



What is a preliminary inquiry?

The Child Justice Bill proposes a preliminary inquiry procedure, which should be held after assessment, within 48 hours of arrest and prior to the child's plea. This is an entirely new procedure, supported by child justice practitioners. A large majority of children consulted in the drafting process felt the preliminary inquiry, as it was explained to them, would be of benefit to children accused of committing offences.

The procedure will be presided over by a designated district court. The objectives of this procedure are to establish whether the child can be diverted, to provide the prosecutor with an opportunity to determine whether the case should proceed to trial, to determine the release or placement of a child and to establish whether the matter should be transferred to a children's court.

The preliminary inquiry:

- Sets out procedures to determine whether a child can be released
- Safeguards the 'last resort' and 'shortest possible period of time' principles of child justice through provisions relating to where the child must be detained, if he or she cannot be released
- Sees to it that the assessment and recommendations by the probation officer are considered and provides the framework within which more information that may be necessary can be collected
- Ensures that a proper age determination of the child occurs. Various provisions in the Bill relating to capacity and sentencing depend on specific ages
- Ensures the diversion process meets the needs of the individual child, where a child is divertible
- Ensures that the due process rights of the child are protected if the child does not wish to accept responsibility for the alleged crime and be diverted
- Allows the prosecutor to remain *dominus litis* and as such determine whether a matter should be prosecuted or not
- Allows for a neutral chair, in the form of a judicial officer, to ensure a power balance between the interests of the state and the interests of the child in determining questions such as detention and an appropriate diversion option.
- Ensures a child's participation in the process.

Because of the many delays that occur, the Bill provides for stringent time periods. The child must appear before a preliminary inquiry within 48 hours after arrest. The magistrate presiding over the inquiry can postpone the inquiry for a number of reasons, but only for 48 hours. After this, one final postponement of 48 hours is permitted, but only if this can facilitate diversion. If the preliminary inquiry has not been finalised by this time, the inquiry must be closed and the matter must proceed in the normal course.

There is provision for a longer postponement of 14 days where a more detailed assessment of the child is necessary, for example, where the child has a history of offending or is being assessed for a young sex offenders diversion programme.

The Child Justice Alliance (CJA) believes that the Preliminary Inquiry is a powerful tool for early intervention and allows for accurate decision making that is in the interests of the child and of society. The concern of the CJA is that although Bill 49 of 2002 envisaged that all children would be provided with this crucial service, the current Bill now limits this process to particular children. Children who are diverted by a prosecutor will not go to a preliminary enquiry. The CJA sees the practical benefit of this. However, we are very concerned that children “charged with an offence referred to in Part 1 of Schedule 3 or item 2,5 or 6 of Part II of schedule 3” will not go to a preliminary enquiry. This is concerning because even if a child’s case is unlikely to be diverted, the preliminary inquiry is still necessary to determine where the child should be placed whilst awaiting trial. A child who commits a serious offence is likely to require more, not less, services in the form of in depth assessment. This is necessary to determine their needs and to assess whether they pose a risk to the community.