* should be prosecuted and to have a summons issued, a *member* may consider any information that may be contained in the *Diversion Register*. The *Diversion Register* is maintained by the Department of Social Development and contains information of children's criminal cases that have been diverted. This information may assist the *member* to decide whether it would be appropriate in the circumstances, bearing in mind the information obtained from the *Diversion Register*, to *arrest* the *child* or to rather follow the summons route.
- (d) A *member* must ensure that —
  - (i) a *child* is detained separately from adults and boys separately from girls;
  - (ii) a *child* is detained in conditions which take into account his or her particular vulnerability and which will reduce the risk of harm to the *child*, including the risk of harm emanating from other *children*;

- (iii) the *child* may be visited by parents, *appropriate persons*, *guardians*, legal representatives, registered social workers, *probation officers*, assistant probation officers, health workers, religious counsellors and any other person who, in terms of any law, is entitled to visit the *child*; and
- (iv) the *child* is cared for in a manner consistent with the special needs of *children*, including the provision of —
  - (aa) immediate and appropriate health care in the event of any illness, injury or severe psychological trauma in accordance with the procedure set out in National Instruction 8 of 2016: Medical treatment and hospitalization of a person in custody;
  - (bb) adequate food, water, blankets, bedding; and
  - (cc) sanitary towels (if required by girl *children*).

## **(5) Application of the Criminal Procedure Act**

- (a) Section 4(3)(a) of *the Act* provides that, unless *the Act* provides for amended, additional or different provisions or procedures in respect of a *child in conflict with the law*, the provisions and procedures as set out in the *Criminal Procedure Act* apply with the necessary changes, to any *child* who is alleged to have committed an offence.
- (b) Therefore, if *the Act* or this National Instruction is silent on a provision or procedure relating to a *child in conflict with the law*, the provisions or procedures set out in the *Criminal Procedure Act*, as well as other National Instructions dealing with such aspects, must be complied with in respect of a *child in conflict with the law*. This includes matters such as the searching of such a *child*, the seizure of articles in accordance with section 20 of the *Criminal Procedure Act*, the taking of fingerprints, body-prints, buccal samples or photographic images relating to a *child in conflict with the law* and the confinement of the *child* when he or she has been *arrested*.

## 7. Responsibility of Divisional Commissioner: Visible Policing and Operations, Provincial Commissioners and Station Commanders

- (1) The Divisional Commissioner: Visible Policing and Operations must obtain from the Department of Social Development the —
  - (a) contact particulars of every *designated probation officer* in every province and any changes thereto; and
  - (b) information concerning the location, amenities, features and level of security offered by every *child and youth care centre* in every province.
- (2) The Divisional Commissioner: Visible Policing and Operations must compile a list containing the information referred to in subparagraph (1) in respect of each province and provide every Provincial Commissioner with a copy of the list relating to his or her province.
- (3) A Provincial Commissioner must provide a copy of the list to every station commander in his or her province.
- (4) Every station commander must ensure that the information received from the Provincial Commissioner referred to in subparagraph (3), is at all times available in the community service centre of his or her station and is updated as new information is received from the Provincial Commissioner.
- (5) Every station commander must liaise with the *designated probation officer*, and, if another *probation officer* is designated, the newly *designated probation officer*, to reach agreement on —
  - (a) how he or she should be notified of the *arrest* of a *child* or be provided with a copy of an Information Notice or Written Notice issued to or in respect of a *child* (ie by handing over a copy of the Notice, or by faxing it to a particular number and

telephonically notifying the *designated probation officer* of the fax); and

- (b) the procedure to be followed in the event of a *member* being unable to establish contact with the *designated probation officer* to notify him or her or provide a copy of a Notice as set out in subparagraph (a) to him or her.
- (6) The station commander must set out the information agreed upon with the *designated probation officer* as contemplated in subparagraph (5) in writing.
- (7) The station commander must ensure that a copy of –
  - (a) *the Act*;
  - (b) the Regulations promulgated in terms thereof;
  - (c) this National Instruction;
  - (d) the station orders issued by him or her in terms of subparagraph (8); and
  - (e) a document containing the information referred to in subparagraph (6); are at all times available in the Community Service Centre.
- (8) The station commander must, taking into account the unique circumstances prevailing in his or her specific station area, the agreement reached with the *designated probation officer*, the available resources, etc., issue station orders –
  - (a) requiring a *member* under his or her command to follow the approach agreed upon as contemplated in subparagraph (6); and
  - (b) in general, instructing *members* under his or her command on any other matter relating to the treatment of *children in conflict*

*with the law* which he or she deems necessary to determine in respect of his or her specific station area.

- (9) Where a police station area forms part of a larger area consisting of more than one police station area and a radio control unit has been established to patrol and attend to complaints in such larger area, every station commander of a station in such larger area must, for information purposes, provide the commander of such radio control unit with a copy of the station orders issued in accordance with subparagraph (8) and, if he or she amends the orders, a copy of the updated version thereof.
- (10) The station commander must see to it that all functional *members* at his or her station receive in-service training (also at station meetings) on *the Act*, the Regulations, this Instruction and the station orders issued by him or her.

## **8. Criminal offences reported to the Police**

- (1) If a member of the public reports the alleged commission of an offence to a police official, the member of the public will normally not know who had allegedly committed the offence. In such a case, the police official must take an affidavit, open a docket and have it registered on the CAS. The same applies if the member of the public suspects that the offence was committed by a particular person whose age is unknown to the member of the public, but he or she believes that person to be an adult or at least older than 12 years.
- (2) The detective designated as the investigating officer must, if he or she establishes, during the course of the investigation of the offence, that the person who had allegedly committed the offence, is a *child*, deal with the *child* in accordance with this Instruction.
- (3) If a member of the public reports the alleged commission of an offence to a police official and the member of the public



knows that the person who had allegedly committed the offence, is younger than 12 years and acted alone (ie was not used by an adult to commit the offence), the member of the public must be informed that a *child* below the age of 12 years lacks criminal capacity and cannot be arrested, prosecuted or convicted of an offence. In such a case, the *member* must —

- (a) take the particulars of the person reporting the alleged commission of the offence as well as the particulars of the alleged offence;
  - (b) determine from the member of the public how he or she knows that the *child* who had allegedly committed the offence is younger than 12 years and acted alone (was not used by an adult to commit the alleged offence);
  - (c) determine from the member of the public, the particulars of the *child* (name and residential address), as well as any information that the member of the public may have that will assist in determining whether the *child* is a child in need of care and protection and in need of immediate emergency protection as set out in the National Instruction on the Care and Protection of Children;
  - (d) make a comprehensive entry in the Occurrence Book (OB) setting out the particulars of the alleged offence, the person who reported it and the information (referred to in subparagraph (c)) that was provided by the member of the public; and
  - (e) provide the member of the public with the reference number of the OB entry.
- (4) The Community Service Centre Commander must satisfy himself or herself that the incident that was reported by the member of the public did in fact occur, that the *child* is likely to have been responsible for the incident and is below the age

of 12 years and, if so, act in accordance with paragraph 10(4) of this Instruction.

## **9. Conduct of a member at a crime scene**

(1) If a *member* —

- (a) is present while an offence is being committed; or
- (b) arrives at the scene after the commission of the offence and while the perpetrator is still at the crime scene,

the *member* must do whatever may be reasonably necessary to ensure the safety of any person at the crime scene, to stop the alleged perpetrator of the offence and to secure the crime scene, irrespective of the age of the person who has allegedly committed the offence.

- (2) If the person who is alleged to have committed the offence is, according to the knowledge of the *member*, a *child* of a particular age, the *member* must deal with the *child* in accordance with this Instruction insofar as it relates to a *child* of that age that has allegedly committed such an offence.
- (3) If the *member* is uncertain whether the person who allegedly committed the offence, is an adult or a *child* and, if a *child*, what the age of the *child* is, the *member* must gather any information which may be available at the crime scene which will satisfy him or her that the person is a *child* or an adult and, if a *child*, what the age of the *child* is. Such information may include information that may be available from witnesses or other persons (such as a parent or friend of the *child*) that may be present at the crime scene or any documentation (such as a birth certificate, an identity document or driver's licence).
- (4) If the *member* is satisfied that the person who allegedly committed the offence, is an adult, this Instruction will not be applicable.

- (5) If the *member* is satisfied that the person who allegedly committed the offence, is a *child* of a certain age, the *member* must deal with the *child* in accordance with this Instruction insofar as it relates to a *child* of that age.
- (6) If the *member* is satisfied that the person who allegedly committed the offence, is a *child*, but he or she remains uncertain about how old the *child* really is, the *member* must consider the youngest age that the *child* may possibly be and deal with the *child* in accordance with this Instruction insofar as it relates to a *child* of that age.

## **10. Dealing with a child younger than 12 years who is alleged to have committed any offence**

- (1) If a *member* suspects that a *child* has committed an offence but that the *child* is younger than 12 years, the *member* **MUST NOT** arrest the *child*.
- (2) If the parent or *guardian* of the *child* is present, the *member* must —
  - (a) if a SAPS 583(a) (Information Notice to person to whom a child younger than 12 years is handed) is available at the scene, —
    - (i) complete the information notice and explain to the parent or *guardian* the contents of the notice;
    - (ii) hand the original Information Notice to the parent or *guardian* and request the parent or *guardian* to sign on the first duplicate original Information Notice to acknowledge receipt of the Notice;
    - (iii) hand over the *child* to the parent or *guardian*; and
    - (iv) provide the first duplicate original Information Notice to the *designated probation officer* and retain proof that the Information Notice was received by the *designated probation officer*;

- (b) if a SAPS 583(a) (Information Notice to person to whom a child younger than 12 years is handed) is not available at the scene, but the parent or *guardian* of the *child* is willing and able to bring the *child* to the police station, arrange with the parent or *guardian* of the *child* to bring the *child* to the police station and act in accordance with subparagraph (a)(i)-(iv);
- (c) if a SAPS 583(a) (Information Notice to person to whom a child younger than 12 years is handed) is not available at the scene and the parent or *guardian* of the *child* is not willing or able to bring the *child* to the police station, but arrangements can be made for an information notice to be brought to the scene, arrange for the information notice to be brought to the scene and keep the *child* and the parent or *guardian* until the information notice arrives at the scene, where after the *member* must act in accordance with subparagraph (a)(i)-(iv);
- (d) if a SAPS 583(a) (Information Notice to person to whom a child younger than 12 years is handed) is not available at the scene and —
  - (aa) the parent or *guardian* of the *child* is not willing or able to bring the *child* to the police station; and
  - (bb) arrangements cannot be made for an Information Notice to be brought to the scene within a reasonable time,  
  
take the *child* and the parent or *guardian* to the police station and act in accordance with subparagraph (a)(i)-(iv).
- (3) If the parent or *guardian* of the *child* is not present, the *member* must establish whether an *appropriate person* is present and, if so, apply the provisions of subparagraph (2) (replacing “parent or *guardian*” with “*appropriate person*”).
- (4) If neither the parent or *guardian* of the *child* nor an *appropriate person* is present, the *member* must take such steps as may be reasonable in the circumstances to contact the parent or *guardian* of the *child* or an *appropriate person* and, —

- (a) if successful, request the parent or *guardian* of the *child* or the *appropriate person* to collect the *child* from the police station. When the parent or *guardian* of the *child* or the *appropriate person* collects the *child*, the *member* must act in accordance with subparagraph (2)(a)(i)-(iv); or
- (b) if unsuccessful, take the *child* to a *child and youth care centre* and —
  - (i) complete a SAPS 583(a) (Information Notice to a person to whom child younger than 12 years is handed) and explain to the person receiving the *child*, the contents of the notice;
  - (ii) hand the original Information Notice to the person receiving the *child* and request that person to sign on the first duplicate original Information Notice to acknowledge receipt of the notice;
  - (iii) hand over the *child* to that person; and
  - (iv) provide the first duplicate original Information Notice to the *designated probation officer* and retain proof that the Information Notice was received by the *designated probation officer*.
- (5) If, in exceptional circumstances, the parent or *guardian* of the *child* or the *appropriate person* is present or comes to collect the *child*, but the *member* is satisfied that it will not be in the best interest of the *child*, as set out in paragraph 2(3) of the National Instruction on the Care and Protection of Children in terms of the Children’s Act, to hand over the *child* to such a person, the *member* must act in accordance with subparagraph (4)(b).

## 11. Dealing with a child who is 12 years or older and who is alleged to have committed an offence referred to in Schedule 1 of the Act

- (1) If a *member* suspects that a *child*, who is 12 years or older, has committed an offence, the *member* must satisfy himself or herself whether the offence is an offence referred to in Schedule 1 of *the Act* (attached hereto as Annexure A).
- (2) If the offence concerned is an offence referred to in Schedule 1 of *the Act*, the *member* **MUST NOT** arrest the *child* **UNLESS** there are **COMPELLING REASONS JUSTIFYING THE ARREST OF THE CHILD** as outlined in paragraph (3).
- (3) Compelling reasons that will justify the *arrest* of a *child* who is 12 years or older in respect of an offence referred to in Schedule 1 are —
  - (a) where the *member* has reason to believe that the *child* —
    - (i) does not have a fixed residential address;
    - (ii) has absconded from foster care, a *child and youth care centre* or *temporary safe care*;
    - (iii) is likely to continue to commit offences, unless he or she is *arrested*;
    - (iv) will pose a danger to any person (including himself or herself) unless *arrested*;
    - (v) is likely to destroy or tamper with evidential material relating to the offence;
    - (vi) is likely to interfere with the investigation into the offence unless *arrested*; or
  - (b) where the offence is in progress and is not yet completed.

**12. Dealing with a child who is 12 years or older and who is alleged to have committed an offence referred to in Schedule 1 of the Act if there are no compelling reason to arrest the child**

- (1) If there are no compelling reason to *arrest* the *child* who is 12 years or older and who is alleged to have committed an offence referred to in Schedule 1 of *the Act*, the *member* may not *arrest* the *child*.
- (2) If the parent or *guardian* of the *child* is present, the *member* must —
  - (a) if a SAPS 583(b) (Written Notice to Appear at a Preliminary Inquiry) is available at the scene, —
    - (i) complete the Written Notice and set the date of the *preliminary inquiry* to be the fifth (5<sup>th</sup>) working day after the date of the issuing of the Written Notice;
    - (ii) explain to the *child* and the parent or *guardian* the contents of the Written Notice;
    - (iii) hand the original Written Notice to the *child* and request the *child* and the parent or *guardian* to sign on the first duplicate original Written Notice to acknowledge receipt of the notice;
    - (iv) hand over the *child* to the parent or *guardian*;
    - (v) provide the first duplicate original Written Notice to the *designated probation officer* within 24 hours after the Written Notice was handed to the *child* and retain proof that it was received by the *designated probation officer*; and
    - (vi) make a copy of the Written Notice and file the copy under “B” in the docket opened in respect of the offence which the *child* is alleged to have committed;

- (b) if a SAPS 583(b) (Written Notice to Appear at a Preliminary Inquiry) is not available at the scene, but the parent or *guardian* of the *child* is willing and able to bring the *child* to the police station, arrange with the parent or *guardian* of the *child* to bring the *child* to the police station and act in accordance with subparagraph (a)(i)-(vi);
- (c) if a SAPS 583(b) (Written Notice to Appear at a Preliminary Inquiry) is not available at the scene and the parent or *guardian* of the *child* is not willing or able to bring the *child* to the police station, but arrangements can be made for a Written Notice to be brought to the scene, arrange for the Written Notice to be brought to the scene and keep the *child* and the parent or *guardian* until the Written Notice arrives at the scene and, upon its arrival, act in accordance with subparagraph (a)(i)-(vi);
- (d) if a SAPS 583(b) (Written Notice to Appear at a Preliminary Inquiry) is not available at the scene and —
  - (aa) the parent or *guardian* of the *child* is not willing or able to bring the *child* to the police station; and
  - (bb) arrangements cannot be made for a Written Notice to be brought to the scene within a reasonable time, take the *child* and the parent or *guardian* to the police station and act in accordance with subparagraph (a)(i)-(vi).
- (3) If the parent or *guardian* of the *child* is not present, the *member* must establish whether an *appropriate person* is present and, if so, apply the provisions of paragraph (2) (replacing “parent or *guardian*” with “*appropriate person*”).
- (4) If the parent or *guardian* of the *child* or an *appropriate person* is not present, the *member* must take such steps as may be reasonable in the circumstances to contact the parent or *guardian* of the *child* or an *appropriate person* and, —
  - (a) if successful, request the parent or *guardian* of the *child* or the



*appropriate person* to collect the *child* from the police station. When the parent or *guardian* of the *child* or the *appropriate person* collects the *child*, the *member* must act in accordance with subparagraph (2)(a)(i)-(vi); or

- (b) if unsuccessful, the *child* must be regarded as a *child* in need of care and protection and in need of immediate emergency protection and must be dealt with in accordance with paragraphs 12 and 11 of the National Instruction on the Care and Protection of Children in terms of the Children’s Act. In such a case, the person with whom the *child* is placed in *temporary safe care*, (such as the person in charge of a *child and youth care centre*, if the *child* is placed in a *child and youth care centre*) becomes an *appropriate person* in whose presence the Written Notice must be handed to the *child* in accordance with subparagraph (3) (read with subparagraph (2)). A copy of the Written Notice must be handed to the person in whose *temporary safe care* the *child* is placed.

### **13. Dealing with a child who is 12 years or older and who is alleged to have committed an offence referred to in Schedule 1 of the Act if there are compelling reasons to arrest the child**

- (1) If there are compelling reasons to *arrest* a *child* who is 12 years or older and who is alleged to have committed an offence referred to in Schedule 1 of *the Act*, the *member* may *arrest* the *child*.
- (2) Upon the *arrest* of such a *child*, the *member* must inform the *child* —
- (a) of his or her constitutional rights as provided for in paragraph 10(4) of National Instruction 11 of 2019 (Arrest, treatment and transportation of an arrested person); and
- (b) that he or she will be assessed by a *probation officer* who will explain to him or her the procedure that will be followed thereafter.

- (3) Once a *child* of 12 years or older has been *arrested*, the *child* must be taken to a police station. The *member* who effected the *arrest* must record in the Arrest Statement the compelling reason (set out in paragraph 11(3)) that persuaded him or her to effect the *arrest*. The *member* must also state whether there is any reason (stating the reason) to believe that the *child* will pose a danger to any person (including himself or herself) if released.
- (4) The Community Service Centre Commander must consider the Arrest Statement and any other information at his or her disposal to satisfy himself or herself whether the *child* will pose a danger to any person (including himself or herself) if released.
- (5) If the Community Service Centre Commander is satisfied that the *child* will pose a danger to any person (including himself or herself) if released and that the *child* can therefore not be released, the Community Service Centre Commander must ensure that the *child* remains in *detention* and —
  - (a) inform the parent, *guardian* or an *appropriate person* of the *arrest* of the *child*;
  - (b) complete a SAPS 583(j) (Information Notice upon the arrest of a child) and explain to the parent or *guardian* the contents of the notice and set the date of the *preliminary inquiry* as a date that will ensure that the *child* appears at the *preliminary inquiry* within 48 hours (as extended by the Criminal Procedure Act) from the time of the *arrest* of the *child*;
  - (c) provide the Information Notice to the parent, *guardian* or *appropriate person* and retain proof that the parent, *guardian* or *appropriate person* received the Information Notice (if it is possible to hand the Information Notice to the parent, *guardian* or *appropriate person*, the parent, *guardian* or *appropriate person* must be requested to sign on the first duplicate original of the Information Notice to acknowledge receipt of the Information Notice);

- (d) provide the first duplicate original Information Notice to the *designated probation officer* and retain proof that it was received by the *designated probation officer*; and
  - (e) make two copies of the Information Notice if the *child* will be detained at a *child and youth care centre* (or one copy if the *child* will be detained in a *police cell* (in which case the copy must be filed under “B” in the docket opened in respect of the case for which the *child* was arrested)).
- (6) The Community Service Centre Commander must —
- (a) if a *child and youth care centre* is available within a reasonable distance from the police station and there is a vacancy in the centre, —
    - (i) ensure that the *child* is transported to the *child and youth care centre* and is handed over to the person in charge of the centre;
    - (ii) instruct the *member*, who will be transporting the *child* to the *child and youth care centre*, to hand the two copies of the SAPS 583(j) (Information Notice upon the arrest of a child) (referred to in subparagraph (5)(e) above) to the person receiving the *child* at the *child and youth care centre* and request that person to sign one copy as proof of having received the *child*;
    - (iii) file the copy of the SAPS 583(j) (Information Notice upon the arrest of a child) (referred to in subparagraph (ii)) signed by the person receiving the *child* at the *child and youth care centre* under “B” in the docket opened in respect of the case for which the *child* was arrested;
    - (iv) complete a SAPS 583(c) (Written Report on detention of child arrested for Schedule 1 Offence before appearing at Preliminary Inquiry form) and file the report under “B” in the docket opened in respect of the case for which the *child* was arrested; and

- (v) provide the first duplicate original SAPS 583(j) (Information Notice upon the arrest of a child) to the *designated probation officer* and retain proof that it was received by the *designated probation officer*;
- (b) if a *child and youth care centre* is not available within a reasonable distance from the police station or there is no vacancy in the centre, the *child* must be detained in police custody and —
  - (i) if the police station where the *child* has been detained, has the necessary facilities available, the *child* must be detained separate from adults and separate from *children* of the opposite sex;
  - (ii) if the police station where the *child* has been detained, does not have the necessary facilities available to detain the *child* separate from adults and separate from *children* of the opposite sex, the *child* must be transported to and be detained at another police station where such facilities are available;
  - (iii) the Community Service Centre Commander of the police station where the *child* was originally detained, must complete the SAPS 583(c) (Written Report on detention of child arrested for Schedule 1 Offence before appearing at Preliminary Inquiry form) and file the report under “B” in the docket opened in respect of the case for which the *child* was *arrested*;
  - (iv) the Community Service Centre Commander must, if he or she was unable to provide the SAPS 583(j) (Information Notice upon the arrest of a child), to the parent, *guardian* or *appropriate person*, —
    - (aa) complete the SAPS 583(j) (Information Notice upon the arrest of a child);
    - (bb) provide the Information Notice to the *designated probation officer* within 24 hours after the *arrest*;

- (cc) file proof that the Information Notice was received by the *designated probation officer* under “B” in the docket opened in respect of the case for which the *child* was *arrested*; and
  - (dd) file the first duplicate original Information Notice under “B” in the docket opened in respect of the case for which the *child* was *arrested*.
- (7) If the Community Service Centre Commander of the police station, where the *child* was originally detained, is unable to —
- (a) inform the parent, *guardian* or an *appropriate person* of the *arrest* of the *child*, he or she must complete a SAPS 583(d) (Written Report on failure to notify the parent, guardian or appropriate person of arrest of child) setting out the steps taken to notify the parent, *guardian* or an *appropriate person* of the *arrest* of the *child* and the reason why he or she was unable to notify the parent, *guardian* or an *appropriate person* of the *arrest* of the *child*; or
  - (b) notify the *designated probation officer* of the *arrest* of the *child*, he or she must complete a SAPS 583(e) (Written Report on failure to notify the Probation Officer of the arrest of a child) setting out the steps taken to notify the *probation officer* and the reason why he or she was unable to notify the *probation officer*,

and file it under “B” in the docket, which must be submitted to the prosecutor, who will be present at the *preliminary inquiry*, and who must be requested to hand the report to the presiding officer at the *preliminary inquiry*.

#### **14. Releasing a child who is 12 years or older and who has been arrested for an offence referred to in Schedule 1 of the Act**

- (1) If the Community Service Centre Commander is satisfied that the *child* will not pose a danger to any person (including himself or herself) if released, the Community Service

Centre Commander may instruct a *member* to approach the Department of Social Development to establish whether a previous criminal case, in which the *child* was an accused, has been diverted (as recorded in the Diversion Register). If the Department of Social Development is approached and the information is obtained, this fact must be recorded in the Investigation Diary (SAPS 5) of the docket. This information must be taken into account to decide whether, bearing in mind the information obtained from the Diversion Register, it would be appropriate in the circumstances, to release the *child* on a Written Notice.

- (2) If the Community Service Centre Commander is satisfied that the *child* may be released, he or she must —
  - (a) if the parent or *guardian* of the *child* or an *appropriate person* is present, —
    - (i) complete the SAPS 583(b) (Written Notice to Appear at a Preliminary Inquiry and set the date of the *preliminary inquiry* to be the fifth (5<sup>th</sup>) working day after the date of the issuing of the Written Notice;
    - (ii) explain to the *child* and the parent, *guardian* or *appropriate person* the contents of the Written Notice;
    - (iii) hand the original Written Notice to the *child* and request the *child* and parent, *guardian* or *appropriate person* to sign on the first duplicate original Written Notice to acknowledge receipt of the Written Notice;
    - (iv) hand over the *child* to the parent, *guardian* or *appropriate person*; and
    - (v) provide the first duplicate original Written Notice to the *designated probation officer* and retain proof that it was received by the *designated probation officer*.

- (b) if the parent or *guardian* of the *child* or an *appropriate person* is not present, take such steps as may be reasonable in the circumstances to contact the parent or *guardian* of the *child* or an *appropriate person* and, —
  - (i) if successful, request the parent or *guardian* of the *child* or the *appropriate person* to collect the *child* from the police station. When the parent or *guardian* of the *child* or the *appropriate person* collects the *child*, the *member* must act in accordance with subparagraph (1)(a)-(e); or
  - (ii) if unsuccessful, —
    - (aa) the *child* must be regarded as a *child* in need of care and protection and in need of immediate emergency protection and must be dealt with in accordance with paragraphs 12 and 11 of the National Instruction on the Care and Protection of Children in terms of the Children’s Act. In such a case, the person with whom the *child* is placed in *temporary safe care*, becomes an *appropriate person* in whose presence the Written Notice must be handed to the *child* in accordance with subparagraph (3) (read with subparagraph (2)); and
    - (bb) the Community Service Centre Commander must complete the SAPS 583(d) (Written Report on failure to notify the parent, guardian or appropriate person of the arrest of the child) which must be filed under “B” in the docket opened in respect of the case for which the *child* was *arrested* and which must be submitted to the prosecutor, who will be present at the *preliminary inquiry*, and who must be requested to hand the report to the presiding officer at the *preliminary inquiry*.
- (3) The *member* designated as the investigating officer of the case, must ensure that, at least one (1) day before the *preliminary inquiry*, the docket, opened in respect of the case for which the *child* was *arrested*, is presented to the prosecutor that will be present during the *preliminary inquiry*.

## 15. Dealing with a child who is 12 years or older and who is alleged to have committed an offence referred to in Schedule 2 of the Act

- (1) A *member* may *arrest* a *child* who is 12 years or older and who he or she has reasonable grounds to believe that the *child* has committed an offence referred to in Schedule 2 of the Act (attached hereto as Annexure B).
- (2) In considering whether or not to *arrest* the *child*, the *member* must take into account whether the *child* —
  - (a) has a fixed residential address;
  - (b) has absconded from foster care, a *child and youth care centre* or *temporary safe care*;
  - (c) is likely to continue to commit offences, unless he or she is *arrested*;
  - (d) will pose a danger to any person (including himself or herself) unless *arrested*;
  - (e) is likely to destroy or tamper with evidential material relating to the offence;
  - (f) is likely to interfere with the investigation into the offence unless *arrested*; or
  - (g) is busy committing the offence (the offence is in progress) or whether it has been completed.
- (3) If the *member* decides not to *arrest* the *child*, the *member* must —
  - (a) record the full particulars of the *child* (including his or her name, occupation (if any), work address (if he or she is a learner, the name and address of the school he or she attends) and his or her fixed residential address, contact particulars, etc.) in his or her pocketbook; and



- (b) upon arrival at the police station and after the docket in respect of the offence allegedly committed by the *child*, has been opened, make an affidavit containing the particulars referred to in subparagraph (a) and file the affidavit under “A” in the said docket.
- (4) If the *member* decides to *arrest* the *child*, the *member* must, upon the *arrest* of the *child*, inform the *child* —
  - (a) of his or her constitutional rights as provided for in paragraph 10(4) of National Instruction 11 of 2019 (Arrest, treatment and transportation of an arrested person); and
  - (b) that he or she will be assessed by a *probation officer* who will explain to him or her the procedure that will be followed thereafter.
- (5) If the *child* or a parent or *guardian* of the *child* or a legal representative on behalf of the *child* requests that the *child* be released on bail, the Community Service Centre Commander must contact the prosecutor on standby, who is authorised to consider a bail application, and request him or her to come to the police station to consider the bail application in terms of section 21(2)(b) of the *Act*.
- (6) If the prosecutor authorises the release of the *child* on bail, the normal processes applicable to the release of a suspect on bail by an authorised prosecutor, must be followed: Provided that the *child* may only be released into the care of a parent, *guardian* or an *appropriate person*. This paragraph must be read together with paragraph 13 of National Instruction 3 of 2016 (Bail and the release of persons).
- (7) If the *child* will remain in custody and the parent or *guardian* of the *child* or an *appropriate person* is present, the Community Service Centre Commander must —
  - (a) complete the SAPS 583(j) (Information Notice upon the arrest

of a child) and explain to the parent, *guardian* or *appropriate person* the contents of the notice;

- (b) hand the original notice to the parent, *guardian* or *appropriate person* and request the parent, *guardian* or *appropriate person* to sign on the first duplicate original Information Notice to acknowledge receipt of the notice; and
  - (c) provide the first duplicate original Information Notice to the *designated probation officer* and retain proof that the Information Notice was received by the *designated probation officer*.
- (8) If the *child* will remain in custody and neither the parent nor *guardian* of the *child* is present, the Community Service Centre Commander must take such steps as may be reasonable in the circumstances to contact the parent or *guardian* of the *child* or an *appropriate person* and, if successful, request the parent or *guardian* of the *child* or the *appropriate person* to come to the police station. When the parent or *guardian* of the *child* or *appropriate person* arrives at the police station, the Community Service Centre Commander must act in accordance with subparagraph (7)(a)-(c).
- (9) If the *child* will remain in custody and neither the parent nor *guardian* of the *child* is present and cannot be contacted, the *child* or a parent or *guardian* of the *child* or a legal representative on behalf of the *child* does not request that the *child* be released on bail or the prosecutor refuses to grant bail to the *child*, the Community Service Centre Commander must —
- (a) if a *child and youth care centre* is available within a reasonable distance from the police station and there is a vacancy in the centre, —
    - (i) complete a SAPS 583(j) (Information Notice upon the arrest of a child) and explain to the person receiving the *child*, the contents of the notice;

- (ii) hand the original notice to the person receiving the *child* and request that person to sign on the first duplicate original information notice to acknowledge receipt of the notice;
  - (iii) hand over the *child* to that person;
  - (iv) provide the first duplicate original information notice to the *designated probation officer* and retain proof that the information notice was received by the *designated probation officer*; and
  - (v) make a copy of the information notice and file it under “B” in the docket opened in respect of the case for which the *child* was arrested;
- (b) if a *child and youth care centre* is not available within a reasonable distance from the police station or there is no vacancy in the centre, the *child* must be detained in police custody and —
- (i) if the police station where the *child* has been detained, has the necessary facilities available, the *child* must be detained separate from adults and separate from *children* of the opposite sex;
  - (ii) if the police station where the *child* has been detained, does not have the necessary facilities available to detain the *child* separate from adults and separate from *children* of the opposite sex, the *child* must be transported to and be detained at another police station where such facilities are available;
  - (iii) complete a SAPS 583(j) (Information Notice upon the arrest of a child), provide the notice to the *designated probation officer* and file proof that it was received by the *designated probation officer* under “B” in the docket opened in respect of the case for which the *child* was arrested; and

- (iv) file the first duplicate original SAPS 583(j) (Information Notice upon the arrest of a child) under “B” in the docket opened in respect of the case for which the *child* was *arrested*.
- (10) If the Community Service Centre Commander of the police station, where the *child* was originally detained, is unable to —
- (a) inform the parent, *guardian* or an *appropriate person* of the *arrest* of the *child*, he or she must complete a SAPS 583(d) (Written Report on failure to notify the parent, guardian or appropriate person of arrest of child) setting out the steps taken to notify the parent, *guardian* or an *appropriate person* of the *arrest* of the *child* and the reason why he or she was unable to notify the parent, *guardian* or an *appropriate person* of the *arrest* of the *child*; or
  - (b) notify the *designated probation officer* of the *arrest* of the *child*, he or she must complete a SAPS 583(e) (Written Report on failure to notify the Probation Officer of the arrest of a child) setting out the steps taken to notify the *probation officer* and the reason why he or she was unable to notify the *probation officer*, and file it under “B” in the docket, which must be submitted to the prosecutor, who will be present at the *preliminary inquiry*, and who must be requested to hand the report to the presiding officer at the *preliminary inquiry*.

## **16. Dealing with a child who is 12 years or older but younger than 14 years and who is alleged to have committed an offence referred to in Schedule 3 of the Act**

- (1) A *member* may *arrest* a *child* who is 12 years or older but younger than 14 years and who he or she has reasonable grounds to believe that the *child* has committed an offence referred to in Schedule 3 of *the Act* (attached hereto as Annexure C).

- (2) In considering whether or not to *arrest* the *child*, the *member* must take into account whether the *child* —
- (a) has a fixed residential address;
  - (b) has absconded from foster care, a *child and youth care centre* or *temporary safe care*;
  - (c) is likely to continue to commit offences, unless he or she is *arrested*;
  - (d) will pose a danger to any person (including himself or herself) unless *arrested*;
  - (e) is likely to destroy or tamper with evidential material relating to the offence;
  - (f) is likely to interfere with the investigation into the offence unless *arrested*; or
  - (g) is busy committing the offence (the offence is in progress) or whether it has been completed.
- (3) If the *member* decides not to *arrest* the *child*, the *member* must —
- (a) record the full particulars of the *child* (including his or her name, occupation (if any), work address (if he or she is a learner, the name and address of the school he or she attends) and his or her fixed residential address, contact particulars, etc) in his or her pocketbook; and
  - (b) upon arrival at the police station and after the docket in respect of the offence allegedly committed by the *child*, has been opened, make an affidavit containing the particulars referred to in subparagraph (a) and file the affidavit under “A” in the said docket.

- (4) If the *member* decides to *arrest* the *child*, the *member* must, upon the *arrest* of the *child*, inform the *child* —
  - (a) of his or her constitutional rights as provided for in paragraph 10(4) of National Instruction 11 of 2019 (Arrest, treatment and transportation of an arrested person); and
  - (b) that he or she will be assessed by a *probation officer* who will explain to him or her the procedure that will be followed thereafter.
- (5) If the parent or *guardian* of the *child* or an *appropriate person* is present, the Community Service Centre Commander must —
  - (a) complete the SAPS 583(j) (Information Notice upon the arrest of a child) and explain to the parent, *guardian* or *appropriate person* the contents of the notice;
  - (b) hand the original notice to the parent, *guardian* or *appropriate person* and request the parent, *guardian* or *appropriate person* to sign on the first duplicate original Information Notice to acknowledge receipt of the notice; and
  - (c) provide the first duplicate original Information Notice to the *designated probation officer* and retain proof that the Information Notice was received by the *designated probation officer*.
- (6) If the *child* will remain in custody and neither the parent nor *guardian* of the *child* is present, the Community Service Centre Commander must take such steps as may be reasonable in the circumstances to contact the parent or *guardian* of the *child* or an *appropriate person* and, if successful, request the parent or *guardian* of the *child* or the *appropriate person* to come to the police station. When the parent or *guardian* of the *child* or *appropriate person* arrives at the police station, the Community Service Centre Commander must act in accordance with subparagraph (5)(a)-(c).

- (7) The Community Service Centre Commander must —
- (a) if a *child and youth care centre* is available within a reasonable distance from the police station and there is a vacancy in the centre, —
    - (i) complete a SAPS 583(j) (Information Notice upon the arrest of a child) and explain to the person receiving the *child*, the contents of the Information Notice;
    - (ii) hand the original Information Notice to the person receiving the *child* and request that person to sign on the first duplicate original Information Notice to acknowledge receipt of the Information Notice;
    - (iii) hand over the *child* to that person;
    - (iv) provide the first duplicate original Information Notice to the *designated probation officer* and retain proof that the Information Notice was received by the *designated probation officer*; and
    - (v) make a copy of the Information Notice and file it under “B” in the docket opened in respect of the case for which the *child* was arrested;
  - (b) if a *child and youth care centre* is not available within a reasonable distance from the police station or there is no vacancy in the centre, detain the *child* in police custody and —
    - (i) if the police station where the *child* has been detained, has the necessary facilities available, the *child* must be detained separate from adults and separate from *children* of the opposite sex;
    - (ii) if the police station where the *child* has been detained, does not have the necessary facilities available to detain the *child* separate from adults and separate from *children*

of the opposite sex, the *child* must be transported to and be detained at another police station where such facilities are available;

- (iii) complete a SAPS 583(j) (Information Notice upon the arrest of a child), provide the Information Notice to the *designated probation officer* and file proof that it was received by the *designated probation officer* under “B” in the docket opened in respect of the case for which the *child* was arrested; and
  - (iv) file the first duplicate original SAPS 583(j) (Information Notice upon the arrest of a child) under “B” in the docket opened in respect of the case for which the *child* was arrested.
- (8) If the Community Service Centre Commander of the police station, where the *child* was originally detained, is unable to —
- (a) inform the parent, *guardian* or an *appropriate person* of the arrest of the *child*, he or she must complete a SAPS 583(d) (Written Report on failure to notify the parent, guardian or appropriate person of arrest of child) setting out the steps taken to notify the parent, *guardian* or an *appropriate person* of the arrest of the *child* and the reason why he or she was unable to notify the parent, *guardian* or an *appropriate person* of the arrest of the *child*; or
  - (b) notify the *designated probation officer* of the arrest of the *child*, he or she must complete a SAPS 583(e) (Written Report on failure to notify the Probation Officer of the arrest of a child) setting out the steps taken to notify the *probation officer* and the reason why he or she was unable to notify the *probation officer*, and file it under “B” in the docket, which must be submitted to the prosecutor, who will be present at the *preliminary inquiry*, and who must be requested to hand the report to the presiding officer at the *preliminary inquiry*.



- (9) This paragraph must be read together with paragraph 13 of National Instruction 3 of 2016 (Bail and the release of persons).

**17. Dealing with a child who is 14 years or older and who is alleged to have committed an offence referred to in Schedule 3 of the Act**

- (1) A *member* may *arrest* a *child* who is 14 years or older and who he or she has reasonable grounds to believe that the *child* has committed an offence referred to in Schedule 3 of *the Act* (attached hereto as Annexure C).
- (2) In considering whether or not to *arrest* the *child*, the *member* must take into account whether the *child* —
- (a) has a fixed residential address;
  - (b) has absconded from foster care, a *child and youth care centre* or *temporary safe care*;
  - (c) is likely to continue to commit offences, unless he or she is *arrested*;
  - (d) will pose a danger to any person (including himself or herself) unless *arrested*;
  - (e) is likely to destroy or tamper with evidential material relating to the offence;
  - (f) is likely to interfere with the investigation into the offence unless *arrested*; or
  - (g) is busy committing the offence (the offence is in progress) or whether it has been completed.
- (3) If the *member* decides not to *arrest* the *child*, the *member* must —
- (a) record the full particulars of the *child* (including his or her

name, occupation (if any), work address (if he or she is a learner, the name and address of the school he or she attends) and his or her fixed residential address, contact particulars, etc) in his or her pocketbook; and

- (b) upon arrival at the police station and after the docket in respect of the offence allegedly committed by the *child*, has been opened, make an affidavit containing the particulars referred to in subparagraph (a) and file the affidavit under “A” in the said docket.
- (4) If the *member* decides to *arrest* the *child*, the *member* must, upon the *arrest* of the *child*, inform the *child* —
  - (a) of his or her constitutional rights as provided for in paragraph 10(4) of National Instruction 11 of 2019 (Arrest, treatment and transportation of an arrested person); and
  - (b) that he or she will be assessed by a *probation officer* who will explain to him or her the procedure that will be followed thereafter.
- (5) If the parent or *guardian* of the *child* or an *appropriate person* is present, the Community Service Centre Commander must —
  - (a) complete the SAPS 583(j) (Information Notice upon the arrest of a child) and explain to the parent, *guardian* or *appropriate person* the contents of the Information Notice;
  - (b) hand the original notice to the parent, *guardian* or *appropriate person* and request the parent, *guardian* or *appropriate person* to sign on the first duplicate original Information Notice to acknowledge receipt of the notice; and
  - (c) provide the first duplicate original Information Notice to the *designated probation officer* and retain proof that the Information Notice was received by the *designated probation officer*.

- (6) If the *child* will remain in custody and neither the parent nor *guardian* of the *child* is present, the Community Service Centre Commander must take such steps as may be reasonable in the circumstances to contact the parent or *guardian* of the *child* or an *appropriate person* and, if successful, request the parent or *guardian* of the *child* or the *appropriate person* to come to the police station. When the parent or *guardian* of the *child* or *appropriate person* arrives at the police station, the Community Service Centre Commander must act in accordance with subparagraph (5)(a)-(c).
- (7) If the parent or *guardian* of the *child* or the *appropriate person* is not present and cannot be contacted, the Community Service Centre Commander must —
  - (a) if the police station where the *child* has been detained, has the necessary facilities available, the *child* must be detained separate from adults and separate from *children* of the opposite sex;
  - (b) if the police station where the *child* has been detained, does not have the necessary facilities available to detain the *child* separate from adults and separate from *children* of the opposite sex, the *child* must be transported to and be detained at another police station where such facilities are available;
  - (c) complete a SAPS 583(j) (Information Notice upon the arrest of a child), provide the Information Notice to the *designated probation officer* and file proof that it was received by the *designated probation officer* under “B” in the docket opened in respect of the case for which the *child* was *arrested*; and
  - (d) file the first duplicate original SAPS 583(j) (Information Notice upon the arrest of a child) under “B” in the docket opened in respect of the case for which the *child* was *arrested*.
- (8) If the Community Service Centre Commander of the police station, where the *child* was originally detained, is unable to —

- (a) inform the parent, *guardian* or an *appropriate person* of the arrest of the *child*, he or she must complete a SAPS 583(d) (Written Report on failure to notify the parent, guardian or appropriate person of arrest of child) setting out the steps taken to notify the parent, *guardian* or an *appropriate person* of the arrest of the *child* and the reason why he or she was unable to notify the parent, *guardian* or an *appropriate person* of the arrest of the *child*; or
- (b) notify the *designated probation officer* of the arrest of the *child*, he or she must complete a SAPS 583(e) (Written Report on failure to notify the Probation Officer of the arrest of a child) setting out the steps taken to notify the *probation officer* and the reason why he or she was unable to notify the *probation officer*, and file it under “B” in the docket, which must be submitted to the prosecutor, who will be present at the *preliminary inquiry*, and who must be requested to hand the report to the presiding officer at the *preliminary inquiry*.
- (9) This paragraph must be read together with paragraph 13 of National Instruction 3 of 2016 (Bail and the release of persons).

## **18. Transportation of a child**

- (1) If it is necessary for a *child*, who is alleged to have committed an offence, to be transported in a police vehicle, the *child* must, as far as reasonably possible, be transported —
  - (a) in an unmarked police vehicle. If this is not possible, and the *child* has to be transported in a marked police vehicle, the *child* must —
    - (i) preferably be transported in a sedan police vehicle; and
    - (ii) if the *child* has to be transported in a marked police van, the *child* must be transported in the cabin of the van and not in the back of the van; and
  - (b) separately from adults.

- (2) Restraining measures, as provided for in paragraph 11 of National Instruction 13 of 2019, may be applied to a *child* during the transportation of the *child*, where this is necessary and appropriate, in order to ensure the safety of the *child*, other *children* and *members* accompanying him or her and to prevent the escape of the *child*.
- (3) If it is not possible to transport a *child* separately from adults to or from a *preliminary inquiry* or other hearing before a *child justice court*, the *member* who is the driver of the police vehicle, or other *member* who authorised the transport of the *child* together with the adult, must —
  - (a) complete a SAPS 583(g) (Written Report on transportation of child with adults);
  - (b) within 48 hours after the transport has been undertaken, hand the original SAPS 583(g) (Written Report on transportation of child with adults) to the clerk of the court where the *preliminary inquiry* or hearing before a *child justice court* will be or has been held and request that the Written Report be handed to the judicial officer who presided or will preside over the *preliminary inquiry* or other hearing;
  - (c) request the clerk of the court to sign on the first duplicate original copy of the Written Report to acknowledge receipt; and
  - (d) file the first duplicate original copy of the Written Report under “B” in the docket opened in respect of the offence allegedly committed by the *child*.
- (4) If, for whatever reason, it was not possible to hand the SAPS 583(g) (Written Report on transportation of child with adults) to the clerk of the court within 48 hours after the transport had been undertaken, the responsible *member* must —
  - (a) make an affidavit setting out the reasons why it was not possible to do so;

- (b) make a copy of the affidavit;
- (c) attach the original affidavit to the original Written Report, which is handed to the clerk of the court;
- (d) request the clerk of the court to sign on the copy of the affidavit to acknowledge receipt; and
- (e) file the copy of the affidavit, signed by the clerk of the court, together with the first duplicate original copy of the Written Report under “B” in the docket opened in respect of the offence allegedly committed by the *child*.

### **19. Access to Custody Register**

- (1) An entry in the Custody Register relating to a *child* in police custody, must be made in red ink and any aliases of the *child* must be recorded in the remarks column of the entry in the register.
- (2) The register may be examined by —
  - (a) a *member* in the performance of his or her functions;
  - (b) a social worker, health care practitioner or *probation officer* in the performance of his or her functions;
  - (c) the prosecutor in the performance of his or her functions;
  - (d) a *member* of the Intersectoral Committee for Child Justice established in terms of *the Act*;
  - (e) an independent observer appointed in terms of *the Act*;
  - (f) a person who is by law empowered or mandated to take care of the interests of a *child*;
  - (g) a parent of the *child* or the *appropriate person* or *guardian*;

- (h) a staff member of the *child and youth care centre* where the *child* is placed;
  - (i) the presiding officer involved in the case; and
  - (j) the legal representative of the *child*.
- (3) A person, other than a person referred to in subparagraph (2), who wishes to examine the register must —
- (a) submit a SAPS 583(h) (Application for Access to Custody Register) to the station commander or the person designated in writing by the station commander; and
  - (b) identify himself or herself and provide documentary proof of his or her capacity, if requested to do so by the station commander or designated person.
- (4) The station commander or designated person must consider the application and, if he or she —
- (a) is satisfied that the applicant has a *bona fide* reason for examining the register and has no reason to believe that allowing him or her to examine the register will detrimentally affect any *child* or other detainee whose name and particulars appear in the register, he or she may authorise the applicant to examine the register; or
  - (b) is not so satisfied, he or she must decline the application, record his or her reasons for declining the application on the application and provide the applicant with a copy of the declined application.
- (5) A *member* must remain present while a person examines the register to protect the privacy of persons in police custody who are not the subject of an investigation involving the *child*.

## 20. Summons

- (1) If a summons is received which is to be served on a *child* who allegedly committed an offence, the investigating officer must contact a parent or *guardian* of the *child* or an *appropriate person* and make arrangements that will enable him or her to serve the summons in the presence of a parent or *guardian* of the *child* or an *appropriate person* at least 12 (ten) *working days* before the date of the *preliminary inquiry* or other hearing in respect of which the *child* is summoned.
- (2) When the summons is served, the *member* serving the summons must —
  - (a) explain the contents of the summons to the *child* and the parent, *guardian* or *appropriate person*;
  - (b) hand the original summons to the *child* in the presence of the parent, *guardian* or *appropriate person* and request the *child* and parent, *guardian* or *appropriate person* to sign the Return of Service to acknowledge receipt of the summons; and
  - (c) make two copies of the summons and the Return of Service and —
    - (i) provide the first copy of the summons and the Return of Service to the *designated probation officer* within 24 hours after the summons was handed to the *child*; and
    - (ii) file proof that it was received by the *designated probation officer* together with the second copy of the summons and the Return of Service under “B” in the docket opened in respect of the case for which the *child* was summoned.
- (3) If the investigating officer is unable to make arrangements that will enable him or her to serve the summons at least 12 (ten) *working days* before the date of the *preliminary inquiry*



or other hearing in respect of which the *child* is summoned, the investigating officer must make an appropriate entry in the investigation diary of the docket and submit the docket to the prosecutor with a request to have a new summons issued.

## 21. Assessment of a child

- (1) The station commander and Community Service Centre Commander must render full support to a *probation officer* to enable the *probation officer* to conduct an *assessment* of a *child* in police custody.
- (2) A station commander and Community Service Centre Commander must, if requested thereto by a *probation officer*, take all reasonable steps (including phoning the parent or *guardian* of the *child* or an *appropriate person* or visiting the last known address of the parent or *guardian* of the *child* or an *appropriate person* (if within a reasonable distance)) in order to assist the *probation officer* to locate a parent or *guardian* of the *child* or an *appropriate person*.
- (3) The station commander must make a room, other than a *police cell*, available for the *probation officer* in which to conduct the *assessment*. Such a room must enable the *probation officer* to conduct the *assessment* in private.
- (4) (a) If the station commander, Community Service Centre Commander or any other *member* is of the opinion that —
  - (i) the *child* poses a danger to the *probation officer* or any other person; or
  - (ii) there is a risk that the *child* may escape during the *assessment*,the *member* must inform the *probation officer* of the basis for his or her opinion.
- (b) If the *probation officer* requests that a *member* be present

during the *assessment*, the station commander or Community Service Centre Commander must make a *member*, other than the investigating officer, available for this purpose.

- (5) If a *member* is present while an *assessment* is conducted, such *member* may not disclose any information that came to his or her knowledge during the *assessment*, except if requested thereto by the presiding officer at a *preliminary inquiry* or other court proceeding.

## 22. Error regarding placement

- (1) In terms of *the Act*, no presiding officer (whether at a preliminary enquiry or at a *child justice court*) may remand a *child* to police custody pending the *child's* next appearance in court. Accordingly, if a court issues a warrant for the further *detention* of a *child* and the warrant states that the *child* must be detained in police custody until the date, stated in the warrant, when he or she must again appear in court, this amounts to an error on the part of the presiding officer and the matter must be dealt with as set out in subparagraph (2).
- (2) The Community Service Centre Commander must —
  - (a) accept the *child* into police custody and perform the normal duties relating to the *detention* of a *child* in police custody;
  - (b) make an entry in the Occurrence Book (OB) recording the fact that the warrant for the *detention* of the *child* in police custody was erroneously issued by the presiding officer;
  - (c) complete the SAPS 583(i) (Notification of Error regarding Placement form);
  - (d) make a copy of the warrant for the *detention* of the *child* at the police station and attach the copy to the SAPS 583(i) (Notification of Error regarding Placement form); and
  - (e) ensure that —

- (i) if the *child* is received at the police station at a time when it is still possible for the *child* to be returned to the presiding officer before the end of the court session for that day, the *child* is returned to the presiding officer immediately together with the SAPS 583(i) (Notification of Error regarding Placement form) to which the copy of the warrant for the *detention* of the *child* is attached; or
  - (ii) if the *child* is received at the police station at a time when it is no longer possible for the *child* to be returned to the presiding officer before the end of the court session for that day, the *child* must be detained in police custody until the next court day and, at the beginning of the next court day, be returned to the presiding officer together with the SAPS 583(i) (Notification of Error regarding Placement form) to which the copy of the warrant for the *detention* of the *child* is attached.
- (3) If a *child* is erroneously placed in a *child and youth care centre* and a request is received from the *child and youth care centre* to return the *child* to the presiding officer for the error to be corrected, the station commander must instruct the investigating officer of the case in respect of which the *child* is in *detention*, if he or she is available, and, if not, another *member*, to, —
- (a) if the request is received by the station commander at a time when it is still possible for the *child* to be returned to the presiding officer before the end of the court session for that day, collect the *child* and return the *child* to the presiding officer immediately together with the Written Referral by the *child and youth care centre* to which the copy of the court order for the *detention* of the *child* at the *child and youth care centre* is attached; or
  - (b) if the request is received by the station commander at a time when it is no longer possible for the *child* to be returned to the presiding officer before the end of the court session for that

day, collect the *child* at the beginning of the next court date and return the *child* to the presiding officer, together with the Written Referral by the *child and youth care centre* to which the copy of the court order for the *detention* of the *child* at the *child and youth care centre* is attached.

### **23. Taking of fingerprints, body-prints, photographic images and buccal sample of a child in conflict with the law**

- (1) The taking, storing and use of fingerprints, body-prints or a photographic image of persons is regulated by National Instruction 2 of 2013 (The management of fingerprints, body-prints and photographic images).
- (2) The instructions set out in National Instruction 2 of 2013 (The management of fingerprints, body-prints and photographic images) also apply in respect of a *child in conflict with the law* and must accordingly be complied with. In this regard, *members* must, in particular, comply with paragraph 3 of that Instruction insofar as it provides specific instructions relating to a *child in conflict with the law*.
- (3) The taking of buccal samples from a *child in conflict with the law* must be done in accordance with the Forensic DNA Regulations issued in terms of the Criminal Law (Forensic Procedures) Amendment Act, 2013 (Act No. 37 of 2013).

### **24. Confession by a child in conflict with the law**

- (1) If a *child* indicates to a *member* that he or she is willing to make a confession, the *member* must inform the *child* that he or she —
  - (a) will be taken to a magistrate or a police officer (whoever is applicable), that the confession will be written down and may be used as evidence against him or her in court;
  - (b) is entitled to have a legal representative present while making the confession; and

- (c) is entitled to be assisted by his or her parent, *guardian* or an *appropriate person* while making the confession.
- (2) If the *child* indicates that he or she wishes to have his or her legal representative present while the confession is taken, the *member* must —
  - (a) establish who the legal representative is;
  - (b) contact the legal representative and inform him or her that the *child* wishes to have him or her present while he or she makes the confession and of the time when and place where the confession will be taken to enable him or her to attend while the confession is taken; and
  - (c) inform the magistrate or the police officer (whoever is applicable) of the steps that he or she has taken to inform the legal representative when the *child* is taken to the magistrate or the police officer for the taking of the confession.
- (3) If the *child* indicates that he or she wishes to have his or her parent, *guardian* or an *appropriate person* present to assist him or her while the confession is taken, the *member* must —
  - (a) establish the whereabouts of the parent, *guardian* or the *appropriate person*;
  - (b) contact the parent, *guardian* or the *appropriate person* and inform him or her that the *child* wishes to have him or her present while he or she makes the confession and of the time when and place where the confession will be taken to enable him or her to attend and assist the *child* during the taking of the confession; and
  - (c) inform the magistrate or the police officer (whoever is applicable) of the steps that he or she has taken to inform the parent, *guardian* or the *appropriate person* when the *child* is taken to the magistrate or the police officer for the taking of the confession.

- (4) If the *child* indicates that he or she does not wish to have his or her legal representative or his or her parent, *guardian* or an *appropriate person* present to assist him or her while the confession is taken, the *member* must —
- (a) if the *member* and the *child* is present at the police station, —
- (i) make an entry in the Occurrence Book (OB) stating that the *child* was informed as set out in subparagraph (1) but that the *child* has indicated that he or she does not wish to have his or her legal representative or his or her parent, *guardian* or an *appropriate person* present to assist him or her while the confession is taken;
  - (ii) request the *child* to sign the entry to confirm the correctness of the entry; and
  - (iii) inform the magistrate or the police officer (whoever is applicable) of the choice of the *child* when the *child* is taken to the magistrate or the police officer for the taking of the confession; or
- (b) if the *member* and the *child* is not present at the police station, —
- (i) make an entry in his or her Pocketbook stating that the *child* was informed as set out in subparagraph (1) but that the *child* has indicated that he or she does not wish to have his or her legal representative or his or her parent, *guardian* or an *appropriate person* present to assist him or her while the confession is taken;
  - (ii) request the *child* to sign the entry to confirm the correctness of the entry; and
  - (iii) inform the magistrate or the police officer (whoever is applicable) of the choice of the *child* when the *child* is taken to the magistrate or the police officer for the taking of the confession; and

- (c) if requested thereto by the said magistrate or police officer, provide him or her with the contact particulars of the legal representative, parent, *guardian* or *appropriate person*.

## **25. Pointing-out by a child in conflict with the law**

- (1) If a *child* indicates to a *member* that he or she is willing to make a pointing-out, the *member* must inform the *child* that he or she —
  - (a) will be taken to a magistrate or a police officer (whoever is applicable), that the pointing-out will be recorded and may be used as evidence against him or her in court;
  - (b) is entitled to have a legal representative present while making the pointing-out; and
  - (c) is entitled to be assisted by his or her parent, *guardian* or an *appropriate person* while making the pointing-out.
- (2) If the *child* indicates that he or she wishes to have his or her legal representative present while the pointing-out is made, the *member* must —
  - (a) establish who the legal representative is;
  - (b) contact the legal representative and inform him or her that the *child* wishes to have him or her present while he or she makes the pointing-out and of the time when and place where the pointing-out will be made to enable him or her to attend while the pointing-out is made; and
  - (c) inform the magistrate or the police officer (whoever is applicable) of the steps that he or she has taken to inform the legal representative when the *child* will be taken to the magistrate or the police officer for the pointing-out.
- (3) If the *child* indicates that he or she wishes to have his or her parent, *guardian* or an *appropriate person* present to assist him

or her while the pointing-out is made, the *member* must —

- (a) establish the whereabouts of the parent, *guardian* or the *appropriate person*;
  - (b) contact the parent, *guardian* or the *appropriate person* and inform him or her that the *child* wishes to have him or her present while he or she makes the pointing-out and of the time when and place where the pointing-out will be made to enable him or her to attend and assist the *child* during the pointing-out; and
  - (c) inform the magistrate or the police officer (whoever is applicable) of the steps that he or she has taken to inform the parent, *guardian* or the *appropriate person* when the *child* will be taken to the magistrate or the police officer for the pointing-out.
- (4) If the *child* indicates that he or she does not wish to have his or her legal representative or his or her parent, *guardian* or an *appropriate person* present to assist him or her while the pointing-out is made, the *member* must —
- (a) if the *member* and the *child* is present at the police station, —
    - (i) make an entry in the Occurrence Book (OB) stating that the *child* was informed as set out in subparagraph (1) but that the *child* has indicated that he or she does not wish to have his or her legal representative or his or her parent, *guardian* or an *appropriate person* present to assist him or her while the pointing-out is made;
    - (ii) request the *child* to sign the entry to confirm the correctness of the entry; and
    - (iii) inform the magistrate or the police officer (whoever is applicable) of the choice of the *child* when the *child* is taken to the magistrate or the police officer for the making of the pointing-out; or



- (b) if the *member* and the *child* is not present at the police station,  
—
- (i) make an entry in his or her Pocketbook stating that the child was informed as set out in subparagraph (1) but that the child has indicated that he or she does not wish to have his or her legal representative or his or her parent, guardian or an appropriate person present to assist him or her while the pointing-out is made;
  - (ii) request the child to sign the entry to confirm the correctness of the entry; and
  - (iii) inform the magistrate or the police officer (whoever is applicable) of the choice of the *child* when the *child* is taken to the magistrate or the police officer for the making of the pointing-out; and
- (c) if requested whereto by the said magistrate or police officer, provide him or her with the contact particulars of the legal representative, parent, *guardian* or *appropriate person*.

## **26. Admission by a child in conflict with the law**

- (1) If a *child* makes an admission, the *member* must inform the *child* that he or she is entitled to —
- (a) remain silent and does not have to make any statement or answer any question and that anything that he or she says may be written down and may be used as evidence against him or her in court;
  - (b) consult with a legal representative before making any statement or answering any question; and
  - (c) be assisted by his or her parent, *guardian* or an *appropriate person* before making any statement or answering any question.

- (2) If the *child* indicates that he or she wishes to consult with his or her legal representative before making any statement or answering any question, the *member* must —
- (a) establish who the legal representative is;
  - (b) contact the legal representative and inform him or her that the *child* wishes to consult with him or her before making any statement or answering any question and when and where he or she may consult with the *child*; and
  - (c) record in the Occurrence Book (OB), if the *member* is at the police station or, if the *member* is not at the police station, in his or her Pocketbook, the steps that he or she has taken to inform the legal representative as set out in subparagraph (b).
- (3) If the *child* indicates that he or she wishes to have his or her parent, *guardian* or an *appropriate person* present before making any statement or answering any question, the *member* must —
- (a) establish the whereabouts of the parent, *guardian* or the *appropriate person*;
  - (b) contact the parent, *guardian* or the *appropriate person* and inform him or her that the *child* wishes to have him or her present when making any statement or answering any question and when and where the statement will be taken or the questions will be asked to enable him or her to assist the *child* while the statement is being taken or the questions are being asked; and
  - (c) record in the Occurrence Book (OB), if the *member* is at the police station or, if the *member* is not at the police station, in his or her Pocketbook, the steps that he or she has taken to inform the parent, *guardian* or the *appropriate person* as set out in subparagraph (2)(b).

- (4) If the *child* indicates that he or she does not wish to have his or her legal representative or his or her parent, *guardian* or an *appropriate person* present to assist him or her before making any statement or answering any question, the *member* must —
- (a) if the *member* and the *child* is present at the police station, —
- (i) make an entry in the Occurrence Book (OB) stating that the *child* was informed as set out in subparagraph (1) but that the *child* has indicated that he or she does not wish to have his or her legal representative or his or her parent, *guardian* or an *appropriate person* present to assist him or her before making any statement or answering any question;
  - (ii) request the *child* to sign the entry to confirm the correctness of the entry; and
  - (iii) take any statement made by the *child* by properly completing Form SAPS 3M(m); or
- (b) if the *member* and the *child* is not present at the police station, —
- (i) make an entry in his or her Pocketbook stating that the *child* was informed as set out in subparagraph (1) but that the *child* has indicated that he or she does not wish to have his or her legal representative or his or her parent, *guardian* or an *appropriate person* present before making any statement or answering any question;
  - (ii) request the *child* to sign the entry to confirm the correctness of the entry; and
  - (iii) take any statement made by the *child* by properly completing Form SAPS 3M(m).

## 27. Identity parade in which a child in conflict with the law appears as a suspect

- (1) An investigating officer in a case in which a *child* is a suspect, who decides that it is necessary for the purposes of the successful conclusion of the investigation of the case, for the *child* to appear as a suspect on an identification parade, must, well in advance before the identification parade is to be held so as to allow the *child* a reasonable opportunity to secure the presence of his or her legal representative and his or her parent, *guardian* or *appropriate person* at the parade, inform the *child* —
  - (a) of the intention to hold the identification parade and the purpose of the identification parade;
  - (b) that he or she is legally obliged to participate in the identification parade; and
  - (c) that he or she is entitled to have his or her legal representative and his or her parent, *guardian* or *appropriate person* present at the parade.
- (2) If the *child* indicates that he or she wishes to have his or her legal representative present while the identification parade is held, the investigating officer must —
  - (a) establish who the legal representative is;
  - (b) contact the legal representative and inform him or her that the *child* wishes to have him or her present while the identification parade is held and of the time when and place where the identification parade will be held to enable him or her to attend the identification parade; and
  - (c) record in the Occurrence Book (OB) the steps that he or she has taken to inform the legal representative as set out in subparagraph (b).

- (3) If the *child* indicates that he or she wishes to have his or her parent, *guardian* or an *appropriate person* present to assist him or her during the identification parade, the *member* must —
  - (a) establish the whereabouts of the parent, *guardian* or the *appropriate person*;
  - (b) contact the parent, *guardian* or the *appropriate person* and inform him or her —
    - (i) that the *child* wishes to have him or her present during the identification parade and of the time when and place where the identification parade will be held to enable him or her to attend and assist the *child* during the identification parade; and
    - (ii) that he or she is entitled to attend the identification parade and may assist the *child* during the identification parade; and
  - (c) record in the Occurrence Book (OB) the steps that he or she has taken to inform the parent, *guardian* or the *appropriate person* as set out in subparagraph (b).
- (4) If the *child* indicates that he or she does not wish to have his or her legal representative or his or her parent, *guardian* or an *appropriate person* present to assist him or her during the identification parade, the *member* must —
  - (a) make an entry in the Occurrence Book (OB) stating that the *child* was informed as set out in subparagraph (1) but that the *child* has indicated that he or she does not wish to have his or her legal representative or his or her parent, *guardian* or an *appropriate person* present to assist him or her during the identification parade;
  - (b) request the *child* to sign the entry to confirm the correctness of the entry; and

- (c) if requested thereto by the *member* in charge of the identification parade, provide him or her with the contact particulars of the legal representative, parent, *guardian* or *appropriate person*.
- (5) The *member* in charge of an identification parade must, before the commencement of the parade, inform every *child* who will be required to appear as a suspect on the parade of the following:
  - (a) the nature of the allegations against him or her;
  - (b) the purpose of the identification parade;
  - (c) his or her right to legal representation and afford him or her a reasonable opportunity and assist him or her to contact his or her legal representative or to secure legal representation;
  - (d) his or her right to be assisted by his or her parent, *guardian* or an *appropriate person* during the parade and assist him or her to contact his or her parent, *guardian* or an *appropriate person* to secure the presence of his or her parent, *guardian* or an *appropriate person* at the parade;
  - (e) his or her right to remain silent; and
  - (f) that he or she is legally obliged to participate in the identification parade.
- (6) If the *child* refuses to participate in the parade, he or she must not be physically taken to the parade. The *child* must, however, be informed that his or her refusal will be adduced as evidence against him or her during his or her trial and that the court may draw an adverse inference from the refusal.
- (7) The legal representative of the *child* or his or her parent, *guardian* or an *appropriate person* may not participate or interfere with the proceedings and is merely an observer. The parent, *guardian* or an *appropriate person* who attends the

parade must be informed accordingly and must be allowed to support the *child* between the appearances of witnesses. The legal representative of the *child* may elicit facts with regard to the identification parade during cross-examination in court and even give evidence thereon.

- (8) The *child* must participate in the parade in such condition, position or clothing as the *member* in charge of the parade may determine. The *child* or his or her legal representative, parent, *guardian* or the *appropriate person* may make reasonable requests regarding the appearance of the *child* on the parade. However, the *member* in charge of the parade may refuse to comply with such a request if it will be in the interest of justice to refuse - such as where the change of appearance will actually result in the *child* being disguised.
- (9) National Instruction 1 of 2007 on Identification Parades (as amended by subparagraphs (1)-(8)) applies to an identification parade in which a *child* appears as a suspect.

## **28. Receiving a report that a child was used by an adult to commit a crime**

- (1) In terms of section 141(1)(d) read with section 305(1)(c) of the *Children's Act*, any adult person who uses, procures or offers a *child* for the commission of any offence listed in Schedules 1 or 2 of the *Criminal Procedure Act*, or attempts to do so, is guilty of an offence.
- (2) In terms of section 92 of *the Act*, a court official or *probation officer* must, if it comes to his or her attention that a *child* has been used by an adult to commit an offence referred to in Schedule 1 or 2 of the *Criminal Procedure Act*, report the information at his or her disposal in this regard, to a police official.
- (3) The person reporting the alleged commission of the offence, normally does so voluntarily (except in the circumstances

referred to in subparagraph (2)) and is accordingly normally willing to provide all the information at his or her disposal to the police.

- (4) Any person reporting such information as a result of the legal duty to do so in terms of section 92 of *the Act*, may sometimes do so because of the legal duty on him or her to do so.
- (5) If a person (referred to in subparagraph (4)) reports such knowledge or his or her belief or suspicion to a police official, the *member* receiving the report may under no circumstances turn such a person away. Such a *member* must consider the information and —
  - (a) if the *member* is satisfied that there are reasonable grounds to believe that the offence established in section 141(1)(d) of the *Children's Act* was indeed committed, take an affidavit from the person setting out the information provided by that person, open a docket for the investigation of the offence that was allegedly committed and register the docket on the CAS system; or
  - (b) if the *member* is not satisfied that there are reasonable grounds to believe that such an offence was indeed committed, consult with the Community Service Centre Commander who must make a comprehensive OB entry of the report and the reasons why the Commander is not satisfied that there are reasonable grounds to believe that such an offence was indeed committed and provide the number of the OB entry to the person who made the report. The entry must include sufficient particulars of the person that made the report to enable him or her to be located and be interviewed if this turns out to be necessary.
- (6) Any person who reports the alleged commission of the offence established in section 141(1)(d) of the *Children's Act* to a *member* must be treated in a professional manner and must be reassured that the report is viewed in a serious light and will be thoroughly investigated.



## 29. Expungement of previous conviction and criminal record of a child

- (1) The Head: Criminal Record Centre may, in writing, authorise any *member* attached to the Criminal Record Centre of or above the rank of Brigadier, to expunge the criminal record of a person who was convicted of an offence while that person was a *child*, upon the receipt of a certificate of expungement issued by —
  - (a) the Director General of the Department of Justice and Constitutional Development; or
  - (b) the Minister of Justice and Correctional Services.
- (2) The Head: Criminal Record Centre must file every certificate referred to in subparagraph (1) and keep record of the date of the receipt of the certificate, the date upon which the record of the conviction and sentence was removed and the official who removed it.
- (3) The Head: Criminal Record Centre must, upon receipt of a written request from any person whose criminal record has been expunged in accordance with this paragraph, in writing confirm that the criminal record of the *child* has been expunged.

## ANNEXURE A

### SCHEDULE 1

1. Theft, whether under the common law or a statutory provision, receiving stolen property knowing it to have been stolen or theft by false pretences, where the amount involved does not exceed R 2 500.
2. Fraud, extortion, forgery and uttering or an offence referred to in the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), where the amount involved does not exceed R 1 500.
3. Malicious injury to property, where the amount involved does not exceed R 1 500.
4. Common assault where grievous bodily harm has not been inflicted.
5. Perjury.
6. Contempt of court.
7. Blasphemy.
8. Compounding.
9. Crimen iniuria.
12. Defamation.
11. Trespass.
12. Public Indecency.
13. Engaging sexual services of persons 18 years or older, referred to in section 11 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007).

14. Bestiality, referred to in section 13 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007.
15. Acts of consensual sexual penetration with certain children (statutory rape) and acts of consensual sexual violation with certain children (statutory sexual assault), referred to in and subject to sections 15 and 16 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, respectively.
16. Any offence under any law relating to the illicit possession of dependence-producing drugs, other than any offence referred to in Item 17 of this Schedule, where the quantity involved does not exceed R 500 in value.
17. Any other statutory offence where the maximum penalty determined by that statute is imprisonment for a period of no longer than three months or a fine for that period, calculated in accordance with the Adjustment of Fines Act, 1991 (Act No. 121 of 1991).
18. Any conspiracy, incitement or attempt to commit any offence referred to in this Schedule.

## ANNEXURE B

### SCHEDULE 2

1. Theft, whether under the common law or a statutory provision, receiving stolen property knowing it to have been stolen, or theft by false pretences, where the amount involved exceeds R 2 500.
2. Fraud, extortion, forgery and uttering or an offence referred to in the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), where the amount involved exceeds R 1 500.
3. Robbery, other than robbery with aggravating circumstances.
4. Malicious injury to property, where the amount involved exceeds R 1 500.
5. Assault, involving the infliction of grievous bodily harm.
6. Public violence.
7. Culpable homicide.
8. Arson.
9. Housebreaking, whether under the common law or a statutory provision, with the intent to commit an offence.
12. Administering poisonous or noxious substance.
11. Crimen expositiois infantis.
12. Abduction.
13. Sexual assault, compelled sexual assault or compelled selfsexual assault referred to in sections 5, 6 and 7 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007), respectively, where grievous bodily harm has not been inflicted.

14. Compelling or causing persons 18 years or older to witness sexual offences, sexual acts or selfmasturbation, referred to in section 8 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007.
15. Exposure or display of or causing exposure or display of child pornography or pornography as referred to in sections 12 or 19 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, respectively.
16. Incest and sexual acts with a corpse, referred to in sections 12 and 14 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, respectively.
17. Exposure or display of or causing exposure or display of genital organs, anus or female breasts to any person (“flashing”), referred to in sections 9 or 22 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007.
18. Violating a dead body or grave.
19. Defeating or obstructing the course of justice.
20. Any offence referred to in section 1 or 1A of the Intimidation Act, 1982 (Act No. 72 of 1982).
21. Any offence relating to criminal gang activities referred to in Chapter 4 of the Prevention of Organised Crime Act, 1998 (Act No. 121 of 1998).
22. Any contravention of section 2 of the Animals Protection Act, 1962 (Act No. 71 of 1962).
23. Any offence under any law relating to the illicit possession of dependence-producing drugs, other than any offence referred to in Item 24 of this Schedule, where the quantity involved exceeds R 500 but does not exceed R 5 000 in value.

24. Any other statutory offence where the maximum penalty determined by that statute is imprisonment for a period exceeding three months but less than five years or a fine for that period, calculated in accordance with the Adjustment of Fines Act, 1991 (Act No. 121 of 1991).
25. Any conspiracy, incitement or attempt to commit any offence referred to in this Schedule.
26. Any offence contemplated in—
  - (a) section 2, 3 or 4 of the Cybercrimes Act, 2020;
  - (b) section 5, 6, 7 or 11(1) of the Cybercrimes Act, 2020, where the damage caused does not exceed an amount of R5000;
  - (c) section 14, 15 or 16 of the Cybercrimes Act, 2020; or
  - (d) section 8, 9 or 10 of the Cybercrimes Act, 2020, where the amount involved does not exceed R1500.
27. An offence contemplated in section 11A(1) and (2) of Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007.

## ANNEXURE C

### SCHEDULE 3

1. Treason.
2. Sedition.
3. Murder.
4. Extortion, where there are aggravating circumstances present.
5. Kidnapping.
6. Robbery—
  - (a) where there are aggravating circumstances; or
  - (b) involving the taking of a motor vehicle.
7. Rape or compelled rape referred to in sections 3 and 4 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007), respectively.
8. Sexual assault, compelled sexual assault or compelled selfsexual assault referred to in sections 5, 6 and 7 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, respectively, involving the infliction of grievous bodily harm.
9. Sexual exploitation of children, sexual grooming of children and using children for or benefiting from child pornography, referred to in sections 17, 18 and 20 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, respectively.
12. Exposure or display of or causing exposure or display of child pornography or pornography to children referred to in section

19 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, if that exposure or display is intended to facilitate or promote—

- (a) the sexual exploitation or sexual grooming of a child referred to in section 17 or 18 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, respectively; or
  - (b) the use of a child for purposes of child pornography or in order to benefit in any manner from child pornography, as provided for in section 20 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007.
11. Compelling or causing children to witness sexual offences, sexual acts or selfmasturbation referred to in section 21 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007.
12. Sexual exploitation of persons who are mentally disabled, sexual grooming of persons who are mentally disabled, exposure or display of or causing exposure or display of child pornography or pornography to persons who are mentally disabled or using persons who are mentally disabled for pornographic purposes or benefiting therefrom, referred to in sections 23, 24, 25, and 26 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, respectively.
13. Any offence provided for in sections 4, 5, 6, or 7 or involvement in these offences as provided for in section 10 of the Prevention and Combating of Trafficking in Persons Act, 2013.
14. Any offence referred to in Parts 1, 2 and 3 of Chapter 2 of the Protection of Constitutional Democracy against Terrorist and Related Activities Act, 2004 (Act No. 33 of 2004).



15. Any offence relating to—
  - (a) racketeering activities referred to in Chapter 2; or
  - (b) the proceeds of unlawful activities referred to in Chapter 3, of the Prevention of Organised Crime Act, 1998 (Act No. 121 of 1998).
16. The crimes of genocide, crimes against humanity and war crimes referred to in the Implementation of the Rome Statute of the International Criminal Court Act, 2002 (Act No. 27 of 2002).
17. Any offence under any law relating to—
  - (a) the dealing in or smuggling of ammunition, firearms, explosives or armament;
  - (b) the possession of firearms, explosives or armament.
18. Any offence referred to in section 13(f) of the Drugs and Drug Trafficking Act, 1992 (Act No. 140 of 1992).
19. Any offence of a serious nature if it is alleged that the offence was committed by a person, group of persons, syndicate or any enterprise, acting in the execution or furtherance of a common purpose or conspiracy.
20. Any offence under any law relating to the illicit possession of dependence producing drugs, other than an offence referred to in Item 21 of this Schedule, where the quantity involved exceeds R 5 000 in value.
21. Any other statutory offence where the maximum penalty determined by that statute is imprisonment for a period exceeding five years or a fine for that period, calculated in accordance with the Adjustment of Fines Act, 1991 (Act No. 121 of 1991).

22. Any conspiracy, incitement or attempt to commit any offence referred to in this Schedule.
23. Any offence contemplated in —
- (a) section 5, 6, 7 or 11(1) of the Cybercrimes Act, 2020, where the damage caused exceeds an amount of R 5000;
  - (b) section 8, 9 or 10 of the Cybercrimes Act, 2020, where the amount involved exceeds R 1 500; or
  - (c) section 11(2) of the Cybercrimes Act, 2020.
24. An offence contemplated in section 11A(3) of Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007.

**DIRECTIVES**  
**ISSUED IN TERMS OF SECTION 97(4)**  
**OF THE *CHILD JUSTICE ACT,***  
***2008 (ACT 75 OF 2008)***

**Directives issued in terms of section 97(4)  
of the *Child Justice Act, 2008 (Act 75 of 2008)***

DEPARTMENT OF JUSTICE AND CONSTITUTIONAL  
DEVELOPMENT

The National Director of Public Prosecutions has, under 97(4) of the Child Justice Act, 2008 (Act No. 75 of 2008), and in consultation with the Cabinet member responsible for the administration of justice, made the Directives in this Schedule.

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## **CHILDREN IN CONFLICT WITH THE LAW**

### **A. Objectives of the *Child Justice Act, 2008 (Act 75 of 2008)***

The *Child Justice Act, 2008 (Act 75 of 2008)* (hereinafter referred to in this part as 'the Act'), effective as from 1 April 2010, provides for a criminal justice system that takes account of the vulnerability and special needs of children. The intention is for children in conflict with the law to be diverted from the criminal justice system when appropriate and for children not diverted to be dealt with in child justice courts. Children are to benefit from interventions, programmes and sentencing options aimed at rehabilitation and reintegration in order to minimise the potential for re-offending whilst ensuring their responsibility and accountability for crimes committed.

### **B. Directives of the National Director of Public Prosecutions**

1. Section 97 (4) (a) of the Act requires of the National Director, in consultation with the Minister of Justice, to issue directives regarding all matters which are reasonably necessary or expedient to be provided for in order to achieve the objectives of this Act. In particular the directives must address diversion, how errors regarding age are to be dealt with after diversion and the exceptional circumstances that must exist before diversion of a matter in the case of a serious offence.
2. In terms of section 97 (4) (b) such directives must be submitted to Parliament for approval, before publication in the Gazette. The first directives were submitted to Parliament before commencement of the Act.

### **C. Withdrawal of cases**

Care should be taken not to merely withdraw a case, where the best interests of the child call for some intervention.

## **D. Criminal capacity**

1. It is important to note that the Act amends the common law regarding the age of criminal capacity. A child committing an offence while under the age of 12 years cannot be prosecuted for such offence because of the lack of criminal capacity. In practice, prosecutors will not deal with any child who committed an offence while under the age of 12 years. Such children must not be arrested. The police must notify a probation officer who will deal with the matter.
2. A child who is 12 years or older, but under the age of 14 years is presumed to lack criminal capacity unless the State proves beyond a reasonable doubt that the child was able to appreciate the difference between right and wrong and was able to act in accordance with that appreciation at the time of the commission of the offence.
3. See also paragraphs L (1) and L (2) (b).

## **E. The decision to prosecute a child who is 12 years or older but under the age of 14 years**

1. The decision to prosecute a child who is 12 years or older but under the age of 14 years must be carefully considered. The factors set out in section 10(1) of the Act must be taken into consideration when taking such a decision.
2. Where it is unlikely that it will be proved that the child had the necessary criminal capacity prosecutors should have the child referred to a probation officer to be dealt with in the same manner as children under the age of 12 years.
3. Where it is likely to be proved that the child had the necessary criminal capacity the prosecutor may consider diversion where the alleged offence is minor (see G below) or may refer the matter to a preliminary inquiry in terms of the Act.



4. Where the prosecutor deems it necessary to have the criminal capacity of a child evaluated, he or she should request the court to have it done by the category or class of persons determined by the Minister of Justice, e.g. a psychiatrist or clinical psychologist.

## **F. Basic principles relating to diversion**

1. The general requirements for diversion in terms of the Act are contained in section 52(1) of the Act. The said requirements are:
  - (a) the child acknowledges responsibility for the offence;
  - (b) the child has not been unduly influenced to acknowledge responsibility;
  - (c) there is prima facie evidence that the child committed the offence;
  - (d) the child and, if available, his or her parent, an appropriate person or a guardian, consent to diversion; and
  - (e) the prosecutor indicates that the matter may be diverted in accordance with subsection (2) or the Director of Public Prosecutions indicates that the matter may be diverted in accordance with subsection (3).
2. The diversion must be made an order of court.
3. Prosecutors are responsible for the ultimate decision whether to divert or not and should not abdicate this responsibility. They also have a duty to ensure that adequate conditions of diversion, commensurate with the crime committed, are imposed and should discuss appropriate and available options with the relevant probation officer (Sections 52 to 55 of the Act). With regard to *Schedule 3* offences directives are provided for in paragraph J below.)

4. Prosecutors are not required by the Act to provide reasons for a decision not to divert. The furnishing of reasons might compromise the presiding officer in any further proceedings and prosecutors should therefore be careful if reasons are nevertheless provided. Prosecutors should, however, record reasons for non diversion in the investigation diary of the docket.
5. The Act requires diversion programmes and diversion service providers to apply for accreditation and be accredited. Compliance must always be monitored by a probation officer or a suitable person and this person must be identified in the diversion order (section 57).
6. If a *Family Group Conference* or *Victim Offender Mediation* is considered, the victim must also consent thereto (section 61 and 62):
  - (a) For purposes of informed consent, prosecutors should ensure that the victim is provided with sufficient information regarding the nature of such interventions and the right to refuse to participate.
  - (b) Where the victim is a child, particular care must be taken and the consent of a parent, guardian or an appropriate person should, in addition, be insisted upon as necessary.
  - (c) These will seldom be suitable interventions in the case of a contact crime.
  - (d) Unless pressing circumstances so require, for instance where the prosecutor is concerned about the victim or the latter so requests for good reason, it is not expected of prosecutors to attend the conference.
7. All efforts must be made to establish whether the child has previously been diverted. A diversion may still be considered

despite a previous diversion or the existence of a previous conviction if the child will benefit from the proposed programmes and if the child, all circumstances taken into account, should be afforded another such opportunity. Diversion is not suitable if it brings the administration of justice into disrepute. If unsure whether a certain decision will bring the administration of justice into disrepute or not, prosecutors should require the guidance of the DPP.

8. The views of victims and investigating officers must be considered in respect of Schedule 2 and 3 offences. Whenever possible, such views should also be obtained and considered in respect of Schedule 1 offences. Although prosecutors are not bound by these views, it should be kept in mind that the victim/person affected has no redress by way of a private prosecution once a diversion has been ordered (section 59 (2)).
9. When a child has successfully complied with a diversion order a compliance report must be furnished to the prosecutor (section 57(5)). A copy of this report should be given to the clerk of the court and a copy filed in the docket.
10. In the event of non-compliance due to the child's fault, section 58(4) applies. The degree of non-compliance and the recommendation by the probation officer should inform the decision whether to proceed with prosecution or to impose more onerous diversion options. The latter must also be made an order of court.
11. Although a successful diversion does not constitute a previous conviction, no prosecution may be instituted following a successful diversion (section 59(1)).

## **G. Diversion of matters in respect of minor offences before a preliminary inquiry**

1. A prosecutor may divert a matter involving a child alleged to

have committed a minor offence listed in *Schedule 1* of the Act before a preliminary inquiry is held in terms of the Act, where the general requirements for diversion are present. This may be done after an assessment of the child by a probation officer, unless this requirement is dispensed with by the prosecutor where it is in the best interests of the child to do so (see paragraph K below).

2. Although the prosecutor may summarily indicate that the matter may be diverted where the offence is minor as listed in *Schedule 1* of the Act, where the investigating officer and/or victim or any person with a direct interest in the affairs of the victim is readily available, such persons should be consulted.
3. Prosecutors may select one or any combination of the level 1 diversion options set out in section 53(3) of the Act. If the matter is to be diverted, the child and, where possible, his or her parent, appropriate person or guardian must appear before a magistrate in chambers in order to have the diversion option made an order of court. Where the prosecutor has decided to dispense with the requirements of an assessment, the reasons must be provided to the magistrate to enter on the record of proceedings.
4. Where the child has been arrested, and remains in detention, a preliminary inquiry must be held within 48 hours of arrest. Consequently, consideration of diversion must take place as soon as possible. Where it is not possible to consider diversion during this time period, the preliminary inquiry must be held and paragraph H below finds application.
5. Where the child has been released and a written notice been issued to appear at a preliminary inquiry, the consideration of diversion must take place prior to the appearance at the inquiry. Similarly, where a summons has been issued, the consideration of diversion must take place before appearance at the inquiry. Where a decision is made to divert such a

matter, the return of service should be obtained from the clerk of the court and this, together with the diversion option, must be taken to a magistrate in chambers in order to make it an order of court.

6. Diversion of matters before a preliminary Inquiry should not take place in, for example, the following circumstances:
  - (a) The offence is listed in *Schedule 1*, but the facts or circumstances of the offence are of a serious nature, e.g. the consequences are very serious.
  - (b) The child has a previous conviction, previous diversion or pending charge in respect of a similar or more serious offence.
  - (c) Prosecutors are of the view that the child—
    - (i) has been abandoned or orphaned and is without any visible means of support;
    - (ii) displays behaviour which cannot be controlled by the parent or care-giver;
    - (iii) lives or works on the streets or begs for a living;
    - (iv) is addicted to a dependence-producing substance and is without any support to obtain treatment for such dependency;
    - (v) has been exploited or lives in circumstances that expose the child to exploitation;
    - (vi) lives in or is exposed to circumstances which may seriously harm that child's physical, mental or social well-being;
    - (vii) 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;

(viii) is in a state of physical or mental neglect;

(ix) is being maltreated, abused, deliberately neglected or degraded by a parent, a care-giver, a person who has parental responsibilities and rights or a family member of the child or by a person under whose control the child is;

(x) is a victim of child labour;

(xi) is in a child-headed household; or

(xii) is due to its conduct not suitable for diversion.

7. If the prosecutor is of the view that the child is unlikely to benefit from diversion, or if diversion is for any reason not appropriate, the prosecutor may refer the child to a probation officer to be dealt with (as a child who lacks criminal capacity,) in terms of section 9 of the Act. The prosecutor is required to report on these referrals.

#### **H. Diversion of matters at a preliminary inquiry**

1. Where a matter has not been diverted in terms of paragraph E above, withdrawn or a decision made not to prosecute because of the probable lack of criminal capacity, a preliminary inquiry must be held in terms of the Act.
2. The preliminary inquiry is an informal pre-trial procedure before a magistrate which is inquisitorial in nature and the prosecutor is obliged to attend. This is the equivalent of the child's first appearance in court although this procedure may not necessarily take place in court.

3. Despite the inquisitorial nature of the preliminary inquiry, prosecutors should play an active role in the proceedings for purposes of ensuring a just outcome. Prosecutors should be able to provide all information relevant to the offence, the views of the victim or of the person affected by the crime and those of the investigating officer.
4. Prior to the preliminary inquiry the prosecutor must as a general rule have been provided with an assessment report on the child by a probation officer. This report should be studied by the prosecutor as it will provide information relevant to the decision of how the matter should be further dealt with and if any further information may be necessary, this should be obtained from the probation officer before the start of the preliminary inquiry if possible. The information obtained is confidential and for purposes of the inquiry. The information furnished at the preliminary inquiry is inadmissible during any bail application, plea, trial or sentence proceedings in which the child appears.
5. A preliminary inquiry is not a trial and is not intended to become protracted proceedings for purposes of obtaining the presence of persons not listed as necessary. Whilst information obtained at the inquiry may not be used against the child in any other proceedings, there is no similar provision protecting victims or witnesses. Prosecutors should therefore object to victims or witnesses being called at such an inquiry.
6. At the preliminary inquiry the assessment report is considered. *Inter alia*, it is established whether the matter can be diverted and if so, the suitable diversion option.
7. However, an inquiry magistrate may stop the proceedings and order that the child be brought before a children's court where he or she is of the view that the child is in need of care and protection, does not live at home or in appropriate care, or is

alleged to have committed minor offences aimed at meeting the child's basic need for food and warmth.

8. After the consideration of all relevant information presented at the preliminary inquiry, the possibility of diversion may be considered where the requirements set out in paragraph F1 above are met. Where a prosecutor indicates that the matter can be diverted, he or she must request the presiding officer to make an order for diversion of the matter.
9. Although the prosecutor may summarily indicate that the matter may be diverted where the offence is minor as listed in *Schedule 1* of the Act, where the investigating officer and/or victim or any person with a direct interest in the affairs of the victim is readily available, such persons should be consulted.
10. Where the offence is a more serious offence listed in *Schedule 2* of the Act, the prosecutor may only indicate that the matter may be diverted after he or she has—
  - (a) consulted with the investigation officer;
  - (b) considered the views of the victim or any person with a direct interest in the affairs of the victim, whether or not the matter may be diverted, unless it is not reasonably possible to do so; and
  - (c) obtained the authorisation of the Senior Public Prosecutor.
1. In the case of serious offences listed in *Schedule 3* of the Act, the written indication of the relevant DPP is required (see Paragraph J below).
2. Prosecutors should inform the inquiry magistrate as soon as possible if a matter may not be diverted, provided that there is no likelihood of further information becoming available that might warrant a different decision. This should be done



especially where the availability of a different magistrate to preside in any further proceedings might prove difficult. Given the nature of the inquiry the prosecutor should make all attempts possible to prevent the inquiry magistrate from receiving any information that may prevent the magistrate from hearing the trial.

3. Where the prosecutor indicates that the matter may not be diverted he or she must confirm to the magistrate that there is sufficient evidence available or there is reason to believe that further investigation is likely to result in the necessary evidence becoming available. The magistrate will record this and refer the matter to a child justice court.
4. A preliminary inquiry may be postponed for a period not exceeding 48 hours for specific purposes. These include where the prosecutor indicates that diversion is being considered, but an assessment has not been done and is required; where it is necessary to make arrangements in respect of a diversion option; or for the purposes of further investigation. A further postponement of the preliminary inquiry may only be granted where the postponement is likely to increase the prospect of diversion.
5. A preliminary inquiry may be postponed for a period not exceeding 14 days if a probation officer has recommended a further and more detailed assessment of the child be undertaken or where it is necessary to obtain the written direction of the relevant DPP for the diversion of a matter in the case of a serious offence referred to in *Schedule 3* of the Act (see J below).
6. Where the child is referred for trial to a child justice court and where the same magistrate who presided in the preliminary inquiry is due to preside, the prosecutor should alert the magistrate to the provisions of section 47(10).

## **I. Diversion of matters at a trial**

1. Where the matter has not been diverted at a preliminary inquiry, the prosecutor may indicate that the matter can be diverted until the point in the proceedings before the case for the prosecution is concluded. Once the prosecution has closed its case the prosecutor may no longer request the presiding officer to make a diversion order in respect of the child.
2. After the consideration of all relevant information, including whether a child has a record of previous diversions, a prosecutor may give consideration to diversion where the requirements set out in paragraph F1 above are met. Where a prosecutor indicates that the matter can be diverted, he or she must request the presiding officer to make an order for diversion of the child.
3. Although the prosecutor may summarily indicate that the matter may be diverted where the offence is minor as listed in *Schedule 1* of the Act, where the investigating officer and/or victim or any person with a direct interest in the affairs of the victim is readily available, such persons should be consulted.
4. Where the offence is a more serious offence listed in *Schedule 2* of the Act, the prosecutor may only indicate that the matter may be diverted after he or she has—
  - (a) consulted with the investigation officer; and
  - (b) considered the views of the victim or any person with a direct interest in the affairs of the victim, whether or not the matter may be diverted, unless it is not reasonably possible to do so.
5. Diversion in respect of offences listed in *Schedule 2* of the Act may only be agreed to with the authorisation of a Senior Public Prosecutor.

6. In the case of serious offences listed in *Schedule 3* of the Act, the written direction of the relevant DPP is required (see Paragraph J below). The proceedings may be postponed in order to obtain the written indication of the DPP.

**J. Diversion of matters in respect of serious offences**

1. Where an offence is listed in *Schedule 3* of the Act, a matter may only be considered for diversion if exceptional circumstances exist, and the DPP having jurisdiction has indicated in writing that the matter may be diverted.
2. The exceptional circumstances that may exist include—
  - (a) particular youthfulness;
  - (b) particularly low developmental level of a child;
  - (c) presence of particular hardship, vulnerability or handicap (e.g. where the child heads a household);
  - (d) victim prefers diversion to trial as he/she does not want to testify in court;
  - (e) compelling mitigating circumstances such as diminished responsibility;
  - (f) undue influence exerted upon the child in the commission of the offence (e.g. Persons using children to commit offences);
  - (g) witnesses for the prosecution are fragile and/or unwilling to testify; or
  - (h) to proceed would be potentially damaging to a child witness/victim.

3. Furthermore, the DPP may only indicate that such a matter be diverted where the DPP has consulted with the investigation officer and considered the views of the victim or any person with a direct interest in the affairs of the victim.
4. Where it is reasonable to do so, the DPP should have given the victim or the person with a direct interest in the affairs of the victim an opportunity to express a view on—
  - (a) whether or not the matter should be diverted; and if so,
  - (b) the nature and content of the diversion option being considered; and
  - (c) the possibility of including in the diversion option a condition relating to compensation or the rendering of a special benefit or service.

#### **K. The assessment**

1. The assessment is vital for purposes of coming to an informed decision and has to be done prior to the child appearing at the preliminary inquiry. If the child is in custody this should be done with 48 hours of arrest.
2. Prosecutors may dispense with such assessment in terms of section 41(3) only in respect of a *Schedule 1* offence if it is in the best interest of the child. The reasons for having dispensed with the assessment must be furnished and recorded in terms of section 42.
3. Dispensing with the assessment should be the exception. It may only be done where the prosecutor has sufficient information to make a decision on whether to divert or not, e.g. age determination, criminal capacity, suitable diversion option; where an assessment will not be possible within a reasonable period of time; or where the crime committed is petty.

4. The information obtained during assessment is confidential and may only be used for a legally authorised purpose (section 36(1)), e.g. to determine criminal capacity in accordance with section 11(2).
5. It may not be used during a bail application, plea, trial or sentencing proceedings in which the child appears.

## **L. Categories of child offenders**

1. Children under 12 years:

Such a child does not have criminal capacity (section 7(1)) and cannot be prosecuted but must be referred to the probation officer to be dealt with in terms of section 9(3).

2. Children 12 years or older but under 14 years:

- (a) Such a child may only be detained in a police cell or lockup if a child and youth care centre is not available or, if available, does not have a vacancy (section 27).
- (b) There is a rebuttable presumption that such a child does not have criminal capacity. If criminal capacity is unlikely to be proved beyond reasonable doubt, the prosecutor must refer the child back to the probation officer to be dealt with in terms of section 9(3) unless the latter has already indicated in the assessment report that, in accordance with section 9(3) (a) (vi), no action is contemplated. Where no action is contemplated the prosecutor should withdraw the charge.
- (c) Unless specific reasons are recorded for exceeding the usual duration, diversion orders may not exceed 12 months in duration in respect of level 1 diversion or 24 months in respect of level 2 diversions. (section 53(5) and (6)). As prosecutors may be the sole deciders on the duration of diversion orders following a Schedule 1 offence, they should, for example,

take into account the nature of the offence, the nature of the diversion option, the circumstances of the child and more particularly, the child's prospects of rehabilitation.

3. Children 14 years and older but under 16 years (section 30(2)):
  - (a) If such a child is to be detained in prison, a certificate informing the court that sufficient evidence exists and that the child will be charged with a *Schedule 3* offence is required.
  - (b) The DPP is required to authorise prosecutors to furnish such certificates.
  - (c) In all instances where it is imperative that the child be kept in prison pending the trial, the certificate should be obtained and submitted to the court during application for detention.
4. Children 14 years and older but under 18 years (section 27 (a)/(b)):
  - (a) Such children may only be detained in a police cell or lockup if a child and youth care centre is not available or, if available, does not have a vacancy. However, in respect of a *Schedule 3* offence, if the child is to be detained following arrest, this **must** be in a police cell or lock-up (section 27), pending a decision by the inquiry magistrate.
  - (b) Unless specific reasons are recorded for exceeding the usual duration, diversion orders may not exceed 24 months in duration in respect of level 1 diversions or 48 months in respect of level 2 diversions (section 53(5) and (6)).
5. Children 14 years or older (section 30(5)(a)):
  - (a) Such a child may also be detained in prison in respect of a *Schedule 1* and 2 offence if substantial and compelling circumstances exist.

- (b) Substantial and compelling circumstances might be present if the child has a history of violence or aggression or if the available child and youth care centres are not sufficiently secure.

**M. Directives in respect of persons who were children at the time of commission of a crime but are 18 years and older, but under 21 years**

1. Where a person is 18 years or older, but under the age of 21 years, when handed a written notice, served with a summons or arrested for allegedly having committed an offence when he or she was under the age of 18 years, a DPP may direct that the matter be conducted in accordance with the provisions of the Act as if the person were still a child.
2. Thus, the person will need to be assessed by a probation officer, a preliminary inquiry held in respect of the offence and consideration be given to diversion –
  - (a) by the prosecution prior to the preliminary inquiry in the case of minor offences (listed in *Schedule 1*); or
  - (b) at the preliminary inquiry.
3. Where the matter is not diverted, withdrawn or referred to a children's court, the matter will be referred to child justice court for plea and trial.
4. A DPP may issue such a direction—
  - (a) in the event of a Schedule 1 offence;
  - (b) if the co-accused is a child;
  - (c) if the person was used by an adult to commit the crime;
  - (d) where there is doubt regards the age of the person;

- (e) where the person appears to be intellectually or developmentally challenged; or
  - (f) where other pertinent and relevant circumstances so demand, such as those listed in paragraph J.2.
5. A direction should generally not be given where the co-accused are adults, unless the person was used by them to commit the crime.
  6. The relevant DPP should be requested for a directive at the earliest possible opportunity. This may be done telephonically and as soon as it appears that the person will probably be prosecuted and where any of the above criteria are met. The DPP should confirm his/her telephonic directive in writing.
  7. Prosecutors may, in respect of a *Schedule 1* offence, where there is no indication that a direction in terms of section 4(2) of the Act is appropriate and if circumstances so dictate and the requirements are met divert the person without requesting a direction from the DPP. In such instances adult diversion finds application and the diversion is then not in terms of this Act.
  8. Allowing for the benefit of proper assessment and appropriate handling does not imply that the person must also be diverted: Diversion will depend on the usual weighing up of relevant interests and the prescribed requirements will also need to be met.
  9. If the prosecutor holds the view that the person will probably be diverted, the prosecutor may *mero motu* cause the person to be assessed pending the directive from the DPP.
- N. Error regarding the age of a child or adult discovered after the matter is diverted**
1. Determining the correct age of the accused person is crucial. If



after diversion the age of the accused person differs from that which was previously accepted as correct, it must be brought to the attention of the presiding officer who ordered the diversion to deal with in terms of section 16.

2. It is then for the presiding officer to decide what steps should be taken to address the situation.
3. The prosecutor must inform the presiding officer whether diversion, and if so, the same conditions of diversion would have been ordered if the correct age was known when the matter was initially considered for diversion.

## **O. Categories of offences**

1. *Schedule 1* (least serious) offences:

- (a) Prosecutors may release the child on bail.
- (b) Section 59A of the Criminal Procedure Act as it relates to children must be read as follows:

*“Prosecutors may in respect of the offences referred to in Schedule 1 of the Child Justice Act and in consultation with the police official charged with the investigation authorise the release of the child on bail.”*

- (c) A prosecutor may agree at the preliminary inquiry or at the trial proceedings to a diversion or may divert the child at an earlier stage without assessment (para. C *supra*) and/or without referral to a preliminary inquiry (section 41). In the latter instance the child must still be present when the diversion is made an order of court (section 42) and an assessment by the probation officer should ordinarily still be required.
- (d) If asked for guidance by a police officer in terms of section 17

with regards to the need for a preliminary inquiry, prosecutors should ordinarily indicate that the child will have to attend a preliminary inquiry for purposes of ensuring that the child is brought to court. The exception will be where a police docket is submitted to the prosecutor for decision and the prosecutor may probably decline to prosecute. In this instance, the prosecutors must always keep the number of cases where they have declined to prosecute and the reasons thereof.

- (e) Prosecutors may decide not to refer a matter to a preliminary inquiry but to divert the matter in the following circumstances (provided that all requirements for diversion are met):
  - (i) Where the crime is a minor *Schedule 1* offence;
  - (i) Where the child is not in need of care and protection; and
  - (ii) Where the child does not have a record of previous criminality.
- (f) In these circumstances only Level 1 diversion options may be utilized (section 53(2)(a)).

10. *Schedule 2* (more serious) offences:

- (a) A prosecutor may release the child on bail (section 21(2) (b)).
- (b) Section 59A of the Criminal Procedure Act as it relates to children must be read as follows:

*“Prosecutors may in respect of the offences referred to in Schedule 2 of the Child Justice Act and in consultation with the police official charged with the investigation authorise the release of the child on bail.”*

- (c) The prosecutor may, subject to para F(2)(d), agree to a diversion

at the preliminary inquiry or trial only after having considered the views of the victim or person with a direct interest and after having consulted the investigating officer.

- (d) Diversion may only be agreed to with the authorisation of the Senior Public Prosecutor. If in doubt, the office of the DPP should be contacted for guidance.
- (e) Level 1 and 2 diversion options apply (section 53(2)(b)).

2. *Schedule 3* (most serious) offences:

- (a) A certificate authorizing the detention of a child 14 years and older but under 16 must be issued (Para L(3) above).
- (b) Diversion may only occur in exceptional circumstances (see paragraph J) with the written indication of the relevant DPP after having considered the views of the victim or of a person with a direct interest as well as the investigating officer (section 52 (3)).
- (c) Prosecutors should bring deserving cases to the attention of their respective DPP's as soon as it seems that a diversion needs to be considered.

The following information must then be submitted-

- (a) the case docket;
- (b) the assessment report;
- (c) a report by the prosecutor providing-
  - a summary of the evidence;
  - the preliminary views of the victim or person affected and the investigating officer, in writing and signed by them with their contact numbers
  - confirmation that the requirements for diversion have been met; and
  - motivated recommendations.

## **P. The trial in a child justice court (section 63)**

1. A referral to a child justice court following the preliminary inquiry means a referral to any court having jurisdiction and therefore may also be a Regional or High Court. In instances where a child is charged with an adult, the court sits simultaneously as an ordinary court and a child justice court. There is no reason to request a separation of trials, even though the child was dealt with separately during the preliminary inquiry.
2. Prevailing prescripts with regards to forum still apply (High or Lower Courts). However, the High Court will only be a suitable forum in cases of children 12 years and older but under 14 years of age if compelling reasons exist.
3. The trials have to be prioritised and section 66 places limitations on the length of postponements. Prosecutors should make all efforts to ensure that the trials are finalised speedily.
4. The child has to be informed by the court of his/her rights and the procedure that will be followed. The presence of a legal representative will not alleviate the court of this duty and prosecutors should remind courts of such duty if necessary.
5. Prosecutors should refrain from hostile and inappropriate cross-examination of the child and should, as officers of the court, object, where necessary, to such cross-examination by any other party.
6. The court may divert the case at the request of the prosecutor at any stage prior to the close of the state case (section 67(1) read with section 52(5)). Prosecutors should consider making a request where a diversion would have been favourably considered at an earlier stage had the child accepted responsibility; or where the child is now prepared to consent

to the diversion options; or where the court in the exercise of its independent discretion is now prepared to make such an order contrary to the decision of the inquiry magistrate. Where the prosecution has previously not agreed to diversion, there should be compelling reasons for deviating at this stage from the initial decision.

7. The court must warn the child prior to making a diversion order that any acknowledgement of responsibility may, upon non-compliance with a diversion order, be recorded as an admission in terms of section 220 of the Criminal Procedure Act. Where the court fails to warn the child, the prosecutor should request the court to do so timeously. The purpose of the warning is to encourage compliance and to ensure that the admission has evidential value (section 67 (1)(b)).
8. The proceedings are postponed pending completion of the diversion and in the event of compliance, they are stopped. Where the child fails to comply with a diversion order and this is found to be due to the child's fault, the trial may proceed or a more onerous diversion option may be decided on.
9. At the trial the magistrate must stop the proceedings and order that the child be brought before a children's court where he or she is of the view that the child is in need of care and protection, does not live at home or in appropriate care, or is alleged to have committed minor offences aimed at meeting the child's basic need for food and warmth.

## **Q. Sentencing**

1. Prosecutors should take cognisance of the provisions of sections 69 to 78 for purposes of addressing the court on sentence.
2. The minimum sentence provisions in the *Criminal Law Amendment Act, 1997 (Act No. 105 of 1997)*, do not

apply (*vide Centre for Child Law v Minister of Justice and Constitutional Development and others CCT98/08, 2009 ZACC 18*).

3. Prosecutors are encouraged to obtain a victim impact statement. Undisputed victim impact statements are admissible upon mere production.
4. Pre-sentence reports are compulsory and should be requested by the court and not by the prosecutor (section 71(1)(a)).

#### **R. Persons using children to commit offences**

The prosecution should refer to SAPS any information of persons using children to commit offences for opening of case dockets are opened in respect of all persons who are alleged to have used children to commit crime (section 92).

#### **S. Monitoring**

Each office should keep register of all persons diverted in terms of this Act.

#### **T. Failure to comply with these Directives**

Failure by a prosecutor to comply with these Directives and/or any duty imposed on him/her in terms of this Act may lead or result in disciplinary steps being taken against such prosecutor.

# CHILD JUSTICE

## ACT 75 OF 2008

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REGULATIONS

NATIONAL INSTRUCTION 2 OF 2010

DIRECTIVES ISSUED IN TERMS OF SECTION  
97(4) OF THE CHILD JUSTICE ACT

DEPARTMENT OF JUSTICE & CONSTITUTIONAL DEVELOPMENT

CHIEF DIRECTORATE: PROMOTION OF THE  
RIGHTS OF VULNERABLE GROUPS

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