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## THE PRESIDENCY

No. 549

11 May 2009

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

**No. 75 of 2008: Child Justice Act, 2008**



**AIDS HELPLINE: 0800-123-22 Prevention is the cure**

*(English text signed by the President.)  
(Assented to 7 May 2009.)*

## 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,

**P**ARLIAMENT of the Republic of South Africa therefore enacts as follows:—

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## CHAPTER 1

## DEFINITIONS, OBJECTS AND GUIDING PRINCIPLES OF ACT

## Definitions

1. In this Act, unless the context indicates otherwise—
- “**acknowledges responsibility**” means acknowledges responsibility for an offence without a formal admission of guilt; 5
- “**adult**” means a person who is 18 years or older but does not include a person referred to in section 4(2);
- “**appropriate adult**” 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; 10
- “**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); 15
- “**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 No. 38 of 2005); 20
- “**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; 25
- “**Criminal Procedure Act**” means the Criminal Procedure Act, 1977 (Act No. 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; 30
- “**Director of Public Prosecutions**” means a Director of Public Prosecutions appointed in terms of section 13 of the National Prosecuting Authority Act, 1998 (Act No. 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; 35
- “**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; 40
- “**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; 45
- “**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; 50
- “**Legal Aid Board**” means the Legal Aid Board established under section 2 of the Legal Aid Act, 1969 (Act No. 22 of 1969);
- “**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 No. 32 of 1998); 55

- “**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; 5
- “**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 No. 68 of 1995); 10
- “**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 No. 111 of 1998); 15
- “**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);
- “**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; 20
- “**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; 25
- “**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; 30
- “**this Act**” includes any regulation made under section 97;
- “**victim-offender mediation**” means a procedure referred to in section 62.

### Objects of Act

2. The objects of this Act are to— 35
- (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 5
- (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; 10
- (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 15
- (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.

### Guiding principles

3. In the application of this Act, the following guiding principles must be taken into account: 20
- (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. 25
  - (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. 30
  - (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. 35
  - (g) Parents, appropriate adults 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. 40
  - (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. 45

## CHAPTER 2

## APPLICATION OF ACT, CRIMINAL CAPACITY OF CHILDREN UNDER THE AGE OF 14 YEARS AND MATTERS RELATED TO AGE

## PART 1: APPLICATION OF ACT

## Application of Act

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4. (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 10 years at the time of the commission of the alleged offence; or
- (b) was 10 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,

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for that offence.

(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—

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- (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),

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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.

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(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.

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

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5. (1) Every child who is alleged to have committed an offence and is under the age of 10 years, must be referred to a probation officer to be dealt with in terms of section 9.

(2) Every child who is 10 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).

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(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 10 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.

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(4) (a) A matter in respect of a child referred to in subsection (2) may be considered for diversion—

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- (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.

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#### Seriousness of offences

6. (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; 10
- (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.

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(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

#### Minimum age of criminal capacity

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7. (1) A child who commits an offence while under the age of 10 years does not have criminal capacity and cannot be prosecuted for that offence, but must be dealt with in terms of section 9.

(2) A child who is 10 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.

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(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.

#### Review of minimum age of criminal capacity

8. 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 this section, submit a report to Parliament, as provided for in section 96(4) and (5).

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#### Manner of dealing with child under the age of 10 years

9. (1) Where a police official has reason to believe that a child suspected of having committed an offence is under the age of 10 years, he or she may not arrest the child, and must, in the prescribed manner, immediately hand the child over—

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- (a) to his or her parents or an appropriate adult or a guardian; or
- (b) if no parent, appropriate adult 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 adult or a guardian, to a suitable child and youth care centre,

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and must notify a probation officer.

(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 10 years as soon as possible but not later than seven days after being notified.

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(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 10 years; 5
  - (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 adult 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 10
  - (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.
- (4) The purpose of the meeting convened by a probation officer in terms of subsection (3)(a)(v) is to— 15
- (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— 20
- (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 25
  - (d) state the responsibilities of the child and of the parent, appropriate adult 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. 30
- (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.

#### **Decision to prosecute child who is 10 years or older but under the age of 14 years 35**

- 10.** (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, cognitive ability, domestic and environmental circumstances, age and maturity of the child;
  - (b) the nature and seriousness of the alleged offence; 40
  - (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 preliminary inquiry in terms of Chapter 7; 45
  - (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— 50

- (i) divert the matter in terms of Chapter 6 if the child is alleged to have committed an offence referred to in Schedule 1; or
- (ii) 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. 5

### Proof of criminal capacity

11. (1) The State must prove beyond reasonable doubt the capacity of a child who is 10 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. 10

(2) In making a decision regarding the criminal capacity of the child in question—

- (a) the inquiry magistrate, for purposes of diversion; or
- (b) if the matter has not been diverted, the child justice court, for purposes of plea and trial,

must consider the assessment report of the probation officer referred to in section 40 and all evidence placed before the inquiry magistrate or child justice court prior to diversion or conviction, as the case may be, which evidence may include a report of an evaluation referred to in subsection (3). 15

(3) An inquiry magistrate or 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, which must include an assessment of the cognitive, moral, emotional, psychological and social development of the child. 20

(4) If an order has been made by the inquiry magistrate or child justice court in terms of subsection (3), the person identified to conduct an evaluation of the child must furnish the inquiry magistrate or child justice court with a written report of the evaluation within 30 days of the date of the order. 25

(5) Where an inquiry magistrate or child justice court has found that a child's criminal capacity has not been proved beyond a reasonable doubt, the inquiry magistrate or 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. 30

### PART 3: AGE ESTIMATION, AGE DETERMINATION AND ERROR REGARDING AGE

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

12. If a police official is uncertain about the age of a person suspected of having committed an offence but has reason to believe that— 35

- (a) the person may be a child under the age of 10 years, the official must act in accordance with the provisions of section 9; or
- (b) the person may be a child who is 10 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— 40
  - (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, 45

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.

#### Age estimation by probation officer

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13. (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:

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- (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 adult, 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.

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(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.

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(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.

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

14. (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—

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- (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.

35

(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.

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(b) Should evidence to the contrary emerge, the presiding officer must alter the record to reflect the correct age.



**Age determination by any other court**

15. 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 5
- (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.

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

16. (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— 15

- (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. 20

(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. 25

**CHAPTER 3****WRITTEN NOTICE, SUMMONS AND ARREST 30****Methods of securing attendance of child at preliminary inquiry**

17. (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 35
- (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. 40

**Written notice to appear at preliminary inquiry**

18. (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. 45

(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 adult 50

or guardian, in which case both the child and parent, appropriate adult 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 adult 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 adult or guardian, and both the child and parent, appropriate adult or guardian must acknowledge receipt by way of a signature or mark. 5

(4) A police official must, in the prescribed manner—

(a) when handing a written notice to the child, parent, appropriate adult or guardian— 10

(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 15

(v) warn the parent, appropriate adult 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 20

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

### Summons

19. (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. 25

(2) (a) A summons must be served on a child in the presence of his or her parent, an appropriate adult or a guardian, in which case both the child and parent, appropriate adult 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 adult 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 adult or guardian, and both the child and parent, appropriate adult or guardian must acknowledge service by way of a signature or mark. 30 35

(3) A police official must, in the prescribed manner—

(a) when serving a summons on the child, parent, appropriate adult 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; 40

(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 adult 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 45

- (b) immediately but not later than 24 hours after the service of the summons notify the probation officer concerned.

### Arrest

20. (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: 5

- (a) Where the police official has reason to believe that the child does not have a fixed residential address; 5  
 (b) where the police official has reason to believe that the child will continue to commit offences, unless he or she is arrested; 10  
 (c) where the police official has reason to believe that the child poses a danger to any person; 10  
 (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). 15

(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; 20  
 (b) inform the child of his or her rights; 20  
 (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 adult or guardian of the arrest: Provided that if a police official is unable to notify the child's parent, an appropriate adult or guardian of the arrest, the police official must submit a written report to the presiding officer at the preliminary inquiry. 25

(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. 30

(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— 35

- (i) ordinary court hours; 40  
 (ii) physical illness or other physical condition; and  
 (iii) arrest outside of the area of jurisdiction of the court, 40  
 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

#### PART 1: RELEASE OR DETENTION 45

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

21. (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 adult or guardian in terms of section 18, read with section 22; or 5
- (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. 10

(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 adult 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 15
- (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. 10

**Release of child on written notice into care of parent, appropriate adult or guardian before first appearance at preliminary inquiry** 20

22. (1) A police official must release a child on written notice in terms of section 18 into the care of a parent, an appropriate adult 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 adult or guardian cannot be located or is not available and all reasonable efforts have been made to locate the parent or appropriate adult or guardian; or 25
- (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). 30

**Duty of police official when releasing child into care of parent, appropriate adult or guardian** 35

23. 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 adult 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.

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

24. (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 5
  - (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)— 10
- (a) into the care of a parent, an appropriate adult 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— 15
- (a) the best interests of the child;
  - (b) whether the child has previous convictions; 20
  - (c) the fact that the child is 10 years or older but under the age of 14 years and is presumed to lack criminal capacity;
  - (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— 25
- (a) report periodically to a specified person or at a specified place;
  - (b) attend a particular school;
  - (c) reside at a particular address; 30
  - (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. 35
- (5) If a child is released into the care of a parent, appropriate adult or guardian, the presiding officer must direct the parent, appropriate adult or guardian to appear and warn the parent, appropriate adult 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. 40
- (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. 45

(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— 5

- (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. 10

(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 adult 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. 15

### Release of child on bail

25. (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). 20

(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 adult or guardian to pay the amount of money being considered or any other appropriate amount; and 25
- (c) if after an inquiry referred to in paragraph (b), it is found that the child and his or her parent, an appropriate adult 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 30
  - (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. 35

## PART 2: PLACEMENT

### Approach to be followed when considering placement of child

26. (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. 40

(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 45
- (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.

5

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

27. 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—

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- (a) (i) 10 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.

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**Protection of children detained in police custody**

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28. (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 adults, 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.

25

(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:

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- (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 No. 32 of 2007), has been committed against the child; or
- (iv) there are other circumstances which warrant medical treatment.

45

(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 National Commissioner of Police, indicating—

- (i) the nature of the injury sustained or severe psychological trauma suffered by the child; 5
- (ii) an explanation of the circumstances surrounding the injury or trauma; and
- (iii) a recommendation as to whether any further action is required.

(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. 10

(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. 15

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

29. (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: 20

- (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; 25
- (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. 30

(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— 35

- (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.

#### Placement in a prison 40

30. (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; 45
- (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. 50

(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— 5

- (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; 10
- (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; 15
- (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; 20
- (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. 25

(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. 30

(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.

#### **Error regarding placement**

31. 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. 40

**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**

**Factors to be taken into account by presiding officer regarding further detention and placement at preliminary inquiry or child justice court** 5

32. 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— 10

- (a) determine whether or not the detention is or remains necessary and whether the placement is or remains appropriate; 15
- (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; 15
- (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 20
- (f) enter the reasons for any decision made in this regard on the record of the proceedings.

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

33. (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. 25

(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. 30

(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. 35

**CHAPTER 5**

**ASSESSMENT OF CHILD**

**Duty of probation officer to assess children**

34. (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). 40

(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 10 years has been dealt with in terms of section 9, must make arrangements to assess the child within seven days of the notification. 5

#### **Purpose of assessment**

35. 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; 10
- (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; 15
- (e) where appropriate, establish the prospects for diversion of the matter;
- (f) in the case of a child under the age of 10 years or a child referred to in section 10(2)(b), establish what measures need to be taken in terms of section 9;
- (g) in the case of a child who is 10 years or older but under the age of 14 years, express a view on whether expert evidence referred to in section 11(3) would be required; 20
- (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. 25

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

36.(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 30
- (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. 35

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

37. (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. 40

(2) The place identified in terms of subsection (1) must, as far as possible, be conducive to privacy.

**Persons to attend assessment**

- 38.** (1) The child must be present at his or her assessment in terms of this Act.
- (2) A child's parent or an appropriate adult 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 5
  - (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; 10
  - (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. 15
- (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 adult 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. 20
- (b) A probation officer may conclude the assessment of a child in the absence of a parent, appropriate adult 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.

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

- 39.** (1) The probation officer must— 25
- (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 30 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 35 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 40 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.

#### Assessment report of probation officer

40. (1) The probation officer must complete an assessment report in the prescribed manner with recommendations on the following issues, where applicable: 5

- (a) The possible referral of the matter to a children's court in terms of section 50 or 64; 5
- (b) the appropriateness of diversion, including a particular diversion service provider, or a particular diversion option or options, as provided for in section 53; 10
- (c) the possible release of the child into the care of a parent, an appropriate adult or guardian or on his or her own recognisance, in terms of section 24; 10
- (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 10 years, establish what measures need to be taken in terms of section 9; 15
- (f) the possible criminal capacity of the child if the child is 10 years or older but under the age of 14 years, as provided for in section 10, as well as measures to be taken in order to prove criminal capacity;
- (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 20
- (h) an estimation of the age of the child if this is uncertain, as provided for in section 13. 20

(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— 25

- (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: 30

- (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; 35 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. 40

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

41. (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 10 years or older but under the age of 14 years, that criminal capacity is likely to be proved in terms of section 11.
- (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.

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

42. (1) If a matter is diverted in terms of section 41, the child and, where possible, his or her parent, appropriate adult 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**

40

**Nature and objectives of preliminary inquiry**

43. (1) A preliminary inquiry—

- (a) is an informal pre-trial procedure which is inquisitorial in nature; and  
 (b) may be held in a court or any other suitable place.
- (2) The objectives of a preliminary inquiry are to—
- (a) consider the assessment report of the probation officer, with particular reference to— 5
- (i) the age estimation of the child, if the age is uncertain;  
 (ii) the view of the probation officer regarding the criminal capacity of the child if the child is 10 years or older but under the age of 14 years and a decision whether an evaluation of the criminal capacity of the child by a suitably qualified person referred to in section 11(3) is necessary; and 10
- (iii) whether a further and more detailed assessment of the child is needed as referred to in section 40(1)(g);
- (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; 15
- (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; 20
- (g) encourage the participation of the child and his or her parent, an appropriate adult or a guardian in decisions concerning the child; and  
 (h) determine the release or placement of a child, pending— 25
- (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— 30
- (i) the matter has been diverted by a prosecutor in terms of Chapter 6;  
 (ii) the child is under the age of 10 years; or  
 (iii) the matter has been withdrawn.
- (b) A preliminary inquiry referred to in paragraph (a) must be held— 35
- (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.

#### **Persons to attend preliminary inquiry** 40

44. (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 adult 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. 5

(4) (a) A preliminary inquiry may proceed in the absence of the child's parent, an appropriate adult, guardian or the probation officer if the inquiry magistrate is satisfied that to do so would be in the best interests of the child. 10

(b) An inquiry magistrate who proceeds in the absence of the child's parent, an appropriate adult, 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. 15

(6) The inquiry magistrate may subpoena or cause to be subpoenaed any person whose presence is necessary at the preliminary inquiry.

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

45. (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. 20

(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. 25

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

46. A child or his or her parent, an appropriate adult 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. 35

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

47. (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. 40



- (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; 5
    - (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— 10
    - (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 15
    - (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; 20
  - (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 25
  - (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; 30
  - (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 35 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 40 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 adult or a guardian; 45
  - (b) allow the child, the child's parent, an appropriate adult 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. 5

(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; 10

(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. 15

(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.

#### Postponement of preliminary inquiry 20

48. (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; 25

(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; 30

(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 35

(c) for the purposes of further investigation of the matter. 35

(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. 40

(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 adult, guardian or a legal representative present during those proceedings. 45

(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 50

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

(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 10  
 (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.

#### **Orders at preliminary inquiry** 15

49. (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, in the case of a child who is 10 years or older but under the age of 14 years, only make an order that the matter be diverted in terms of paragraph (a) if he or she is satisfied that the child has criminal capacity. 20

(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 adult or a guardian, the provisions of section 82(1) regarding legal representation; 25  
 (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 adult or a guardian to attend the proceedings on the specified date, and at the specified time and place; and 30  
 (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 adult or a guardian to appear in a child justice court on the specified date and at the specified time and place. 35

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

50. 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 40  
 (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, 45

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

## Objectives of diversion

51. The objectives of diversion are to—
- (a) deal with a child outside the formal criminal justice system in appropriate cases; 5
  - (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; 10
  - (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; 15
  - (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. 20

## Consideration of diversion

52. (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— 25
- (a) the child acknowledges responsibility for the offence;
  - (b) the child has not been unduly influenced to acknowledge responsibility;
  - (c) there is a *prima facie* case against the child;
  - (d) the child and, if available, his or her parent, an appropriate adult or a guardian, consent to diversion; and 30
  - (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— 35
- (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, 40
- 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). 45
- (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 5
- (ii) consulted with the police official responsible for the investigation of the matter. 10
- (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. 10
- (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. 15
- (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. 20
- (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.

### **Diversion options**

53. (1) For the purposes of this section— 25
- (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; 30
- (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; 35
- (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 40
- (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— 45
- (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; 5
- (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; 10
- (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; 15
- (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; 20
- (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 25
- (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— 30
- (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 35
- (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. 40
- (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; 45
- (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. 50

- (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. 5
- (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). 15

#### Selection of diversion option

54. (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; 20
  - (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. 25
- (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. 30 35

#### Minimum standards applicable to diversion

55. (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; 40
  - (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 45
  - (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; 5
  - (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; 10
  - (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 adults or guardians, if applicable. 15

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

56. (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). 20

(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; 25
  - (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. 30
- (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; 35
  - (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; 40
  - (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; 5
- (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. 10
- (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. 15
- (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. 20
- (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. 25
- (b) The Director-General: Social Development must, immediately after any publication referred to in paragraph (a), provide a copy of the publication to— 30
- (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.

#### Monitoring of compliance with diversion order

57. (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. 35
- (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. 40

(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.

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

58. (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.

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#### Legal consequences of diversion

59. (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.

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(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.

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

60. (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—

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- (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.

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(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 No. 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.

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(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).

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#### Family group conference

61. (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. 10

(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 adult or a guardian; 15
- (ii) any person requested by the child;
- (iii) the victim of the alleged offence, his or her parent, an appropriate adult 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; 20
- (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. 25

(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). 30

(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 35
- (b) must—
  - (i) specify the objectives for the child and the period within which they are to be achieved; 40
  - (ii) contain details of the services and assistance to be provided to the child and a parent, an appropriate adult 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 adult or a guardian; 45
  - (v) state personal objectives for the child and for the child's parent, an appropriate adult 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). 5

(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. 10

(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. 15

#### **Victim-offender mediation**

62. (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. 20

(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. 25

(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 30**

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

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

63. (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. 35

(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— 40

(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— 45

- (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.

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

64. 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.

#### **Parental assistance**

65. (1) Subject to subsections (2) and (5), a child must be assisted by a parent, an appropriate adult or a guardian in proceedings in a child justice court.
- (2) If a parent, an appropriate adult 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 adult or a guardian.
- (3) The parent of a child, an appropriate adult or a guardian who has been warned by an inquiry or a guardian 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).
- (4) If a parent, an appropriate adult 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 adult or a guardian to appear at the proceedings.
- (5) A parent, an appropriate adult 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 adult or a guardian, he or she must do so in writing.
- (6) Where a child is not assisted by a parent, an appropriate adult 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.

**Time limits relating to postponements**

66. (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. 5
- (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; 10
  - (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. 15

**Child justice court may divert matter**

67. (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). 20
- (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). 25
- (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 30****PART 1: GENERAL****Child to be sentenced in terms of this Chapter**

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

**Objectives of sentencing and factors to be considered 35**

69. (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; 40
  - (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 45
  - (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: 5

- (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 10
- (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: 15

- (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; 20
- (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.

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

70. (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. 25

(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). 30

(3) If the contents of a victim impact statement are not disputed, a victim impact statement is admissible as evidence on its production.

#### **Pre-sentence reports**

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71. (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 dispense with a pre-sentence 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, but no child justice court sentencing a child may 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, unless a pre-sentence report has first been obtained. 40 45

(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. 5

(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 10

### Community-based sentences

72. (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. 15

(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 20
- (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.

### Restorative justice sentences

73. (1) A child justice court that convicts a child of an offence may refer the matter— 25

- (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. 30

(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. 35

(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 40
- (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.

**Fine or alternatives to fine**

74. (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 adult or a guardian to pay the fine, whether in full or in instalments; and 5
  - (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; 10
  - (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 15
  - (d) any other option that the child justice court considers to be appropriate in the circumstances. 20
- (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. 25

**Sentences involving correctional supervision**

75. A child justice court that convicts a child of an offence may impose a sentence involving correctional supervision— 30
- (a) in the case of a child who is 14 years or older, in terms of section 276(1)(h) or (i) of the Criminal Procedure Act; or
  - (b) in the case of a child who is under the age of 14 years, in terms of section 276(1)(h) of the Criminal Procedure Act.

**Sentence of compulsory residence in child and youth care centre 35**

76. (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. 40
- (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, 45
- 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 50

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— 5

- (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 10
- (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 No. 111 of 1998). 15

(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. 20

(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; 25
- (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. 30

(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. 35

(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. 40

(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). 45

(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.

#### **Sentence of imprisonment**

77. (1) A child justice court— 50

- (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. 5
- (2) Notwithstanding any provision in this or any other law, a child who was 16 years or older at the time of the commission of an offence referred to in Schedule 2 to the Criminal Law Amendment Act, 1997 (Act No. 105 of 1997) must, if convicted, be dealt with in accordance with the provisions of section 51 of that Act.
- (3) A child who is 14 years or older at the time of being sentenced for the offence, and in respect of whom subsection (2) does not apply, may only be sentenced to imprisonment, if the child is convicted of an offence referred to in— 10
- (a) Schedule 3;
- (b) Schedule 2, if substantial and compelling reasons exist for imposing a sentence of imprisonment; or 15
- (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.
- (4) A child referred to in subsection (3) may be sentenced to a sentence of imprisonment for a period not exceeding 25 years. 20
- (5) A child justice court imposing a sentence of imprisonment must antedate the term of imprisonment by the number of days that the child has spent in prison or child and youth care centre prior to the sentence being imposed.
- (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. 25

#### Postponement or suspension of passing of sentence

78. (1) Subject to section 77(2), 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. 30
- (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 35
- (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. 40

#### Failure to comply with certain sentences

79. (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 45

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.

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## CHAPTER 11

### LEGAL REPRESENTATION

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

- 80.** (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; 10
  - (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; 15
  - (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 20
  - (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. 25

(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 No. 53 of 1979);
- (ii) in the case where the legal representative concerned has been employed by the Legal Aid Board, the Board; or 30
- (iii) in the case of an advocate, the controlling body of which the advocate is a member,

of the order.

#### Legal representation at preliminary inquiry 35

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

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

**82.** (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 the Legal Aid Board for the matter to be evaluated by the Board as provided for in section 3B(1)(b) of the Legal Aid Act, 1969 (Act No. 22 of 1969). 40

(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. 45

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

**83.** (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 Guide referred to in section 3A of the Legal Aid Act, 1969 (Act No. 22 of 1969), be appointed by the Legal Aid Board to assist the court in the prescribed manner. 5

## CHAPTER 12

### APPEALS AND AUTOMATIC REVIEW OF CERTAIN CONVICTIONS AND SENTENCES

#### Appeals 10

84. (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 15
- (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. 20

(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. 25

#### Automatic review in certain cases

85. (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 was, at the time of the commission of the alleged offence— 30

- (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, 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, 35

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 the duration of the sentence.

(2) The provisions of subsection (1) do not apply if an appeal has been noted in terms of section 84. 40

#### Release on bail pending review or appeal

86. 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, 45

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

## CHAPTER 13

## RECORDS OF CONVICTION AND SENTENCE

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

87. (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 adult 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.

## CHAPTER 14

### GENERAL PROVISIONS

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#### Rules of Court

**88.** (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 No. 107 of 1985), make and implement rules in respect of any aspect of this Act. 10

(2) Any rule made in terms of subsection (1) must, before publication in the *Gazette*, be approved by Parliament.

#### Establishment and jurisdiction of One-Stop Child Justice Centres

**89.** (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. 15

(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. 20

(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— 25

- (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; 30
- (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; 35
- (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, the Legal Aid Board and other relevant organs of state. 40

(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. 45

(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 No. 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.

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

**90.** (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.

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(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 adult 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.

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

**91.** 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.

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#### **Children used by adults to commit crime**

**92.** If it comes to the attention of any court official or probation officer that a child has been used by an adult to commit a crime referred to in Schedule 1 or 2 of the Criminal Procedure Act, that adult 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 adult's involvement must be taken into account when determining the treatment of the child in the child justice system.

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#### **National policy framework**

**93.** (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—

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- (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.

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(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 5
- (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).

#### **Establishment of Intersectoral Committee** 10

**94.** (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; 15
- (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 20
- (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. 25

(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 30
- (b) persons to its meetings, when necessary, for technical assistance, support or advice.

#### **Meetings of Intersectoral Committee** 35

**95.** 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. 40

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

**96.** (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; 45
- (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; 50

- (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— 5
- (i) arrest or methods of securing attendance at criminal proceedings;
  - (ii) assessment;
  - (iii) preliminary inquiries;
  - (iv) diversion; 10
  - (v) children awaiting trial;
  - (vi) bail and placement;
  - (vii) trials;
  - (viii) sentencing;
  - (ix) appeals and reviews; 15
  - (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. 20
- (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 25
  - (b) every year thereafter submit those reports to Parliament.
- (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 this Act, submit a report to the Cabinet member responsible for the administration of justice, setting out the following: 30
- (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: 35
    - (i) Children who are 10 years at the time of the commission of the alleged offence;
    - (ii) children who are 11 years at the time of the commission of the alleged offence;
    - (iii) children who are 12 years at the time of the commission of the alleged offence; 40
    - (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; 45
  - (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; 50
  - (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 10 years as provided for in section 7(1) or whether the minimum age of criminal capacity should be raised. 55

(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.

### Regulations, directives, national instructions and register

97. (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. 5

(2) The regulations referred to in subsection (1) must be tabled in Parliament for approval. 10

(3) The Cabinet member responsible for the administration of justice must by notice in the *Gazette*—

(a) 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 15

(b) in consultation with the Cabinet member responsible for finance, determine the allowances and remuneration of those persons.

(4) (a) The National Director of Public Prosecutions must, in consultation with the Cabinet member responsible for the administration of justice, issue directives— 20

(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: 25

(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; 30

(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). 35

(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. 40

(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 45

(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 Constitu- 50

tional 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 adult or a guardian when a child makes a confession, an admission, during a pointing-out or during the holding of an identity parade; 5
- (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 adult or a guardian of the arrest; 10
- (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; 15
- (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; 20
- (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; 25
- (vii) all aspects relating to locating a parent, appropriate adult 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 30
- (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 35  
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 40  
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 45
  - (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 50  
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. 5
- (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— 10
- (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— 15
- (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 20
  - (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. 25
- (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. 30

#### Transitional arrangements

98. (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. 35
- (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. 40

#### Repeal or amendment of laws

99. (1) The laws specified in Schedule 4 are hereby repealed or amended to the extent set out in the third column of that Schedule. 45
- (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. 50

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**Act No. 75, 2008****CHILD JUSTICE ACT, 2008****Short title and commencement**

**100.** 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))

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|-----|--|----|
| 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.  | 5  |
| 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 R1 500.   | 10 |
| 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.   | 15 |
| 7.  | Blasphemy.   |    |
| 8.  | Compounding.   |    |
| 9.  | <i>Crimen iniuria</i> .  |    |
| 10. | Defamation.  |    |
| 11. | Trespass.  | 20 |
| 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.   | 25 |
| 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. | 30 |
| 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 No. 101 of 1991).   | 35 |
| 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))

- |     |   |    |
|-----|---|----|
| 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.  | 5  |
| 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 R1 500.  |    |
| 3.  | Robbery, other than robbery with aggravating circumstances.   | 10 |
| 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.  | 15 |
| 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 exhibitionis infantis.   |    |
| 12. | Abduction.  | 20 |
| 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 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 self-masturbation, referred to in section 8 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007.   | 25 |
| 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.  | 30 |
| 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.  | 35 |
| 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).  | 40 |
| 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).  | 45 |
| 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.   |    |

**Act No. 75, 2008****CHILD JUSTICE ACT, 2008**

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. 101 of 1991).
25. Any conspiracy, incitement or attempt to commit any offence referred to in this Schedule. 5

**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))

- |     |  |    |
|-----|--|----|
| 1.  | Treason.   |    |
| 2.  | Sedition.  | 5  |
| 3.  | Murder.  |    |
| 4.  | Extortion, where there are aggravating circumstances present.  |    |
| 5.  | Kidnapping.  |    |
| 6.  | Robbery—   |    |
|     | (a) where there are aggravating circumstances; or  | 10 |
|     | (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 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.  | 15 |
| 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.   | 20 |
| 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—   | 25 |
|     | (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.   | 30 |
| 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.   | 35 |
| 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. | 40 |
| 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.  | 45 |
| 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).  | 50 |
| 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). 5
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). 10
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. 15
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. 101 of 1991). 20
22. Any conspiracy, incitement or attempt to commit any offence referred to in this Schedule.

## SCHEDULE 4

(Section 99(1))

| No. and year of law | Short title                     | Extent of repeal or amendment   |                            |
|---------------------|---------------------------------|---|----------------------------|
| Act No. 8 of 1959   | Correctional Services Act, 1959 | Repeal of section 29  | 5                          |
| Act No. 71 of 1968  | Dangerous Weapons Act, 1968     | Amendment of section 4 by the substitution for subsection (2) of the following subsection:<br><br>“(2) Notwithstanding anything to the contrary in any law contained, no person in respect of whom the imposition of a sentence of imprisonment is compulsory in terms of subsection (1), shall be dealt with under section [290 or] 297 of the Criminal Procedure Act, 1977.”  | 10<br>15                   |
| Act No. 51 of 1977  | Criminal Procedure Act, 1977    | (a) Amendment of section 7 by the substitution for subsection (1) of the following subsection:<br><br>“(1) In any case in which [an attorney-general] a Director of Public Prosecutions declines to prosecute for an alleged offence—<br>(a) any private person who proves some substantial and peculiar interest in the issue of the trial arising out of some injury which he individually suffered in consequence of the commission of the said offence;<br>(b) a husband, if the said offence was committed in respect of his wife;<br>(c) the wife or child or, if there is no wife or child, any of the next of kin of any deceased person, if the death of such person is alleged to have been caused by the said offence; or<br>(d) the legal guardian or curator of a minor or lunatic, if the said offence was committed against his ward,<br>may, subject to the provisions of section 9 and section 59(2) of the Child Justice Act, 2008, institute and conduct a prosecution in respect of such offence in any court competent to try that offence.” | 20<br>25<br>30<br>35<br>40 |

| No. and year of law | Short title | Extent of repeal or amendment   |                            |
|---------------------|-------------|---|----------------------------|
|                     |             | <p>(b) Substitution for section 38 of the following section:</p> <p><b>“Methods of securing attendance of accused in court</b></p> <p>38. (1) Subject to section 4(2) of the Child Justice Act, the methods of securing the attendance of an accused who is eighteen years or older in court for the purposes of his or her trial shall be arrest, summons, written notice and indictment in accordance with the relevant provisions of this Act.</p> <p>(2) <u>The methods of securing the attendance of an accused who is under the age of eighteen years at a preliminary inquiry or child justice court are those contemplated in section 17 of the Child Justice Act, 2008.</u>”</p>   | 5<br>10<br>15              |
|                     |             | <p>(c) Amendment of section 50 by the deletion of subsections (4) and (5).</p> <p>(d) Amendment of section 55—</p> <p>(i) by the substitution for subsection (1) of the following subsection:</p> <p>“(1) Subject to section 4(2) of the Child Justice Act, 2008, an accused who is <u>eighteen years or older and who is summoned under section 54 to appear at criminal proceedings and who fails to appear at the place and on the date and at the time specified in the summons or who fails to remain in attendance at such proceedings, shall be guilty of an offence and liable to the punishment prescribed under subsection (2).</u>”; and</p> <p>(ii) by the insertion after subsection (1) of the following subsection:</p> <p>“(1A) <u>The provisions of section 46 of the Child Justice Act, 2008, apply to an accused who is under the age of eighteen years and who fails to appear at a preliminary inquiry in terms of a summons issued under that Act.</u>”</p> | 20<br>25<br>30<br>35<br>40 |

| No. and year of law | Short title | Extent of repeal or amendment   |  |
|---------------------|-------------|---|--|
|                     |             | <p>(e) Repeal of section 71.</p> <p>(f) Amendment of section 72—</p> <p>(i) by the substitution for the introductory part of subsection (1) of the following introductory part:</p> <p>“(1) Subject to section 4(2) of the Child Justice Act, 2008, if an accused who is <u>eighteen years or older</u> is in custody in respect of any offence and a police official or a court may in respect of such offence release the accused on bail under section 59 or 60, as the case may be, such police official or such court, as the case may be, may, in lieu of bail and if the offence is not, in the case of such police official, an offence referred to in Part II or Part III of Schedule 2—”; and</p> <p>(ii) by the deletion of paragraph (b) of subsection (1) and paragraph (b) of subsection (2).</p> <p>(g) Amendment of section 73 by the substitution for subsection (3) of the following subsection:</p> <p>“(3) [An accused who is under the age of <b>eighteen years may be assisted by his parent or guardian at criminal proceedings, and any</b>] In addition to the provisions of sections 3(g), 38(2), 44(1)(b) and 65 of the <u>Child Justice Act, 2008, relating to the assistance of an accused who is under the age of eighteen years by his or her parent or an appropriate adult at criminal proceedings</u>, any accused who, in the opinion of the court, requires the assistance of another person at criminal proceedings, may, with the permission of the court, be so assisted at such proceedings.”.</p> <p>(h) Repeal of section 74.</p> | <p>5</p> <p>10</p> <p>15</p> <p>20</p> <p>25</p> <p>30</p> <p>35</p> |

| No. and year of law | Short title | Extent of repeal or amendment   |
|---------------------|-------------|---|
|                     |             | <p>(i) Amendment of section 153—</p> <p>(i) by the substitution for subsection (1) of the following subsection:</p> <p>“(1) In addition to the provisions of section 63(5) of the Child Justice Act, 2008, if [1f] it appears to any court that it would, in any criminal proceedings pending before that court, be in the interests of the security of the State or of good order or of public morals or of the administration of justice that such proceedings be held behind closed doors, it may direct that the public or any class thereof shall not be present at such proceedings or any part thereof.”; and</p> <p>(ii) by the deletion of subsection (4).</p> <p>(j) Substitution for section 211 of the following section:</p> <p><b>“Evidence during criminal proceedings of previous convictions</b></p> <p>211. Except where otherwise expressly provided by this Act or the Child Justice Act, 2008, or except where the fact of a previous conviction is an element of any offence with which an accused is charged, evidence shall not be admissible at criminal proceedings in respect of any offence to prove that an accused at such proceedings had previously been convicted of any offence, whether in the Republic or elsewhere, and no accused, if called as a witness, shall be asked whether he or she has been so convicted.”.</p> <p>(k) Repeal of section 254.</p> <p>(l) Amendment of section 276A by the substitution for subsections (1) and (2) of the following subsections:</p> |



## Act No. 75, 2008

## CHILD JUSTICE ACT, 2008

| No. and year of law | Short title | Extent of repeal or amendment   |  |
|---------------------|-------------|---|--|
|                     |             | <p>“(1) Punishment shall, subject to the provisions of section 75 of the Child Justice Act, 2008, only be imposed under section 276(1)(h)—</p> <p>(a) after a report of a probation officer or a correctional official has been placed before the court; and</p> <p>(b) for a fixed period not exceeding three years.</p> <p>(2) Punishment shall, subject to the provisions of section 75 of the Child Justice Act, 2008, only be imposed under section 276(1)(i)—</p> <p>(a) if the court is of the opinion that the offence justifies the imposing of imprisonment, with or without the option of a fine, for a period not exceeding five years; and</p> <p>(b) for a fixed period not exceeding five years.”.</p> <p>(m) Repeal of section 290.</p> <p>(n) Repeal of section 291.</p> <p>(o) Amendment of section 297—</p> <p>(i) by the deletion of subsection (1A); and</p> <p>(ii) by the substitution for the words following on subparagraph (ii) of paragraph (a) of subsection (9) of the following words:</p> <p>“and such court, whether or not it is, in the case of a court other than a court of equal or superior jurisdiction, constituted differently than it was at the time of such postponement or suspension, may then, in the case of subparagraph (i), impose any competent sentence [<b>which may, where the person concerned is under the age of twenty one years, include an order under the provisions of section 290,</b>] or, in the case of subparagraph (ii), put into operation the sentence which was suspended.”.</p> | <p>5</p> <p>10</p> <p>15</p> <p>20</p> <p>25</p> <p>30</p> <p>35</p> <p>40</p> |

## Act No. 75, 2008

## CHILD JUSTICE ACT, 2008

| No. and year of law | Short title | Extent of repeal or amendment  |
|---------------------|-------------|--|
|                     |             | <p>(p) Amendment of section 302 by the substitution for paragraph (i) of subsection (1)(a) of the following paragraph:</p> <p>“(i) which, in the case of imprisonment (including detention in a <b>[reform school as defined in section 1 of the Child Care Act, 1983 (Act 74 of 1983)]</b> child and youth care centre providing a programme contemplated in section 191(2)(j) of the Children’s Act, 2005 (Act No. 32 of 2005)), exceeds a period of three months, if imposed by a judicial officer who has not held the substantive rank of magistrate or higher for a period of seven years, or which exceeds a period of six months, if imposed by a judicial officer who has held the substantive rank of magistrate or higher for a period of seven years or longer;”.</p>                        |
|                     |             | <p>(q) Amendment of section 309 by the substitution for paragraph (a) of subsection (1) of the following paragraph:</p> <p>“(a) Subject to section 84 of the Child Justice Act, 2008, any person convicted of any offence by any lower court (including a person discharged after conviction) may, subject to leave to appeal being granted in terms of section 309B or 309C, appeal against such conviction and against any resultant sentence or order to the High Court having jurisdiction: <b>Provided that if that person was, at the time of the commission of the offence—</b></p> <p>(i) below the age of 16 years; or</p> <p>(ii) at least 16 years of age but below the age of 18 years and was not assisted by a legal representative at the time of conviction in a regional court; and</p> |

| No. and year of law | Short title | Extent of repeal or amendment  |
|---------------------|-------------|--|
|                     |             | <p data-bbox="837 293 1241 577"><b>(iii) was sentenced to any form of imprisonment as contemplated in section 276(1) that was not wholly suspended, he or she may note such an appeal without having to apply for leave in terms of section 309B):</b> Provided [further] that the provisions of section 302(1)(b) shall apply in respect of a person who duly notes an appeal against a conviction, sentence or order as contemplated in section 302(1)(a).”.</p> <p data-bbox="815 607 1246 680">(r) Amendment of section 309B by the substitution for paragraph (a) of subsection (1) of the following paragraph:</p> <p data-bbox="837 710 1246 913">“(a) Subject to section 84 of the Child Justice Act, 2008, any accused, [other than a person contemplated in the first proviso to section 309(1)(a),] who wishes to note an appeal against any conviction or against any resultant sentence or order of a lower court, must apply to that court for leave to appeal against that conviction, sentence or order.”.</p> <p data-bbox="815 943 1246 1016">(s) Amendment of section 309D by the substitution for paragraph (a) of subsection (1) of the following paragraph:</p> <p data-bbox="837 1046 1246 1272">“(a) An accused, other than a child contemplated in the Child Justice Act, 2008, [contemplated in the first proviso to section 309(1)(a) or] who is unrepresented at the time he or she is convicted and sentenced, 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.”.</p> |

| No. and year of law | Short title                  | Extent of repeal or amendment   |  |
|---------------------|------------------------------|---|--|
|                     |                              | <p>(t) Amendment of section 316—</p> <p>(i) by the substitution for paragraph (a) of subsection (1) of the following paragraph:</p> <p>“(a) Subject to section 84 of the Child Justice Act, 2008, any accused, <b>other than an accused contemplated in paragraph (c),</b> convicted of any offence by a High Court may apply to that court for leave to appeal against such conviction or against any resultant sentence or order.”; and</p> <p>(ii) by the deletion of paragraph (c) of subsection (1).</p> <p>(u) Substitution for section 337 of the following section:</p> <p>“<b>Estimating age of person</b></p> <p>337. If in any criminal proceedings the age of any person is a relevant fact of which no or insufficient evidence is available at the proceedings, the presiding judge or judicial officer may, <u>in addition to the provisions of sections 14 to 16 of the Child Justice Act, 2008,</u> estimate the age of such person by his or her appearance or from any information which may be available, and the age so estimated shall be deemed to be the correct age of such person, unless—</p> <p>(a) it is subsequently proved that the said estimate was incorrect; and</p> <p>(b) the accused at such proceedings could not lawfully have been convicted of the offence with which he or she was charged if the correct age had been proved.”.</p> | <p>5</p> <p>10</p> <p>15</p> <p>20</p> <p>25</p> <p>30</p> <p>35</p> |
| Act No. 116 of 1991 | Probation Services Act, 1991 | (a) Amendment of section 1 by the substitution for the definition of “assessment” of the following definition:  | 40   |

## Act No. 75, 2008

## CHILD JUSTICE ACT, 2008

| No. and year of law | Short title | Extent of repeal or amendment   |
|---------------------|-------------|---|
|                     |             | <p>“ ‘assessment’ means a process of developmental assessment or evaluation of a person, the family circumstances of the person, the nature and circumstances surrounding the alleged commission of an offence, its impact on the victim, the attitude of the alleged offender in relation to the offence and any other relevant factor <u>and, in the case of a child, also means an assessment as contemplated in the Child Justice Act, 2008;</u>”.</p> <p>(b) Amendment of section 1 by the substitution for the definition of “diversion” of the following definition:</p> <p>“ ‘diversion’ means diversion from the formal court procedure with or without conditions <u>and, in the case of a child, also means diversion as contemplated in the Child Justice Act, 2008;</u>”.</p> <p>(c) Amendment of section 1 by the substitution for the definition of “diversion programme” of the following definition:</p> <p>“ ‘diversion programme’ means a programme within the context of the family and community—</p> <p>(a) in respect of a person who is alleged to have committed an offence; and</p> <p>(b) which is aimed at keeping that person away from the formal court procedure, <u>and in the case of a child also means a diversion programme as contemplated in the Child Justice Act, 2008;</u>”.</p> <p>(d) Amendment of section 1 by the substitution for the definition of “family group conferencing” of the following definition:</p> <p>“ ‘family group conferencing’ means a gathering convened by a probation officer as a diversion or sentencing option to devise a restorative justice response to the offence <u>and, in the case of a child, also means a family group conference contemplated in the Child Justice Act, 2008;</u>”.</p> |

| No. and year of law | Short title                 | Extent of repeal or amendment   |                                       |
|---------------------|-----------------------------|---|---------------------------------------|
|                     |                             | <p>(e) Amendment of section 3(e) and (f) by the substitution for the expression “reform school” wherever it appears of the expression “<u>child and youth care centre providing a programme contemplated in section 191(2)(j) of the Children’s Act, 2005 (Act No. 32 of 2005)</u>”.</p> <p>(f) Amendment of section 4 by the substitution for subsection (3) of the following subsection:</p> <p>“(3)(a) If a probationer, other than a probationer who is subject to the provisions of the <u>Child Justice Act, 2008</u>, fails to comply with the conditions on which he has been placed under the supervision of a probation officer, a probation officer may in writing apply to a magistrate or justice of the peace for the issue of a warrant for the arrest of such probationer.</p> <p>(b) If a warrant referred to in paragraph (a) is issued, the probationer concerned may be arrested by a peace officer as defined in section 1 of the Criminal Procedure Act, 1977 (Act 51 of 1977), and shall be dealt with in accordance with the provisions of section 50 of the said Act, and thereupon the provisions of section 276A(4) of the said Act shall apply <i>mutatis mutandis</i>.</p> <p>(c) If a probationer who is subject to the provisions of the <u>Child Justice Act, 2008</u>, fails to comply with the conditions on which he or she has been placed under the supervision of a probation officer, the provisions of sections 24(7) and 58 of that Act apply.”</p> <p>(g) The repeal of section 4B.</p> | 5<br>10<br>15<br>20<br>25<br>30<br>35 |
| Act No. 13 of 2004  | Social Assistance Act, 2004 | Amendment of the definitions of “foster child” and “foster parent” in section 1 by the substitution for the expression “section 290 of the Criminal Procedure Act, 1977” by the expression “section 72 or 76 of the Child Justice Act, 2008”.   | 40                                    |

## Act No. 75, 2008

## CHILD JUSTICE ACT, 2008

| No. and year of law | Short title                     | Extent of repeal or amendment   |   |
|---------------------|---------------------------------|---|---|
| Act No. 111 of 1998 | Correctional Services Act, 1998 | <p data-bbox="820 297 1254 376">(a) Amendment of section 43 by the substitution for subsection (4) of the following subsection:</p> <p data-bbox="842 405 1254 763">“(4) The Commissioner may, in consultation with <u>[the Director-General of the Department of Welfare]</u> a provincial head of education, or a provincial head of social development, as the case may be, transfer a sentenced child to a <u>[reform school] child and youth care centre providing a programme contemplated in section 191(2)(f) of the Children’s Act, 2005 (Act No. 32 of 2005) [as contemplated in the Child Care Act, 1983 (Act No. 74 of 1983)]</u>, and from the date of such transfer the provisions of section <u>[290 of the Criminal Procedure Act] 76 of the Child Justice Act, 2008</u>, will apply.”</p> <p data-bbox="820 790 1007 815">(b) Amendment of—</p> <p data-bbox="842 842 1254 1021">(i) section 50(1); and<br/>(ii) section 52(2)(b),<br/>by the substitution for the expression “section 71 of the Criminal Procedure Act” wherever it appears in those provisions of the expression “section 24(4)(d) or 26 of the Child Justice Act, 2008”.</p> <p data-bbox="820 1048 1254 1126">(c) Amendment of section 51 by the substitution for paragraph (e) of subsection (1) of the following paragraph:</p> <p data-bbox="820 1153 1254 1301">“(e) those placed under the supervision of a correctional official in terms of section[s] <u>62(f), 71, 290(1)(a) and 290(3)</u> of the Criminal Procedure Act or section <u>24(4)(d), 75 or 76 of the Child Justice Act, 2008</u>.”</p> | <p data-bbox="1281 349 1302 374">5</p> <p data-bbox="1270 483 1302 508">10</p> <p data-bbox="1270 611 1302 636">15</p> <p data-bbox="1270 739 1302 763">20</p> <p data-bbox="1270 866 1302 891">25</p> <p data-bbox="1270 994 1302 1019">30</p> <p data-bbox="1270 1122 1302 1146">35</p> <p data-bbox="1270 1249 1302 1274">40</p> |

## Act No. 75, 2008

## CHILD JUSTICE ACT, 2008

| No. and year of law | Short title          | Extent of repeal or amendment  |  |
|---------------------|----------------------|--|--|
| Act No. 38 of 2005  | Children's Act, 2005 | <p data-bbox="817 293 1235 371"><i>(a)</i> Amendment of section 167 by the substitution for paragraph <i>(b)</i> of subsection (1) of the following paragraph:</p> <p data-bbox="837 398 1235 551">“<i>(b)</i> in the care of a child and youth care centre following an order of a court in terms of this Act, [<del>the Criminal Procedure Act, 1977 (Act No. 51 of 1977)</del> section 29 or Chapter 10 of the Child Justice Act, 2008;”;<br/>and</p> <p data-bbox="817 577 1235 656"><i>(b)</i> amendment of section 191 by the substitution for paragraph <i>(j)</i> of subsection (2) of the following paragraph:</p> <p data-bbox="837 683 1251 987">“<i>(j)</i> the reception, development and secure care of children in terms of an order—<br/> (i) under [<del>the Criminal Procedure Act, 1977 (Act No. 51 of 1977)</del>] section 29 or Chapter 10 of the Child Justice Act, 2008;<br/> (ii) in terms of section 156(1)(i) placing the child in a child and youth care centre which provides a secure care programme; or<br/> (iii) in terms of section 171 transferring a child in alternative care;”.</p> | <p data-bbox="1278 371 1295 398">5</p> <p data-bbox="1267 501 1295 528">10</p> <p data-bbox="1267 631 1295 658">15</p> <p data-bbox="1267 761 1295 788">20</p> <p data-bbox="1267 891 1295 918">25</p> |



**SCHEDULE 5**

(Section 4(3)(b))

**AUDIT OF THE PROVISIONS OF THE CRIMINAL PROCEDURE ACT AND THEIR RELATIONSHIP WITH THE CHILD JUSTICE BILL****Explanatory notes:**

5

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.

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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.

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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)                             | 20 |
|------------|--|---|----|
| 1          | Definitions  |   |    |
| 6          | Power to withdraw charge or stop prosecution             |   |    |
| 7          | Private prosecution on certificate <i>nolle prosequi</i> | Subsection (1) amended by Schedule 4 CJA (item (a) under amendments to the CPA) | 25 |
| 8          | Private prosecution under statutory right                |   |    |
| 9          | Security by private prosecutor                           |   | 30 |
| 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    |   | 35 |
| 14         | Costs in respect of process                              |   |    |
| 15         | Costs of private prosecution                             |   |    |
| 16         | Costs of accused in private prosecution                  |   |    |
| 17         | Taxation of costs  |   | 40 |
| 18         | Prescription of right to institute prosecution           |   |    |
| 19         | Saving as to certain powers conferred by other laws      |   |    |
| 20         | State may seize certain articles                         |   |    |

## Act No. 75, 2008

## CHILD JUSTICE ACT, 2008

| Section no | Criminal Procedure Act section heading  | Extent to which affected by Child Justice Act (CJA)                                     |    |
|------------|---|---|----|
| 21         | Article to be seized under search warrant   |   |    |
| 22         | Circumstances in which article may be seized without search warrant   |   | 5  |
| 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                                    |   | 10 |
| 26         | Entering of premises for purposes of obtaining evidence   |   |    |
| 27         | Resistance against entry or search  |   |    |
| 28         | Wrongful search an offence, and award of damages  |   | 15 |
| 29         | Search to be conducted in decent and orderly manner   |   |    |
| 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 |   | 20 |
| 32         | Disposal of article where criminal proceedings are instituted and admission of guilt fine is paid                     |   | 25 |
| 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  |   | 30 |
| 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 | 35 |
| 39         | Manner and effect of arrest   |   | 40 |
| 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  |   | 45 |
| 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   |   | 50 |
| 46         | Non-liability for wrongful arrest   |   |    |
| 47         | Private persons to assist in arrest when called upon  |   |    |

## Act No. 75, 2008

## CHILD JUSTICE ACT, 2008

| Section no | Criminal Procedure Act section heading   | Extent to which affected by Child Justice Act (CJA)  |               |
|------------|--|--|---------------|
| 48         | Breaking open premises for purpose of arrest                                       |  |               |
| 49         | Use of force in effecting arrest   |  |               |
| 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) | 5<br>10<br>15 |
| 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  | 20            |
| 55         | Failure of accused to appear on summons  | Subsection (1) amended by Schedule 4 CJA (item (d) under amendments to the CPA)  | 25            |
| 56         | Written notice as method of securing attendance of accused in magistrate's court   | To be read with section 18(1) and (2) CJA  |               |
| 57         | Admission of guilt and payment of fine without appearance in court                 | To be read with section 18(2) CJA  | 30            |
| 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  | 35            |
| 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   | 40            |
| 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 |  | 45            |
| 64         | Proceedings with regard to bail and conditions to be recorded in full              |  |               |
| 65         | Appeal to superior court with regard to bail                                       |  |               |
| 65A        | Appeal by attorney-general against decision of court to release accused on bail    |  | 50            |
| 66         | Failure by accused to observe condition of bail                                    |  |               |

## Act No. 75, 2008

## CHILD JUSTICE ACT, 2008

| Section no | Criminal Procedure Act section heading   | Extent to which affected by Child Justice Act (CJA)  |    |
|------------|--|--|----|
| 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 |  | 5  |
| 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  |  | 10 |
| 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                          | 15 |
| 72         | Accused may be released on warning in lieu of bail   | Subsections (1) and (2) amended by Schedule 4 CJA (item (f) under amendments to the CPA) Clauses 22 and 24 CJA apply       | 20 |
| 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 (g) under amendments to the CPA)  | 25 |
| 74         | Parent or guardian of accused under eighteen years to attend proceedings   | * To be repealed by Schedule 4 CJA (item (h) under amendments to the CPA) *Sections 3(g), 38(2), 44(1)(b) and 65 CJA apply | 30 |
| 75         | Summary trial and court of trial   |  |    |
| 76         | Charge-sheet and proof of record of criminal case  |  | 35 |
| 77         | Capacity of accused to understand proceedings  | Referred to in section 48(5)(b) CJA  |    |
| 78         | Mental illness or mental defect and criminal responsibility  | Referred to in section 48(5)(b) CJA  | 40 |
| 79         | Panel for purposes of enquiry and report under sections 77 and 78  |  |    |
| 80         | Accused may examine charge   |  | 45 |
| 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   |  | 50 |
| 84         | Essentials of charge   |  |    |
| 85         | Objection to charge  |  |    |
| 86         | Court may order that charge be amended   |  |    |
| 87         | Court may order delivery of particulars  |  | 55 |
| 88         | Defect in charge cured by evidence   |  |    |
| 89         | Previous conviction not to be alleged in charge  |  |    |

## Act No. 75, 2008

## CHILD JUSTICE ACT, 2008

| 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   | 5   |
| 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   | 10  |
| 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   | 15  |
| 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  | 20  |
| 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 | 25  |
| 104        | Reference in charge to objectionable matter not necessary  | 30  |
| 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  | 35  |
| 108        | Issues raised by plea to be tried  |   |
| 109        | Accused refusing to plead  |   |
| 110        | Accused brought before court which has no jurisdiction   |   |
| 111        | Minister may remove trial to jurisdiction of another attorney-general  | 40  |
| 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   | 45  |
| 115        | Plea of not guilty and procedure with regard to issues   |   |
| 115A       | Committal of accused for trial by regional court   | 50  |

## Act No. 75, 2008

## CHILD JUSTICE ACT, 2008

| Section no | Criminal Procedure Act section heading  | Extent to which affected by Child Justice Act (CJA) |
|------------|---|---|
| 116        | Committal of accused for sentence by regional court after trial in magistrate's court                   |   |
| 117        | Committal to superior court in special case   | 5   |
| 118        | Non-availability of judicial officer after plea of not guilty   |   |
| 119        | Accused to plead in magistrate's court on instructions of attorney-general                              |   |
| 120        | Charge-sheet and proof of record  | 10  |
| 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  | 15  |
| 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 | 20  |
| 125        | Attorney-general may direct that preparatory examination be conducted at a specified place              | 25  |
| 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   | 30  |
| 129        | Recording of evidence at preparatory examination and proof of record                                    |   |
| 130        | Charge to be put at conclusion of evidence for prosecution  | 35  |
| 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   | 40  |
| 135        | Discharge of accused at conclusion of preparatory examination   |   |
| 136        | Procedure with regard to exhibits at preparatory examination  | 45  |
| 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  | 50  |
| 140        | Procedure where accused arraigned for sentence  |   |
| 141        | Procedure where accused arraigned for trial   |   |
| 142        | Procedure where attorney-general declines to prosecute  | 55  |

## Act No. 75, 2008

## CHILD JUSTICE ACT, 2008

| Section no | Criminal Procedure Act section heading  | Extent to which affected by Child Justice Act (CJA)   |          |
|------------|---|---|----------|
| 143        | Accused may inspect preparatory examination record and is entitled to copy thereof            |   |          |
| 144        | Charge in superior court to be laid in an indictment  |   | 5        |
| 145        | Trial in superior court by judge sitting with or without assessors                            |   |          |
| 146        | Reasons for decision by superior court in criminal trial                                      |   | 10       |
| 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  |   | 15       |
| 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 | 20<br>25 |
| 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  | 30       |
| 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  | 35       |
| 158        | Criminal proceedings to take place in presence of accused                                     |   |          |
| 159        | Circumstances in which criminal proceedings may take place in absence of accused              |   | 40       |
| 160        | Procedure at criminal proceedings where accused is absent                                     |   |          |
| 161        | Witness to testify viva voce  |   |          |
| 162        | Witness to be examined under oath   |   |          |
| 163        | Affirmation in lieu of oath   |   | 45       |
| 164        | When unsworn or unaffirmed evidence admissible  |   |          |
| 165        | Oath, affirmation or admonition may be administered by or through interpreter or intermediary |   | 50       |
| 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   |   | 55       |
| 169        | Court may adjourn proceedings to any place  |   |          |

## Act No. 75, 2008

## CHILD JUSTICE ACT, 2008

| Section no | Criminal Procedure Act section heading   | Extent to which affected by Child Justice Act (CJA) |
|------------|--|---|
| 170        | Failure of accused to appear after adjournment or to remain in attendance                            |   |
| 170A       | Evidence through intermediaries  | 5   |
| 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   | 10  |
| 175        | Prosecution and defence may address court at conclusion of evidence                                  |   |
| 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 | 15  |
| 179        | Process for securing attendance of witness   |   |
| 180        | Service of subpoena  |   |
| 181        | Pre-payment of witness expenses  | 20  |
| 182        | Witness from prison  |   |
| 183        | Witness to keep police informed of whereabouts   |   |
| 184        | Witness about to abscond and witness evading service of summons                                      | 25  |
| 185        | Detention of witness   |   |
| 186        | Court may subpoena witness   |   |
| 187        | Witness to attend proceedings and to remain in attendance  |   |
| 188        | Failure by witness to attend or to remain in attendance  | 30  |
| 189        | Powers of court with regard to recalcitrant witness  |   |
| 190        | Impeachment or support of credibility of witness   | 35  |
| 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   | 40  |
| 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   | 45  |
| 197        | Privileges of accused when giving evidence   |   |
| 198        | Privilege arising out of marital state   |   |
| 199        | No witness compelled to answer question which the witness's husband or wife may decline              | 50  |



## Act No. 75, 2008

## CHILD JUSTICE ACT, 2008

| Section no | Criminal Procedure Act section heading  | Extent to which affected by Child Justice Act (CJA)              |    |
|------------|---|--|----|
| 200        | Witness not excused from answer establishing civil liability on his part  |  |    |
| 201        | Privilege of legal practitioner   |  | 5  |
| 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   |  | 10 |
| 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  |  | 15 |
| 208        | Conviction may follow on evidence of single witness   |  |    |
| 209        | Conviction may follow on confession by accused  |  |    |
| 210        | Irrelevant evidence inadmissible  |  | 20 |
| 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  |  | 25 |
| 212A       | Proof of certain facts by affidavit from person in foreign country  |  |    |
| 212B       | Proof of undisputed facts   |  |    |
| 213        | Proof of written statement by consent   |  | 30 |
| 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  |  | 35 |
| 217        | Admissibility of confession by accused  |  |    |
| 218        | Admissibility of facts discovered by means of inadmissible confession   |  |    |
| 219        | Confession not admissible against another   |  |    |
| 219A       | Admissibility of admission by accused   |  | 40 |
| 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 |  | 45 |
| 224        | Judicial notice of laws and other published matter  |  | 50 |
| 225        | Evidence of prints or bodily appearance of accused  |  |    |

## Act No. 75, 2008

## CHILD JUSTICE ACT, 2008

| Section no | Criminal Procedure Act section heading  | Extent to which affected by Child Justice Act (CJA) |
|------------|---|---|
| 226        | Evidence of no sexual intercourse between spouses admissible                                    |   |
| 227        | Evidence of character   | 5   |
| 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   | 10  |
| 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   | 15  |
| 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 | 20  |
| 237        | Evidence on charge of bigamy  |   |
| 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   | 25  |
| 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              | 30  |
| 244        | Evidence on charge relating to seals and stamps   |   |
| 245        | Evidence on charge of which false representation is element                                     | 35  |
| 246        | Presumptions relating to certain documents  |   |
| 247        | Presumptions relating to absence from Republic of certain persons                               |   |
| 248        | Presumption that accused possessed particular qualification or acted in particular capacity     | 40  |
| 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   | 45  |
| 252        | The law in cases not provided for   |   |

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## CHILD JUSTICE ACT, 2008

| Section no | Criminal Procedure Act section heading  | Extent to which affected by Child Justice Act (CJA)   |    |
|------------|---|---|----|
| 252A       | Authority to make use of traps and undercover operations and admissibility of evidence so obtained                  |   | 5  |
| 253        | Saving of special provisions in other laws  |   |    |
| 254        | Court may refer juvenile accused to children's court  | * To be repealed by Schedule 4 CJA (item (k) under amendments to the CPA) *Sections 50 and 64 CJA apply                 | 10 |
| 255        | Court may order enquiry under Prevention and Treatment of Drug Dependency Act, 1992                                 |   |    |
| 256        | Attempt   |   | 15 |
| 257        | Accessory after the fact  |   |    |
| 258        | Murder and attempted murder   |   |    |
| 259        | Culpable homicide   |   |    |
| 260        | Robbery   |   |    |
| 261        | Rape and indecent assault   |   | 20 |
| 262        | Housebreaking with intent to commit an offence  |   |    |
| 263        | Statutory offence of breaking and entering or of entering premises  |   |    |
| 264        | Theft   |   | 25 |
| 265        | Receiving stolen property knowing it to have been stolen  |   |    |
| 266        | Assault with intent to do grievous bodily harm  |   |    |
| 267        | Common assault  |   | 30 |
| 268        | Statutory unlawful carnal intercourse   |   |    |
| 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                                  |   | 35 |
| 272        | Finger-print record prima facie evidence of conviction  |   |    |
| 273        | Evidence of further particulars relating to previous conviction   |   | 40 |
| 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                    |   | 45 |
| 276        | Nature of punishments   | Chapter 10 CJA applies  |    |
| 276A       | Imposition of correctional supervision, and conversion of imprisonment into correctional supervision and vice versa | Subsections (1) and (2) amended by Schedule 4 CJA (item (l) under amendments to the CPA) To be read with section 75 CJA | 50 |
| 280        | Cumulative or concurrent sentences  |   |    |

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## CHILD JUSTICE ACT, 2008

| Section no | Criminal Procedure Act section heading  | Extent to which affected by Child Justice Act (CJA)   |    |
|------------|---|---|----|
| 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   | 5  |
| 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  |   | 10 |
| 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  | 15 |
| 288        | Recovery of fine  | Sections 74 and 79 CJA apply  |    |
| 289        | Court may enforce payment of fine   | Section 79 CJA applies  |    |
| 290        | Manner of dealing with convicted juvenile   | * To be repealed by Schedule 4 CJA (item (m) under amendments to the CPA) * Sections 72 and 76 CJA apply  | 20 |
| 291        | Duration of orders under section 290  | To be repealed by Schedule 4 CJA (item (n) under amendments to the CPA)   |    |
| 296        | Committal to treatment centre   | Chapter 9 CJA applies   | 25 |
| 297        | Conditional or unconditional postponement or suspension of sentence, and caution or reprimand | * Subsection (1A) to be deleted by Schedule 4 CJA (item (o) under amendments to the CPA) * Subsection (9)(a)(ii) amended by Schedule 4 CJA * To be read with section 78 CJA | 30 |
| 297A       | Liability for patrimonial loss arising from performance of community service                  | To be read with section 91 CJA  | 35 |
| 297B       | Agreement on operation of suspended sentences   |   |    |
| 298        | Sentence may be corrected   |   | 40 |
| 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                            |   | 45 |
| 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)                 | 50 |
| 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   | 55 |
| 304A       | Review of proceedings before sentence   | To be read with Chapter 12 CJA  |    |

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## CHILD JUSTICE ACT, 2008

| Section no | Criminal Procedure Act section heading   | Extent to which affected by Child Justice Act (CJA)  |    |
|------------|--|--|----|
| 306        | Accused may set down case for argument   | To be read with Chapter 12 CJA   |    |
| 307        | Execution of sentence not suspended unless bail granted  | Referred to in section 86(a) CJA   | 5  |
| 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)   | 10 |
| 309A       | Appeal against conviction and sentence of chiefs, headmen and chiefs' deputies                 |  | 15 |
| 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)   | 20 |
| 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)   | 25 |
| 310        | Appeal from lower court by prosecutor  |  |    |
| 310A       | Appeal by attorney-general against sentence of lower court                                     |  | 30 |
| 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 de novo when conviction set aside on appeal or review               |  | 35 |
| 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   |  | 40 |
| 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 | 45 |
| 316B       | Appeal by attorney-general against sentence of superior court                                  |  | 50 |
| 317        | Special entry of irregularity or illegality  |  |    |
| 318        | Appeal on special entry under section 317  |  |    |

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## CHILD JUSTICE ACT, 2008

| Section no | Criminal Procedure Act section heading  | Extent to which affected by Child Justice Act (CJA)              |
|------------|---|--|
| 319        | Reservation of question of law  |  |
| 320        | Report of trial judge to be furnished on appeal   | 5  |
| 321        | When execution of sentence may be suspended   |  |
| 322        | Powers of court of appeal   |  |
| 324        | Institution of proceedings de novo when conviction set aside on appeal  | 10   |
| 325        | Saving of power of State President to extend mercy  |  |
| 327        | Further evidence and free pardon or substitution of verdict by State President  |  |
| 328        | Force of process  | 15   |
| 329        | Court process may be served or executed by police official  |  |
| 330        | Transmission of court process by telegraph or similar communication   |  |
| 331        | Irregular warrant or process  | 20   |
| 332        | Prosecution of corporations and members of associations   |  |
| 333        | Minister may invoke decision of Appellate Division on question of law   |  |
| 334        | Minister may declare certain persons peace officers for specific purposes   | 25   |
| 335        | Person who makes statement entitled to copy thereof   |  |
| 335A       | Prohibition of publication of identity of persons towards or in connection with whom certain offences have been committed | 30   |
| 335B       | Medical examination of minors towards or in connection with whom certain offences have been committed                     |  |
| 336        | Act or omission constituting offence under two or more laws   | 35   |
| 337        | Estimating age of person  | Amended by Schedule 4 CJA (item (u) under amendments to the CPA) |
| 338        | Production of document by accused in criminal proceedings   | 40   |
| 339        | Removal of accused from one prison to another for purpose of attending at criminal proceedings                            |  |
| 340        | Prison list of unsentenced prisoners and witnesses detained   | 45   |
| 341        | Compounding of certain minor offences   |  |
| 342        | Conviction or acquittal no bar to civil action for damages  |  |
| 342A       | Unreasonable delays in trials   | 50   |
| 344        | Repeal of laws  |  |
| 345        | Short title and date of commencement  |  |

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| <b>Section no</b> | <b>Criminal Procedure Act section heading</b> | <b>Extent to which affected by Child Justice Act (CJA)</b> |
|-------------------|---|--|
|                   | Schedule 1                                    |  |
|                   | Schedule 2                                    |  |
|                   | Schedule 3                                    |  |
|                   | Schedule 4                                    |  |
|                   | Schedule 5                                    |  |
|                   | Schedule 6                                    |  |
|                   | Schedule 7                                    |  |