

REPUBLIC OF SOUTH AFRICA

CHILD JUSTICE BILL

*(As introduced in the National Assembly as a section 75 Bill; explanatory summary
of Bill published in Government Gazette No. 23728 of 8 August 2002)*

(The English text is the official text of the Bill)

(MINISTER FOR JUSTICE AND CONSTITUTIONAL DEVELOPMENT)

BILL

To establish a criminal justice system for children, who are in conflict with the law and are accused of committing alleged offences, in accordance with the values underpinning our Constitution and our international obligations; to create, as a central feature of this new criminal justice system for children, the possibility of diverting children who have committed certain less serious offences away from the criminal justice system, whilst children who have committed certain serious offences are dealt with in the criminal justice system; 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 of, the release or detention of, or placement of, children; to make provision for the assessment of certain children; to provide for the holding of a preliminary inquiry and to incorporate diversion of certain children away from formal criminal court processes; to make provision for child justice courts to hear all trials of children who are charged with certain serious offences; 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 nation, had not given many of its children the opportunity to live and act like children, particularly black children, and that some children, as a result of circumstances in which they find themselves, have turned to crime;

AND MINDFUL that –

- the Constitution of the Republic of South Africa, 1996, as the supreme law of the Republic, was adopted so as 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 peoples and to free the potential of all persons by every means possible; and
- 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 trouble with the law specific safeguards, amongst 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, whilst 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;

IT IS CONSEQUENTLY THE PURPOSE OF THIS ACT-

- 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, amongst others, creating, as a central feature of this new criminal justice system for children, the possibility of diverting children who have committed certain less serious offences away from the criminal justice system, whilst children who have committed certain serious offences are dealt with in the criminal justice system;
- to expand and entrench the principles of restorative justice in the criminal justice system for children who are in conflict with the law; and
- to create, incrementally, where necessary, special mechanisms, processes or procedures for children in trouble with the law-
 - that in broad terms take into account –
 - ❖ the past and sometimes unduly harsh measures taken against such children;
 - ❖ the present realities of crime in the country;
 - ❖ the need to balance the interests of children and those of society, particularly victims;
 - ❖ 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 instruments relating to children, with particular reference to the Convention on the Rights of the Child;
 - in specific terms, by–
 - ❖ raising the minimum age of criminal capacity for children;
 - ❖ ensuring that the individual needs and circumstances of certain children in trouble with the law are assessed;
 - ❖ providing for special processes or procedures for securing attendance at court of, the release or detention of, or 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; and
 - ❖ providing for a wide range of appropriate sentencing options specifically suited to the needs of children.

BE IT ENACTED by the Parliament of the Republic of South Africa, 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;
- "**adult**" means a person who is 18 years or older but does not include a person contemplated in section 4(2)(b);
- "**an appropriate adult**" means any member of a child's family or a guardian of a child or a person who is prepared to assist a child and who has a prior relationship of responsibility towards the child;
- "**assessment**" means assessment of a child by a probation officer as contemplated in Chapter 5;
- "**child**" means any person contemplated in section 4(1) and, in certain circumstances, means a person contemplated in section 4(2)(a) or (b);
- "**child justice court**" means a court contemplated in section 63;
- "**children's court**" means the court contemplated in section 5 of the Child Care Act, 1983 (Act No. 74 of 1983);
- "**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;
- "**correctional supervision**" means any form of community correction contemplated in Chapter VI of the Correctional Services Act, 1998 (Act No. 111 of 1998);
- "**Criminal Procedure Act**" means the Criminal Procedure Act, 1977 (Act No. 51 of 1977);
- "**detention**" includes confinement in a police cell or lock-up, place of safety, secure care facility, prison or other residential facility;
- "**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 accordance with any directives issued under this Act by the National Director of Public Prosecutions, where applicable, or in accordance with any other prosecution policy or policy directives contemplated in section 21 of the National Prosecuting Authority Act, 1998 (Act No. 32 of 1998);
- "**diversion**" means diversion of a child away from the formal court procedures in a criminal matter to the informal procedures established by Chapter 6 and Part 2 of Chapter 7 ;
- "**diversion option**" means an option contemplated in section 56 read with section 58;
- "**family group conference**" means a conference contemplated in section 61;
- "**independent observer**" means a representative from a community or organisation, or community police forum, who is not in the full-time employ of the State and whose name appears on a prescribed list for this purpose which is to be kept by the magistrate of every district;
- "**inquiry magistrate**" means the judicial officer presiding at a preliminary inquiry;
- "**Legal Aid Board**" means the Legal Aid Board established under section 2 of the Legal Aid Act, 1969 (Act No. 22 of 1969);
- "**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);

"One-Stop Child Justice Centre" means a centre established in terms of section 90;

"placement facility" means a facility used for the temporary placement of children in conflict with the law, who have not been sentenced and includes a place of safety and a secure care facility as defined in section 1 of the Child Care Act, 1983 (Act No. 74 of 1983), but does not include a police cell, lock-up or prison;

"place of safety" means a place of safety as defined in section 1 of the Child Care Act, 1983 (Act No. 74 of 1983);

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

"police official" means a member of the South African Police Service or of a municipal police service established in terms of the South African Police Service Act, 1995 (Act No. 68 of 1995);

"preliminary inquiry" means an inquiry contemplated in Part 1 of Chapter 7;

"prescribed" means prescribed by regulation made under section 95;

"presiding officer" means a judicial officer presiding at a preliminary inquiry or a child justice court;

"prison" means a prison as defined in the Correctional Services Act, 1998 (Act No. 111 of 1998), including any place established under the Correctional Services Act, 1998 (Act No. 111 of 1998), as a place for the reception, detention, confinement, training or treatment of persons liable to detention in custody or to detention in placement under protective custody, and all land, outbuildings and premises adjacent to any such place and used in connection therewith and all land, branches, outstations, camps, buildings, premises or places to which any such persons have been sent for the purpose of imprisonment, detention, protection, labour, treatment or otherwise, and all quarters of correctional officials used in connection with any such prison;

"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);

"residential facility" means any facility established by the Cabinet member responsible for education and designated to receive children who have been sentenced by a court of law;

"restorative justice" means the promotion of reconciliation, restitution and responsibility through the involvement of a child, the child's parent, the child's family members, victims and communities;

"secure care facility" means a secure care facility as defined in section 1 of the Child Care Act, 1983 (Act No. 74 of 1983);

"symbolic restitution" means the giving of an object owned, made or bought by a child or the provision of any service to a person, a group of persons or an institution as symbolic compensation for the harm caused by that child;

"this Act" includes any regulation made under section 95;

"victim-offender mediation" means a procedure contemplated in section 62.

Objects of Act

2. The objects of this Act are to—

- (a) protect the rights of children as contemplated in the Constitution;
- (b) promote the spirit of *ubuntu* in the child justice system through—

- (i) fostering children's sense of dignity and worth;
 - (ii) reinforcing children's respect for human rights and the fundamental freedoms of others by holding children accountable for their actions and safe-guarding the interests of victims and the community;
 - (iii) supporting reconciliation by means of a restorative justice response; and
 - (iv) involving parents, families, victims and, where appropriate, other members of the community affected by the crime in procedures contemplated in this Act in order to encourage the reintegration of children;
- (c) 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 appropriate to the needs of children and in accordance with the Constitution, including the use of diversion; and
- (d) promote co-operation between all government departments and other organisations and agencies involved in implementing an effective criminal justice system for children.

Guiding principles

3. In the application of this Act, the following guiding principles should be considered:

- (a) All consequences arising from the commission of an offence by a child should be proportionate to the nature of the offence.
- (b) Every child should, as far as possible, be given an opportunity to participate in any proceedings, particularly the informal proceedings contemplated in this Act where decisions affecting him or her might be taken.
- (c) 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.
- (d) Every child should be treated in a manner which takes into account his or her cultural values and beliefs.
- (e) All procedures in terms of this Act should be conducted and completed as speedily as possible.
- (f) Parents and appropriate adults should be able to assist children in proceedings contemplated in this Act and, wherever possible, to participate in decisions affecting them.
- (g) As far as is practicable and possible, all children, notwithstanding their background, should be subject to the same processes, procedures and mechanisms and have access to the same services or options contemplated in this Act when having committed similar offences.

CHAPTER 2 APPLICATION OF ACT, CRIMINAL CAPACITY AND MATTERS RELATED TO AGE

PART 1: APPLICATION OF ACT

Application of Act

4. (1) Subject to subsection (2), this Act applies to any person in the Republic who is alleged to have committed an offence and who, at the time of the commission of the alleged offence, was 10 years or older but below the age of 18 years.

(2) Notwithstanding subsection (1) –

- (a) only Part 2 of this Chapter applies to any person who, at the time of the commission of the alleged offence, was under the age of 10 years; and
- (b) the Director of Public Prosecutions or a prosecutor designated thereto by the Director may, in exceptional circumstances and in accordance with directives issued by the National Director of Public Prosecutions, in the case of a person who is being charged with a Schedule 1 or 2 offence and who is 18 years or older but under the age of 21 years, at the time of the institution of criminal proceedings against him or her in respect of the commission of an alleged offence, direct that the matter be dealt with in terms of section 11(b) or (c).

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

(b) For purposes of paragraph (a), Schedule 7 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.

Multiple charges

5. (1) 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 in question must guide the manner in which the child must be dealt with in terms of this Act.

(2) In order to determine the most serious offence for purposes of subsection (1), the Schedules containing the offences are listed in the following order of severity, beginning with the most serious:

- (a) Part I of Schedule 3;
- (b) Part II of Schedule 3;
- (c) Schedule 2;
- (d) Schedule 1.

(3) In the case of a child being charged with more than one offence which are dealt with in separate criminal proceedings, subsection (1) does not apply.

PART 2: CHILDREN BELOW 10 YEARS OF AGE

Criminal capacity of child below 10 years of age

6. (1) A child who commits an offence while below 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 8.

(2) The common law pertaining to the criminal capacity of children below 10 years is hereby amended to the extent set out in this section and section .

Manner of dealing with child below 10 years of age

7. (1) Where a police official has reason to believe that a child suspected of having committed an offence is below the age of 10 years, he or she may not arrest the child, and must immediately but not later than 48 hours take such child to the child's home and if the child does not have a home, to a placement facility and must inform a probation officer, as prescribed.

(2) A probation officer who receives a notification from a police official in terms of subsection (1), must assess the child in terms of Chapter 5 as soon as possible but not later than seven days after receipt of the notification.

(3) (a) After assessment of a child in terms of subsection (2), the probation officer concerned may -

- (i) in the prescribed manner, refer the child to the children's court on any of the grounds set out in section 51;
- (ii) in the prescribed manner, refer the child for counselling or therapy;
- (iii) in the prescribed manner, refer the child to an accredited programme designed specifically to suit the needs of children below the age of 10 years;
- (iv) arrange for support services to the child;
- (v) in the prescribed manner, arrange a meeting, which must be attended by the child, his or her parent or an appropriate adult, and which may be attended by any other person likely to provide information for the purposes of the meeting contemplated in subsection (4); or
- (vi) decide to take no action.

(b) Any action taken under paragraph (a) may not, in any way, require a child to be held responsible for the incident that led to the assessment.

(4) The purposes of the meeting convened by a probation officer in terms of subsection (3)(a)(v) are to -

- (a) assist such probation officer to establish more fully the circumstances surrounding the allegations against a child who is alleged to have committed an act with serious consequences; and
- (b) formulate a written plan appropriate to the child and relevant to the circumstances.

(5) The written plan referred to in subsection (4)(b) must, at least -

- (a) specify the objectives to be achieved for the child and the period within which they should be achieved;
- (b) contain details of the services and assistance to be provided for the child as prescribed;
- (c) specify the persons or organisations to provide such services and assistance as prescribed; and
- (d) state the responsibilities of the child and of the parent or appropriate adult.

(6) The probation officer must record, with reasons, the outcome of the assessment and the decision made in terms of subsection (3) in the prescribed manner.

(7) The decision made by the probation officer in terms of subsection (3), including the written plan, if any, must, in the prescribed manner, be submitted to a magistrate in chambers for consideration and for purposes of having the decision, including the plan, if any, made an order of court.

Assessment of child below 10 years of age

8. The provisions of Chapter 5 relating to the assessment of children apply in respect of children contemplated in this Part, except-

- (a) section 35(b), (c) and (d), dealing with assessment before a preliminary inquiry;
- (b) section 40(1)(d) and 41(4), dealing with the acknowledgment of responsibility;
- (c) section 41(1), dealing with the recommendations by a probation officer, in which case the provisions of section 7(3) apply; and
- (d) section 41(5), dealing with the submission of the assessment report to the prosecutor.

PART 3: CHILDREN AGED 10 YEARS OR OLDER BUT BELOW 14 YEARS

Criminal capacity of child aged 10 years or older but below 14 years

9. (1) (a) A child who is 10 years of age or older but under the age of 14 years and who commits an offence is presumed to lack criminal capacity, unless he or she is proved to have such criminal capacity in accordance with section 10.

(b) A prosecutor who is required to make a decision in respect of a child referred to in paragraph (a), whether to divert such child as contemplated in section 11(b) or (c) or not, or whether to prosecute such child as contemplated in section 11(e) or not, must take the following factors into consideration:

- (i) The educational level, cognitive ability, domestic and environmental circumstances, age and maturity of such child;
- (ii) the nature and gravity of the alleged offence;
- (iii) the impact of the alleged offence upon any victim of such offence and the implications thereof;
- (iv) the interests of the community;
- (v) a probation officer's assessment report in terms of Chapter 5;
- (vi) the prospects of establishing criminal capacity in terms of section 10 if the matter were to be referred to a preliminary inquiry in terms of Chapter 7 or to trial in terms of Chapter 8; and
- (vii) any other relevant factor.

(c) If a prosecutor decides in respect of a child referred to in paragraph (a) –

- (i) that criminal capacity is likely to be proven in terms of section 10, he or she must, in the event of –
 - (aa) diversion being a possibility, proceed as contemplated in section 11(b) or (c);
 - (bb) prosecution being a possibility, proceed as contemplated in section 11(e); or
- (ii) that criminal capacity is not likely to be proved in terms of section 10 and the matter cannot be diverted or prosecuted on this ground alone, he or she may cause the child to be taken to a probation officer for any further action in terms of Part 2 of this Chapter.

(2) The common law pertaining to the criminal capacity of children aged 7 years or older but below the age of 14 years is hereby amended to the extent set out in this section and section 10.

Establishment of criminal capacity

10. (1) 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 and to act in accordance with that appreciation at the time of the commission of an alleged offence must be proved by the State beyond a reasonable doubt.

(2) In making a determination regarding the criminal capacity of the child in question, the inquiry magistrate or child justice court must consider the assessment report of the probation officer contemplated in section 41 and all evidence placed before it prior to diversion or conviction, as the case may be, which evidence may include a report of an evaluation referred to in subsection (3).

(3) An inquiry magistrate or child justice court may, on its own accord, or upon 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, emotional, psychological and social development of the child.

(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.

(5) Where an inquiry magistrate or child justice court has found that a child's criminal capacity has not been proven beyond a reasonable doubt, such 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 Part 2 of Chapter 2.

PART 4: REFERRAL OF MATTERS

Referral of matters: manner in which children who are alleged to have committed offences are to be dealt with by virtue of age of child or offence committed

11. In each case where a child is alleged to have committed an offence, such child must be dealt with in one of the five following ways:

- (a) If a child below the age of 10 years or a child referred to in section 9(1)(c)(ii) is accused of committing an offence, the matter must be referred to a probation officer to be dealt with in terms of section 7;
- (b) if a child is accused of committing an offence referred to in Schedule 1, the matter must be referred to a prosecutor to consider the diversion of the matter in terms of Chapter 6;
- (c) if a child is accused of committing an offence referred to in Schedule 1, where the matter has not been diverted by the prosecutor in terms of Chapter 6, or an offence referred to in Schedule 2, or an offence referred to in Part II of Schedule 3, excluding an offence referred to in item 2, 5 or 6 of that Part, the

- matter must be referred to a preliminary inquiry for consideration of the diversion of the matter in terms of Chapter 7;
- (d) if a child as contemplated in section 4(2)(b) is accused of committing an offence referred to in Schedule 1 or 2, the matter must be referred to a prosecutor to consider the diversion of the matter as contemplated in subsection (b) or (c), as the case may be; or
 - (e) if a child is accused of committing an offence referred to in Part I of Schedule 3, or item 2, 5 or 6 of Part II of Schedule 3, or where the matter is not diverted in terms of Chapter 6 or 7 and the provisions of section 50(3) apply, the child must be brought before a child justice court to be dealt with in terms of Chapter 8.

PART 5: AGE ESTIMATION, DETERMINATION AND ERROR

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 the age would render that person subject to this Act, the official must treat such person as a child with due regard to the provisions relating to-

- (a) arrest in terms of Chapter 3; or
- (b) release or detention in terms of Chapter 4,

until the determination of that person's age at a preliminary inquiry or child justice court.

Age estimation by probation officer

13. (1) If, during an assessment of a child as contemplated in Chapter 5, the age of a child, at the time of the commission of the offence, is uncertain, the probation officer must make an estimation of the child's age and must complete the prescribed form.

(2) In making the estimation, the probation officer must consider any available information, including the following:

- (a) A previous determination of age by a magistrate under this Act or under the Criminal Procedure Act or an estimation of age in terms of the Child Care Act, 1983 (Act No. 74 of 1983);
- (b) statements made by a parent, the legal guardian or any other person likely to have direct knowledge of the age of the child;
- (c) a statement made by the child himself or herself;
- (d) a baptismal certificate, school registration form or school report, or other information of a similar nature; or
- (e) an estimation of age made by a medical practitioner.

(3) The probation officer must submit the estimation on the prescribed form, together with any relevant documentation to the inquiry magistrate before the child's appearance at a preliminary inquiry or to the child justice court before the child's appearance there.

(4) 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, if necessary, at any later stage.

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 alleged commission of the offence is uncertain, the inquiry magistrate or presiding officer in the child justice court must determine the age of the child.

(2) For the purposes of a determination an inquiry magistrate or presiding officer may—

- (a) consider the form and any documentation submitted by the probation officer in terms of section 13(3);
- (b) require any relevant documentation, information or statement from any person;
- (c) subpoena any person to produce the documentation, information or statements contemplated in paragraph (b); or
- (d) if necessary, refer the child to a medical practitioner, in the prescribed manner, for an estimation of age.

(3) The inquiry magistrate or presiding officer must enter the age determined in terms of subsection (1) into the record as the age of the child, which age must be regarded as the correct age of the child until evidence to the contrary is placed before the inquiry magistrate or presiding officer, who 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 above or below the age of 18 years at the time of the alleged commission of the offence, such court must –

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

Error as to age

16. (1) If, at any stage during any proceedings in terms of this Act, a presiding officer is satisfied on the strength of evidence placed before him or her that the age of the person reflected on the record is incorrect, the age must be altered on the record in accordance with section 14 and the person must be dealt with in accordance with the provisions of this section, whichever are applicable.

(2) (a) If the matter relating to a person referred to in subsection (1) has been diverted in terms of Chapter 6 or 7 or section 57 or 68, the diversion order remains valid and such person must continue to comply with the diversion order unless –

- (i) the child is found to have been below the age of 10 years at the time of the commission of the alleged offence, in which case the presiding officer must refer the child to a probation officer to be dealt with in terms of section 7;

- (ii) the diversion order in terms of section 57 relates to the offence of rape or compelled rape as contemplated in item 4(b) of Part I of Schedule 3 or the child is found to have been 14 years or older, but below the age of 18 years at the time of the commission of the alleged offence, in which case the presiding officer must refer the matter to the child justice court to proceed with trial in terms of Chapter 8;
- (iii) such person is found -
 - (aa) to be 18 years of age or older in circumstances where the provisions of section 4(2)(b) do not apply; or
 - (bb) to be 21 years of age or older in circumstances where the provisions of section 4(2)(b) did apply,
 in which case the matter must proceed to trial in terms of Chapter 8.

(b) In the case of a matter being dealt with in terms of section 7 as contemplated in paragraph (a)(i) or proceeding to trial as contemplated in paragraph (a)(ii) or (iii), the court that made the diversion order must, in the prescribed manner, cause the diversion order to be cancelled.

(3) If the person referred to in subsection (1) has been charged but has not yet pleaded to the charge in question, the presiding officer must –

- (a) in the case of a child who was thought to have been 10 years or older but is found to have been below the age of 10 years at the time of the commission of the alleged offence, refer the child to a probation officer to be dealt with in terms of section 7;
- (b) in the case of a child who was thought to have been 14 years or older but is found to have been at least 10 years, but below the age of 14 years at the time of the commission of the alleged offence, refer the matter to the prosecutor for a decision in terms of section 9(1)(b);
- (c) in the case of a child who was thought to have been below the age of 14 years but is found to have been at least 14 years but below 18 years at the time of the alleged commission of the offence, proceed with the trial in terms of Chapter 8 of this Act;
- (d) in the case of a person who was thought to have been below the age of 18 years but is found to have been 18 years or older but below 21 years at the time of the commission of the alleged offence, if there is reason to believe that the matter may qualify for diversion in terms of section 4(2)(b), refer the matter to the prosecutor for consideration in terms of that section; or
- (e) in the case of a child who was thought to have been 18 years or older but is found to have been below 18 years at the time of the alleged commission of the offence, if the offence in question is not one of those offences which is excluded from diversion in terms of section 11(1)(c), direct that the matter be referred for the consideration of diversion in terms of Chapter 6 or Part 2 of Chapter 7 or, if the matter is excluded from diversion, proceed with the trial in terms of Chapter 8 of this Act.

(4) If the person referred to in subsection (1) has been charged and has pleaded to the charge in question, the presiding officer must –

- (a) (i) in the case of a child who was thought to have been 10 years or older but is found to have been below the age of 10 years at the time of the commission of the alleged offence, stop the trial and refer the child to a probation officer to be dealt with in terms of section 7; and
- (ii) if the child has already been convicted, cause the record of the proceedings to be transmitted in the same manner as contemplated in

- section 303 of the Criminal Procedure Act, to the registrar of the High Court having jurisdiction for purposes of quashing the conviction and setting aside the sentence, if any, in which case the verdict is of no force and is deemed not to have been returned;
- (b) in the case of a child who was thought to have been 14 years or older but is found to have been at least 10 years, but below the age of 14 years at the time of the commission of the alleged offence, notwithstanding that the case for the prosecution has been closed-
- (i) allow evidence to be adduced as contemplated in section 10(2) relating to criminal capacity; and
 - (ii) if the court finds that the child has criminal capacity, the presiding officer must continue with the trial in terms of Chapter 8 of this Act; or
 - (iii) if the court finds that the child lacks criminal capacity and if the child has been convicted or sentenced, transmit the record of the proceedings to the registrar of the High Court having jurisdiction and such registrar shall, as soon as is practicable, lay the same for review in chambers before a judge in terms of section 303 of the Criminal Procedure Act and the matter must be dealt with according to the procedure on review in terms of section 304 of that Act;
- (c) in the case of a child who was thought to have been 18 years or older but is found to have been below 18 years but 10 years or older at the time of the commission of the alleged offence, proceed with the trial in terms of this Act; or
- (d) in the case of a child who was thought to have been below 18 years but is found to have been 18 years or older at the time of the commission of the alleged offence, proceed with the trial in terms of the Criminal Procedure Act.

(5) In any case other than those referred to in subsection (4), where exceptional circumstances exist and the presiding officer is of the opinion that error as to age may have caused any prejudice to a child during the course of a trial, such presiding officer must transmit the record of the proceedings to the registrar of the High Court having jurisdiction in the same manner as contemplated in section 303 of the Criminal Procedure Act and the matter must be dealt with according to the procedure on review in terms of section 304 of that Act.

(6) A person who estimates or determines the age of a child or who acts on the strength of such estimation or determination in terms of this Act is not liable for any prejudice suffered by such child as a result of such estimation, determination or act performed or omitted in good faith.

CHAPTER 3 ARREST, SUMMONS AND WARNING OF CHILD

Methods of securing attendance of child at preliminary inquiry or child justice court

17. (1) The methods of securing the attendance of a child at a preliminary inquiry or a child justice court are—

- (a) arrest, as contemplated in section 18;
- (b) summons, as contemplated in section 19;
- (c) a written warning, as contemplated in section 20;

- (d) a written notice, as contemplated in section 56 of the Criminal Procedure Act; or
- (e) indictment, as contemplated in section 144 of the Criminal Procedure Act.

(2) Where circumstances permit, a police official should approach the Director of Public Prosecutions or a prosecutor with a docket that has been opened for guidance on whether to institute a prosecution or not and, if so, the manner in which a child should be made to attend a preliminary inquiry or appear before a child justice court in respect of an offence that is alleged to have been committed by the child.

Arrest

18. (1) A child may not be arrested for an offence contemplated in Schedule 1, unless-

- (a) there are compelling reasons justifying such an arrest; or
- (b) the offence is in the process of being committed.

(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 or child justice court.

(3) The police official effecting the arrest of a child must, in the prescribed manner—

- (a) inform the child of the nature of the allegation against him or her;
- (b) inform the child of his or her rights; and
- (c) explain to the child the immediate procedures to be followed in terms of this Act; and
- (d) where circumstances permit, notify the child's parent or an appropriate adult of the arrest.

(4) (a) A police official, or where possible the police official who has arrested a 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 such 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 the non-compliance.

(5) Any child who has been arrested and who remains in custody must, whether an assessment of the child has been done or not, be taken by a police official to the magistrate's court having jurisdiction, for purposes of dealing with the matter in accordance with section 11, as soon as possible but not later than 48 hours after arrest, in which case the provisions of section 50(1)(d) of the Criminal Procedure Act dealing with-

- (i) ordinary court hours;
 - (ii) physical illness or other physical condition; and
 - (iii) arrest outside of the area of jurisdiction of the court,
- apply in respect of the expiry of the period of 48 hours.

Summons

19. (1) A summons issued in respect of a child in terms of section 54 of

the Criminal Procedure Act in relation to a child who is to appear at a preliminary inquiry or child justice court, must specify the place, date and time of such preliminary inquiry or child justice court.

(2) (a) Where circumstances permit, a summons must be served on a child in the presence of his or her parent or an appropriate adult, in which case both the child and parent or appropriate adult must acknowledge service thereof by way of signature.

(b) In exceptional circumstances, where it is not possible to serve a summons on a child in the presence of his or her parent or an appropriate adult, 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 or appropriate adult, each acknowledging service thereof by way of signature.

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

- (a) when serving the summons -
 - (i) inform the child, parent or appropriate adult of the nature of the allegation against the child;
 - (ii) inform the child, parent or appropriate adult of the child's rights; and
 - (iii) explain to the child, parent or appropriate adult the immediate procedures to be followed in terms of this Act; and
- (b) immediately but not later than 24 hours after the service of the summons inform the probation officer concerned of the service of such summons.

Written warning to appear at preliminary inquiry or child justice court

20. (1) A police official may warn a child to appear at a preliminary inquiry or a child justice court at a specified time on a specified date and to remain in attendance at the proceedings relating to the offence in question.

(2) A police official who warns a child under subsection (1), must –

- (a) at the same time and in the presence of the child, warn the child's parent or an appropriate adult to bring the child or cause the child to be brought to appear at the preliminary inquiry or a child justice court and to have the child remain in attendance at the proceedings relating to the offence in question; and
- (b) complete and hand to the child and to the child's parent or appropriate adult, as the case may be, a written warning, as prescribed, on which must be entered the offence in respect of which the child is being warned and the date on which and the time and place at which the child must appear.

(3) The police official must in the prescribed manner—

- (a) when he or she hands the written warning to the child, the child's parent or the appropriate adult, as the case may be—
 - (i) inform such child, parent or appropriate adult of the nature of the allegation against the child;
 - (ii) inform such child, parent or appropriate adult of the child's rights;
 - (iii) explain to such child, parent or appropriate adult the immediate procedures to be followed in terms of this Act; and
 - (iv) require such child and parent or appropriate adult to acknowledge receipt thereof by way of signature; and
- (b) immediately but not later than 24 hours after handing the written warning to the child-
 - (i) inform the probation officer concerned accordingly; and

- (ii) forward a duplicate original of the signed written warning to the clerk of the court which has jurisdiction.

(4) The mere production of the signed duplicate original referred to in subsection (3)(b)(ii) is *prima facie* proof of the issue of the original thereof to the child and that such original was handed to the child and parent or appropriate adult.

CHAPTER 4 RELEASE OR DETENTION AND PLACEMENT OF CHILD PRIOR TO SENTENCE

PART 1: RELEASE OR DETENTION

Approach to be followed when considering release or detention of child

21. Any police official, the Director of Public Prosecutions, any prosecutor designated thereto by the Director, any inquiry magistrate or any officer presiding in a child justice court must, when making any decision regarding the relevant options in this Part for the release or detention of a child, deal with the matter in the following order of priority:

- (a) Consideration must be given to the possible release of a child-
 - (i) by a police official at any stage before the preliminary inquiry in terms of section 22 into the care of a parent or an appropriate adult; or
 - (ii) by a presiding officer during proceedings at a preliminary inquiry or child justice court in terms of section 24 into the care of a parent or an appropriate adult or on own recognisances, with or without the imposition of any conditions; or
- (b) if the child is for any reason not released as contemplated in paragraph (a), the release of the child on bail must be considered in accordance with the provisions of section 25.

Release of child on warning in lieu of bail into care of parent or appropriate adult before preliminary inquiry

22. (1) A police official must release a child on warning in lieu of bail into the care of a parent or an appropriate adult if such 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 cannot be located or is not available and all reasonable efforts have been made to locate such parent or appropriate adult; or
- (b) there is a substantial risk that the child may be a danger to any other person or to himself or herself.

(2) Where a child referred to in subsection (1) has not been released due to any of the factors referred to in paragraphs (a) or (b) of that subsection, the investigating police official must provide the inquiry magistrate with a written report in the prescribed manner, giving reasons why such child could not be released, with particular reference to the factors referred to in the said paragraphs (a) or (b).

Duty of police official and person into whose care child is released upon release of child

23. (1) A police official who releases a child from detention in accordance with section 22 and places such child in the care of a parent or an appropriate adult, must—

- (a) at the time of the release of the child, complete and hand to the child and to the person into whose care the child is released, a written notice in the prescribed form on which must be entered the offence in respect of which the child is accused, any conditions relating to the release of the child and the place, date and time at which the child must appear for a preliminary inquiry;
- (b) at the same time and in the presence of the child, warn such parent or appropriate adult to bring the child or cause the child to be brought to appear at the preliminary inquiry at a specified place, date and time and to remain in attendance and, if any conditions have been imposed, to ensure that the child complies with such conditions;
- (c) warn the child to appear at the preliminary inquiry at a specified place, date and time and to remain in attendance and, if any conditions have been imposed, to comply with such conditions;
- (d) require such child and parent or appropriate adult to acknowledge receipt thereof by way of signature; and
- (e) forward a duplicate original of the signed written notice referred to in paragraph (a) to the clerk of the court which has jurisdiction.

(2) The mere production of the signed duplicate original referred to in subsection (1)(e) is *prima facie* proof of the issue of the original thereof to the child and that such original was handed to the child and parent or appropriate adult.

Release of child into care of parent or appropriate adult or on own recognisances at preliminary inquiry or child justice court

24. (1) Where a child who is in detention in respect of an offence referred to in Schedule 1 or 2 appears —

- (a) at a preliminary inquiry and the inquiry is to be postponed, or the matter, upon conclusion of the preliminary inquiry, is set down for trial in a child justice court; or
 - (b) at a child justice court and the matter is to be postponed,
- the presiding officer must consider the release of such child in terms of this section.

(2) The presiding officer may release a child contemplated in subsection (1)—

- (a) into the care of a parent or an appropriate adult; or
 - (b) on such child's own recognisance,
- if it is in the interests of justice to so 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 recommendation of the probation officer and all other relevant factors, including—

- (a) the best interests of the child;
- (b) whether the child has previous convictions;
- (c) the fact that the child is at least 10 years but under 14 years of age and is presumed to lack criminal capacity; and
- (d) the interests and safety of the community in which the child resides.

(4) The presiding officer may, in releasing a child as contemplated

in this section, impose one or more of the following conditions, namely that the child—

- (a) must appear at a specified place and time;
- (b) must report periodically to a specified person or place;
- (c) must attend a particular school;
- (d) must reside at a particular address;
- (e) must be placed under the supervision of a specified person;
- (f) may not interfere with any witness, tamper with any evidence or associate with any person or group of specified people; or
- (g) comply with any other condition that the presiding officer deems fit in the circumstances.

(5) If a child is released into the care of a parent or an appropriate adult, the presiding officer must warn the parent or adult, as the case may be, to bring the child to appear, or ensure that the child appears, at a specified place and time and, if a condition has been imposed in terms of this section, to ensure that the child complies with such condition.

(6) If a child is released on his or her own recognisance, the presiding officer must warn the child to appear at a specified place and time and, if a condition has been imposed in terms of this section, to comply with such condition.

(7) (a) If a child fails to comply with any condition contemplated in this section, the inquiry magistrate or child justice court may, upon being notified of such failure in the prescribed manner, issue a warrant for the arrest of the child or a written notice to the child to appear before the magistrate or court.

(b) When a child appears before an inquiry magistrate or child justice court pursuant to a warrant of arrest or written notice, the inquiry magistrate or child justice court must inquire into the reasons for the child's failure to comply with the conditions and make a determination as to whether the failure is due to fault on the part of the child or not.

(c) If it is found that the failure is not due to fault on the part of the child, the inquiry magistrate or child justice court may –

- (i) order the child's release on the same conditions;
- (ii) impose any other condition; or
- (iii) make an appropriate order which will assist the child and his or her family to comply with the conditions initially imposed.

(d) If it is found that the failure is due to fault on the part of the child, the inquiry magistrate or child justice court 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 29.

Release of child on bail

25. (1) An application for the release of a child, referred to in section 20(b), on bail, must be considered in two stages as set out in subsection (2) and, where necessary, subsection (3).

(2) (a) Chapter 9 of the Criminal Procedure Act applies to an application for the release of a child on bail.

(b) If it is found that it is in the interests of justice to release a child on bail, the conditions for such release must be considered as contemplated in the said Chapter 9.

(3) (a) If the payment of an amount of money is to be considered

as a condition of bail, a separate inquiry must be held into the ability of the child and his or her parent or an appropriate adult to pay the amount of money being considered or any other appropriate amount.

(b) If after an inquiry referred to in paragraph (a), it is found that the child and his or her parent or an appropriate adult are –

- (i) unable to pay any amount of money, the person who conducted the inquiry must set appropriate conditions that do not include an amount of money for the release of the child on bail; or
- (ii) able to pay an amount of money, such person must set conditions for the release of the child on bail and an amount which is appropriate in the circumstances.

(4) The references in the Criminal Procedure Act-

- (a) in section 59 to any offence other than an offence referred to in Part II and Part III of Schedule 2 to that Act should be construed as a reference to Schedule 1 to this Act;
- (b) in section 59A to Schedule 7 to that Act, should be construed as a reference to Schedule 2 to this Act; and
- (c) in sections 50(6), 58 and 60(11) and (11A) of that Act to Schedules 5 and 6 to that Act, should be construed as a reference to Schedules 4 and 5 to this Act.

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, the following options regarding placement of the child must be considered, subject to sections 27 and 29, as the case may be:

- (a) Placement in a placement facility;
- (b) placement in a police cell; or
- (c) placement in a prison,

with due regard to the principle that the least restrictive option possible in the circumstances should be used.

(2) If in terms of this Part, a police official or presiding officer is given a choice to make a decision or order regarding the placement of a child in a specified prison or placement facility, the appropriate level of security of the placement facility and the availability of a vacancy in a suitable placement facility within a reasonable distance from the relevant court, are of paramount importance when making such a decision or order.

Placement options for child who has not been released before first appearance

27. If, at any stage before a child's first appearance at a preliminary inquiry or a child justice court, such child has not been released from detention in police custody and is charged-

- (a) with an offence referred to in Schedule 1 or 2, the relevant police official must give consideration to the detention of such child in a suitable placement facility, if such facility is available within a reasonable distance from the place where the child has to appear for a preliminary inquiry and there is a vacancy, or if such facility or vacancy is not available, in a police cell or lock-up; or

- (b) with an offence referred to in Part I or II of Schedule 3, pending the child's first appearance at a preliminary inquiry or child justice court, the station commissioner must make arrangements, in the prescribed manner, for the placement of the child in a prison within a reasonable distance from the place where the child has to appear at or before a preliminary inquiry or child justice court.

Protection of children detained in police custody

- 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 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, legal representatives, registered social workers, probation officers, health workers, religious counselors 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 immediate and appropriate healthcare in the event any illness.

(2) (a) If any complaint is received from a child during an arrest or while in detention in police custody relating to any injury sustained by such child or if a police official observes that a child has been injured, 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 the station commissioner is satisfied that any of the following circumstances exist:

- (i) Where there is evidence of physical injury;
- (ii) where the child appears to be in pain as a result of an injury;
- (iii) where there is an allegation of sexual abuse of any nature; or
- (iv) any other circumstances which warrant medical treatment.

(b) In the event of a report being made as contemplated 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 by the child;
- (ii) an explanation of the circumstances surrounding the injury; 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 relevant docket.

(3) The station commissioner of each police station must keep a register in which prescribed details regarding the detention in police cells of all children must be recorded separately.

(4) The register may be examined by such persons as may be prescribed.

Approach to be adopted for further detention of child after first appearance

29. If, at any stage during a preliminary inquiry or a trial, a child has not been released-

- (a) into the care of his or her parent or an appropriate adult or on own recognisances;
- (b) because bail has been considered but not granted; or
- (c) because bail has been granted but any condition set has not been complied with,

the presiding officer must, after considering all suitable placement options in terms of this Part, make an order regarding the placement of the child in a specified prison as contemplated in section 30 or specified placement facility as contemplated in section 31.

Placement in a prison

30. (1) Subject to section 31(5), a presiding officer may only order the detention of a child referred to in section 29 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 relating thereto have not been complied with;
- (b) such child is accused of having committed an offence referred to in Part I or II of Schedule 3;
- (c) such detention is necessary in the interests of the administration of justice or the safety or protection of the public or such child or another child in detention; and
- (d) there is a likelihood that the child, upon conviction, could be sentenced to imprisonment.

(2) A child who is at least 10 years but under the age of 14 years may only be detained in a prison if, in addition to the factors referred to in subsection (1), the Director of Public Prosecutions or a prosecutor authorised thereto in writing by him or her issues a written confirmation that he or she intends charging the child concerned with an offence referred to in Part I or II of Schedule 3 and stating that there is sufficient evidence to institute a prosecution against the child.

(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 sworn statement contemplated in section 41(2) and any appropriate evidence placed before him or her, including evidence, where applicable, in respect of—

- (a) the best interests of the child;
- (b) the child's state of health;
- (c) previous convictions or previous diversions or charges pending against the child;
- (d) the risk that the child may be a danger to himself, herself or to any other person or child in a placement facility;
- (e) any danger that the child may pose to the safety of members of the public;
- (f) the child concerned cannot be placed in a secure care facility, which complies with the appropriate level of security, within a reasonable distance from the court;
- (g) the risk of the child absconding from a placement facility;
- (h) the probable period of detention until the conclusion of the matter;
- (i) any impediment to the preparation of the child's defence or any delay in obtaining legal representation which may be brought about by the detention of the child;

- (j) the seriousness of the offence in question; or
- (k) any other relevant factor.

(4) The presiding officer must enter the reasons for ordering the detention of a child in prison in terms of this section on the record of the proceedings.

Placement in a placement facility

31. (1) A presiding officer may order the detention of a child referred to in section 29 in a specified secure care facility or place of safety, if-

- (a) a presiding officer has not ordered that such child should be detained in a prison in terms of section 30(1); or
- (b) such child is alleged to have committed an offence referred to in Schedule 1 or 2 or , subject to section 30(1), Part II of Schedule 3.

(2) When a presiding officer must decide whether to place a child in a secure care facility or a place of safety as contemplated in subsection (1), consideration must be given to the following factors:

- (a) The age and maturity of the child;
- (b) the seriousness of the offence in question;
- (c) the risk that the child may be a danger to himself, herself or to any other person or child in the placement facility;
- (d) the appropriateness of the level of security of the placement facility when regard is had to the seriousness of the offence allegedly committed by the child; and
- (e) the availability of accommodation within an appropriate placement facility within a reasonable distance from the relevant court.

(3) Whenever a presiding officer is required to make a decision in terms of subsection (1), such presiding officer must consider the sworn statement which forms part of the assessment report contemplated in section 41(2).

(4) Where a sworn statement contemplated in subsection (3) is, for any reason, not available, the presiding officer may request any functionary responsible for the management of a placement facility within a reasonable distance from the court to furnish a sworn statement in respect of –

- (a) the availability or otherwise of accommodation for the child in question; and
- (b) all other available information relating to the level of security, amenities and features of the facility.

(5) (a) If a presiding officer finds substantial and compelling reasons, including a relevant previous conviction or relevant previous diversion or a relevant pending charge against the child, for not placing a child referred to in subsection (1)(b) in a placement facility, then the presiding officer may order the placement of such child in a specified prison.

(b) A presiding officer who makes an order to place a child in a prison as contemplated in paragraph (a), must enter the reasons for making such a decision on the record of the proceedings.

Error as to placement

32. Where a child is placed in a police cell, placement facility, residential facility or a prison and it comes to the attention of the person admitting the child to such cell, facility or prison or any other person at such cell, facility or prison that the

child has been erroneously referred to such cell, facility or prison, as the case may be, such person must act in accordance with the order of the court committing the child to such facility and receive such child into the facility and must, as soon as practicable, but not later than the next court day, refer the child back to the relevant child justice court for the matter to be reconsidered and the error to be corrected.

PART 3: FACTORS TO BE TAKEN INTO ACCOUNT BY PRESIDING OFFICER REGARDING FURTHER DETENTION AND PLACEMENT AND CONDITIONS OF DETENTION AT PRELIMINARY INQUIRY OR CHILD JUSTICE COURT

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

33. Where a child, in terms of Parts 1 and 2 of this Chapter, has been or is to be detained and placed in a prison or a placement facility, the presiding officer at a preliminary inquiry or child justice court, as the case may be, must at every subsequent appearance of the child or at any time thereafter—

- (a) determine whether or not the detention is or remains necessary and whether the placement is or remains appropriate;
- (b) record the reasons for the detention or further detention;
- (c) consider a reduction of the amount of bail, if applicable;
- (d) inquire whether or not the child is being treated properly and being kept in suitable conditions, if applicable;
- (e) if it is not satisfied that the child is being treated properly and being kept in suitable conditions, inspect and investigate the treatment and conditions and make an appropriate remedial order; and
- (f) enter the reasons for any decision made in this regard on the record of the proceedings.

Conditions of detention at preliminary inquiry or child justice court

34. (1) No child may be subjected to the wearing of leg-irons when appearing at a preliminary inquiry or child justice court, and handcuffs may only be used if there are exceptional circumstances warranting their use.

(2) (a) A child held in a cell while awaiting appearance at a preliminary inquiry or child justice court must be kept separate from adults and be treated in a manner and kept in conditions which take account of his or her age.

(b) A girl must be kept separate from boys and must be under the care of an adult woman.

(c) Where a child is transported to or from a preliminary inquiry or child justice court the child must, if reasonably possible, be transported separate from adults.

**CHAPTER 5
ASSESSMENT OF CHILD**

Duty of probation officer to assess certain children

35. A child who is alleged to have committed an offence must be assessed by a probation officer if –

- (a) the child was below 10 years of age at the time of the commission of the alleged offence or is a child referred to in section 9(1)(c)(ii);
- (b) the child may be in need of care for purposes of referring the child to a children's court in terms of section 51 or 64;
- (c) the matter is being considered for diversion in terms of section 11(b) or (c); or
- (d) in the case of a child who is 10 years or older but below 14 years at the time of the commission of the alleged offence, the matter is being considered for diversion in terms of section 11(b) or (c) or prosecution in terms of section 11(e).

Purpose of assessment

36. The purpose of an assessment is to –

- (a) establish whether a child may be in need of care for purposes of referring the child to a children's court in terms of section 51 or 64;
- (b) estimate the age of the child if the age is uncertain;
- (c) gather information relating to a previous conviction, any previous diversion or any pending charge in respect of the child;
- (d) formulate recommendations regarding the release or detention and placement of the child;
- (e) where appropriate, establish the prospects for diversion of the matter;
- (f) in the case of a child below the age of 10 years or a child referred to in section 9(1)(c)(ii), establish what measures need to be taken in terms of section 7;
- (g) in the case of a child aged 10 years or older but below 14 years, express a view on the factors contemplated in section 9(1)(b) that may affect the criminal capacity of such child as contemplated in section 10; or
- (h) provide any other relevant information regarding the child which the probation officer may regard in the best interests of the child or which may further any objective which this Act intends to promote or achieve.

Confidentiality of information obtained at assessment

37. Any information obtained at an assessment is confidential and –

- (a) may only be used for any purpose authorised by this Act, including at a preliminary inquiry; and
- (b) is inadmissible as evidence during any criminal trial in which the assessed child appears, except for purposes of sentencing if the child is to be dealt with in terms of section 50(3).

Place where assessment is to be conducted

38. (1) The assessment of a child may take place in any suitable place identified by the probation officer as prescribed, which place may include a room at the magistrate's court or at the offices of the Department of Social Development.

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

Persons to attend assessment

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

(2) Subject to subsection (9), a child's parent or an appropriate adult must attend the assessment of the child.

(3) The following persons may attend the assessment of a child:

- (a) The prosecutor in whose magisterial district the assessment is being conducted;
- (b) any police official whose presence is necessary or desirable for the assessment;
- (c) any person whose presence is necessary or desirable for the assessment; and
- (d) any other person permitted by the probation officer to attend, including a researcher.

(4) The probation officer may exclude any person referred to in subsection (2) or (3), from attending an assessment if the presence of such person is disrupting, undermining or obstructing the completion of the assessment.

(5) A probation officer may, if there is any risk that the child may escape or may endanger the safety of the probation officer or any other person, request a police official to be present at an assessment.

(6) The probation officer should, where appropriate, elicit the views of the child in private regarding the presence of any person attending the assessment.

(7) A probation officer may, at any time before the assessment of a child –

- (a) issue a notice in the prescribed manner to a parent of the child or an appropriate adult to appear at the assessment or, where the interests of justice so require, the probation officer may orally request the parent or appropriate adult to appear at the assessment; and
- (b) inform a prosecutor referred to in subsection(3)(a) or a police official referred to in subsection (3)(b) of the time and venue of the assessment.

(8) A notice contemplated in subsection (7)(a) must be delivered by a police official upon the request of the probation officer in the prescribed manner.

(9) A person who has been notified in terms of subsection (7)(a) may apply to the probation officer not to attend the assessment, and if the probation officer exempts the person from attending, the exemption must be in writing.

(10) (a) A probation officer must make every effort to locate a parent or an appropriate adult for purposes of concluding the assessment of a child and may request a police official to assist in the location of such person.

(b) A probation officer may conclude the assessment of a child in the absence of a parent or appropriate adult if all reasonable efforts to locate such person have failed or if such person has been notified of the assessment and has failed to attend.

Powers and duties of probation officer at assessment

40. (1) The probation officer must—

- (a) explain the purpose of assessment to the child;
- (b) inform the child of his or her rights in the prescribed manner;
- (c) explain to the child the immediate procedures to be followed in terms of this Act; and

(d) inquire from the child whether or not he or she intends acknowledging responsibility for the offence in question.

(2) The probation officer may at any stage during the assessment of a child consult with—

- (a) the prosecutor;
- (b) the police official who arrested the child, served the summons, issued the written warning or is responsible for the investigation of the matter; or
- (c) any person who may provide information necessary for the assessment.

(3) The probation officer may at any stage during the assessment consult individually with any person at the assessment.

(4) The probation officer may contact or consult any person who is not at the assessment and who has any information relating to the assessment, but if such additional information is obtained, the child must be informed of such information.

(5) Where a child is accused with another child or other children, the probation officer may conduct the assessment of such children simultaneously if to do so would not be to the prejudice of any child.

(6) The probation officer must encourage the participation of the child during the assessment process.

Assessment report of probation officer

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

- (a) The referral of the matter to a children's court, stating reasons for such recommendation as contemplated in sections 51 and 64;
- (b) the appropriateness of diversion, including a particular diversion service provider, a particular diversion option or options as contemplated in section 42, 56, 57, 58 or 68;
- (c) the possible release of the child into the care of a parent or an appropriate adult or on his or her own recognisances, as contemplated in section 24;
- (d) if it is likely that the child could be detained after the first appearance at the preliminary inquiry, the placement of the child in a particular prison or placement facility as contemplated in section 30 or 31;
- (e) in the case of a child below the age of 10 years, establish what measures need to be taken in terms of section 7;
- (f) the criminal capacity of the child if the child is 10 years or older but below 14 years, as contemplated in section 9(1); and
- (g) whether a further and more detailed assessment of the child is required in the circumstances as contemplated in subsection (3).

(2) A recommendation referred to in subsection (1)(d) relating to placement of the child in a placement facility must be supported by a sworn statement or facsimile copy thereof, as prescribed, obtained by the probation officer from the functionary responsible for the management of such facility containing current information regarding –

- (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 facility.

(3) A recommendation referred to in subsection (1)(f) may be made

in one or more of the following circumstances:

- (a) The possibility that the child may be a danger to others or to himself or herself;
- (b) the fact that the child has a history of repeatedly committing offences or absconding;
- (c) where the social welfare history of the child warrants a further assessment; or
- (d) the possibility that the child may be admitted to a sexual offenders' programme, substance abuse programme or other intensive treatment programme.

(4) If it appears to the probation officer that the child does not intend to acknowledge responsibility for the alleged offence, it must be indicated in the assessment report.

(5) The report referred to in subsection (1) must be submitted to the prosecutor before the commencement of a preliminary inquiry or first appearance at a child justice court.

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

42. (1) (a) Subject to paragraph (b), a matter in respect of which a child is accused of committing an offence contemplated in Schedule 1 and where such child has acknowledged responsibility for that offence, may, subject to subsection (2) and the directives of the National Director of Public Prosecutions, after assessment and before a preliminary inquiry contemplated in Chapter 7, be diverted by a prosecutor.

(b) If a prosecutor is of the opinion that a matter referred to in paragraph (a) should rather be dealt with in terms of section 51, he or she must not divert the matter, but refer the matter to a preliminary inquiry and then specifically bring or cause the matter to be brought to the attention of the inquiry magistrate.

(c) The provisions of Part 2 of Chapter 7, except section 58(5), (6) and (7), apply in respect of a matter that is diverted in terms of paragraph (a).

(2) If the child has not yet been assessed, the prosecutor may, in accordance with the directives of the National Director, dispense with such assessment if it is in the best interests of the child to do so.

(3) In order to decide whether to divert the matter or not, the prosecutor must have access to the register of children in respect of whom a diversion order has been made contemplated in section 54(5).

(4) If the prosecutor decides not to divert the matter, he or she must forthwith make arrangements for the child to appear at a preliminary inquiry contemplated in Chapter 7.

Diversion option to be made order of court

43. (1) If a matter is diverted in terms of section 41, the child in question and, where possible, his or her parent or appropriate adult must appear before a

magistrate in chambers, for purposes of having the diversion option that has been selected by the prosecutor made an order of court.

(2) The provisions of section 60 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 AND DIVERSION

PART 1: PRELIMINARY INQUIRY

Nature and purpose of preliminary inquiry

44. (1) (a) A preliminary inquiry must be held in respect of every child –

- (i) who is alleged to have committed an offence contemplated in Schedule 1 where the matter has not been diverted by a prosecutor in terms of Chapter 6; or
- (ii) who is alleged to have committed an offence contemplated in Schedule 2 or an offence referred to in Part II of Schedule 3, excluding an offence referred to in item 2, 5 or 6 of that Part.

(b) A preliminary inquiry referred to in paragraph (a) must be held –

- (i) within 48 hours of arrest as contemplated in section 18(5) if a child is arrested and remains in detention; or
- (ii) within such specified time periods as may be required in terms of a summons in terms of section 19, a written warning in terms of section 20 or a written notice in terms of section 23.

(c) A child's appearance at a preliminary inquiry must be regarded as his or her first appearance before a lower court as contemplated in section 50 of the Criminal Procedure Act.

(2) A preliminary inquiry is an informal pre-trial procedure which is inquisitorial in nature, may be held in a court or any other suitable place, and the purpose of which is to give due consideration to diverting matters away from formal court procedures.

Persons to attend preliminary inquiry

45. (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 or an appropriate adult;
- (c) the probation officer; and
- (d) any diversion service provider identified by a probation officer at the assessment.

(2) The inquiry magistrate may exclude any person from attending the preliminary inquiry if such person's presence is not in the best interests of the child or undermines the inquisitorial nature and purpose of a preliminary inquiry.

(3) (a) A preliminary inquiry may proceed in the absence of the

child's parent, an appropriate adult or the probation officer if the inquiry magistrate is satisfied that to do so would prevent an undue delay and would be in the best interests of the child.

(b) An inquiry magistrate who proceeds in the absence of the child's parent, an appropriate adult or probation officer as contemplated in paragraph (a), must enter the reasons for such decision on the record of proceedings.

(4) The inquiry magistrate may permit the attendance of any other person who has an interest in attending or who may contribute to the proceedings.

(5) 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

46. 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.

Failure to appear at preliminary inquiry

47. (1) A child or his or her parent, or an appropriate adult, who has been directed to appear at a preliminary inquiry in terms of—

(a) a summons contemplated in section 19;

(b) a written warning contemplated in section 20;

(c) a warning by a police official contemplated in section 23;

(d) a warning by a presiding officer contemplated in section 24(5) and (6),

or is otherwise obliged to appear at a preliminary inquiry and who fails to appear at such inquiry or to remain in attendance at the proceedings in question must be dealt with in accordance with the provisions of subsection (2).

(2) (a) An inquiry magistrate may, in respect of a person referred to in subsection (1), authorise the issue of a warrant for the arrest of such person and, when such person is brought before an inquiry magistrate, he or she may, in a summary manner inquire into such person's failure to appear or to remain in attendance.

(b) If the inquiry magistrate is satisfied that the failure to appear or to remain in attendance was not due to fault on the part of the person concerned, he or she must continue with the proceedings in question.

(c) If the inquiry magistrate is satisfied that the failure of a child to appear or to remain in attendance was due to fault on the part of such child and that the purpose of a preliminary inquiry may be undermined, the inquiry magistrate must consider the matter of release or detention and placement of such child anew in terms of the provisions dealing with bail as contemplated in section 25.

(d) A person, other than a child, who fails to appear or to remain in attendance is guilty of an offence if such failure was due to fault on the part of the person concerned and such person is liable on conviction to a fine or to imprisonment for a period not exceeding three months.

Procedure relating to holding of preliminary inquiry

48. (1) The inquiry magistrate must conduct the preliminary inquiry in an informal manner by asking questions, interviewing persons at the inquiry and eliciting information and must keep a record of the proceedings.

(2) At the start of the preliminary inquiry—

- (a) the inquiry magistrate must in the prescribed manner—
 - (i) explain the purpose and inquisitorial nature of the preliminary inquiry to the child;
 - (ii) inform the child of the nature of the allegation against him or her;
 - (iii) inform the child of his or her rights; and
 - (iv) explain to the child the immediate procedures to be followed in terms of this Act;
- (b) the inquiry magistrate must ascertain from the child whether he or she acknowledges responsibility for the alleged offence and if the child—
 - (i) does not acknowledge responsibility, no questions regarding the alleged offence may be put to the child and no information regarding a previous diversion or conviction or charge pending against the child may be placed before the preliminary inquiry, whereupon the provisions of section 50(3) apply with the changes required by the context; or
 - (ii) does acknowledge responsibility, the preliminary inquiry proceeds in terms of this Part; and
- (c) the inquiry magistrate must determine the age of a child in accordance with section 12, if necessary.

(3) The following information must be placed before the inquiry magistrate:

- (a) The probation officer's assessment report, if available;
- (b) any form and documentation required for the determination of age as contemplated in section 14(2)(a) if available;
- (c) any documentation relating to any previous conviction or diversion or a charge pending against the child concerned;
- (d) the report regarding the detention of a child in police custody provided by the investigating police official in terms of section 22(2), if applicable; and
- (e) any other information that may be relevant or necessary 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 or necessary to the proceedings;
- (b) elicit any information from any person attending the preliminary inquiry to supplement or clarify the available information; and
- (c) take such steps as may be necessary to establish the truth of any statement or the correctness of any submission.

(5) (a) If the child has not yet been assessed, the inquiry magistrate may dispense with assessment if it is in the best interests of the child to do so.

(b) An inquiry magistrate who dispenses with an assessment as contemplated in paragraph (a), must enter the reasons for such decision on the record of proceedings.

(6) If a preliminary inquiry proceeds in the absence of a probation officer, the probation officer's assessment report must be available at the preliminary inquiry, unless assessment has been dispensed with in terms of subsection (5).

(7) In order to ensure that the views of all persons present are considered before a decision regarding the child is made, the inquiry magistrate must-

- (a) encourage the participation of the child and his or her parent, or an appropriate adult;
- (b) allow the child, the child's parent or an appropriate adult or any other person present to put questions and to raise issues which, in the opinion of the inquiry magistrate, are appropriate or necessary for the purposes of a preliminary inquiry.

(8) (a) If the child in respect of whom the holding of a preliminary inquiry is contemplated, is a co-accused with one or more other children, a joint preliminary inquiry may be held if the inquiry magistrate is satisfied that there will be no prejudice to any of the children concerned.

(b) If a joint preliminary inquiry is held as contemplated in paragraph (a), different decisions may be made in respect of each child.

Postponement of preliminary inquiry

49. (1) The inquiry magistrate may, subject to subsections (3) 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; or
- (b) if it is necessary for the purposes of—
 - (i) securing the attendance of a person essential for the conclusion of the inquiry;
 - (ii) obtaining information essential for the conclusion of the inquiry;
 - (iii) establishing the attitude of the victim regarding diversion;
 - (iv) making arrangements in respect of a diversion option;
 - (v) finding alternatives to pre-trial detention; or
 - (vi) assessing the child, where no assessment has previously been undertaken.

(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 and, subject to subsections (3) and (4), must be closed and the prosecutor must set the matter down for trial in a child justice court in terms of Chapter 8.

(3) If the proceedings of a preliminary inquiry are postponed for the purpose of noting a confession or an admission or the holding of an identity parade or a pointing-out, the inquiry magistrate must inform the child of the right to have a parent, an appropriate adult or legal representative present during such proceedings.

(4) If the probation officer has recommended in terms of section 41(1)(f) that a further and more detailed assessment of the child is required, or if the probation officer makes such a recommendation during the course of the preliminary inquiry, the inquiry magistrate may, if satisfied that there are exceptional circumstances warranting a further assessment of the child, postpone the proceedings of the preliminary inquiry for a period not exceeding 14 days.

(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 or injury; or
- (b) the child has been referred for a decision relating to mental illness or defect as contemplated in sections 77 and 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 contemplated in this section.

Consideration of diversion

50. (1) If the inquiry magistrate is satisfied that the matter can be diverted as contemplated in section 11(c) and it is not a matter contemplated in section 51, and that –

- (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; and
- (d) the child and, if available, his or her parent, or an appropriate adult, consent to diversion,

and after consideration of all relevant information presented at the preliminary inquiry, the inquiry magistrate must ascertain from the prosecutor whether the matter can be diverted.

(2) If the prosecutor indicates that the matter may be diverted, the inquiry magistrate must make an order for diversion in respect of the child concerned in accordance with the provisions of Part 2 of this Chapter.

(3) (a) If the prosecutor indicates that the matter may not be diverted, the inquiry magistrate must explain to the child and the parent or an appropriate adult, as the case may be, the provisions of section 83(1) regarding legal representation.

(b) If the child is in detention, the inquiry magistrate must, after due consideration of the provisions of Chapter 4, inform the child of the charge against him or her, the place, date and time of the next appearance in a child justice court and must warn the child's parent or an appropriate adult to attend such proceedings at the specified place and time.

(c) If the child is not in detention, the inquiry magistrate—

- (i) may alter or extend any condition imposed in terms of section 24(1)(a), section 25(4) or section 26; and
- (ii) must warn the child and his or her parent or an appropriate adult, as the case may be, to appear in a child justice court at a specified place, date and time.

(4) (a) Where an inquiry magistrate has presided over a preliminary inquiry and has heard any information prejudicial to the impartial determination of the matter, such magistrate may not preside over any subsequent proceeding, procedure or trial arising from the same facts.

(b) No information furnished by any person at a preliminary inquiry in relation to the child in respect of whom the preliminary inquiry is held may be used against such child in any subsequent criminal proceedings, except for purposes of sentencing if the child is to be dealt with in terms of section 50(3), but may be used at a children's court inquiry.

Referral of children in need of care to children's court

51. If it appears to the inquiry magistrate during the course of a preliminary inquiry that –

- (i) a child is a child referred to in section 14(4) of the Child Care Act, 1983 (Act No. 74 of 1983), and it is desirable to deal with the child in terms of sections 13, 14 and 15 of the Child Care Act, 1983; or
- (ii) the child does not live at his or her family home or in appropriate substitute care; or
- (iii) the child is alleged to have committed a minor offence or offences aimed at meeting the child's basic need for food and warmth,

the inquiry magistrate may stop the proceedings and order that the child be brought before a children's court referred to in section 5 of that Act and that the child be dealt with under the said sections 13, 14 and 15.

PART 2: DIVERSION

Objectives of diversion

52. The objectives of diversion are to—

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

Legal consequences of diversion

53. (1) If a matter has been diverted by a prosecutor in terms of Chapter 6 or at a preliminary inquiry in terms of Part 1 of this Chapter, the child in question may not be prosecuted on the facts relating to the offence in respect of which the diversion order was made, unless such child fails to comply with the conditions of the diversion order, in which case the provisions of section 60 apply.

(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.

Provision and accreditation of diversion programmes, service providers and register of previous diversions

54. (1) Subject to section 96(1), a prosecutor, an inquiry magistrate or a child justice court may only refer a matter for diversion to a diversion programme or service provider that has been accredited in terms of this section.

(2) (a) The Cabinet member responsible for social development, in consultation with the Cabinet members responsible for the administration of justice, education, correctional services and safety and security -

- (i) must create a policy framework to develop the capacity within all levels of Government and the non-governmental sector to establish, maintain and develop programmes for diversion;
- (ii) must, in accordance with the minimum standards applicable to diversion and diversion-programmes contemplated in section 55, establish and maintain a system for accreditation, as prescribed, of programmes for diversion and diversion service providers, which must also provide for the removal of programmes and service providers from the system, where appropriate; and
- (iii) may, for these purposes, provide financial and technical support.

(b) The Cabinet member responsible for social development must -

- (i) within three months after the commencement of the Act, table the policy framework and system for accreditation contemplated in paragraph (a)(i) and (ii) in Parliament;
- (ii) within three months after such tabling 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 contemplated in subparagraph (i) within two months from such notice;
- (iii) within four months of the closing date for applications contemplated in subparagraph (ii), ensure that all applications received are considered and decided upon, 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.

(c) After the expiry of the time limits contemplated in paragraphs (a) and (b), 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.

(3) Before any diversion programme contemplated in [section 57](#) may be accredited by the Department of Social Development, such programme, including all relevant details, such as the duration and content thereof, must be tabled in Parliament for approval prior to the accreditation thereof.

(4) (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 such accreditation or removal.

(b) The Director-General: Social Development must, immediately after any publication referred to in paragraph (a), provide a copy of the publication to -

- (i) the relevant role-players falling under his or her jurisdiction; and
- (ii) the Director-General: Justice and Constitutional Development, who must distribute the said publication to all relevant role-players who are involved in the administration of this Act.

(5) (a) The Director-General: Social Development must, in

consultation with the Director-General of Justice and Constitutional Development and the National Commissioner of the South African Police Service, establish, maintain and develop a register, as prescribed, of children in respect of whom a diversion order has been made in terms of this Act, which register must include-

- (i) the personal details of each child;
- (ii) details of the offence in relation to which the diversion order was made;
- (iii) the diversion option as described in the diversion order; and
- (iv) particulars of the child's compliance with the diversion order.

(b) The purpose of the register is to keep a record of particulars contemplated in paragraph (a) in respect of children who are diverted from the formal criminal justice system in terms of this Act –

- (i) for purposes of access by probation officers when assessing a child in terms of Chapter 5, police officials when performing functions in terms of Chapter 3 or 4, or by court officials when diversion is considered by a prosecutor in terms of Chapter 6, at a preliminary inquiry contemplated in Chapter 7, during proceedings at a child justice court contemplated in Chapter 8 and during sentencing proceedings contemplated in Chapter 9; and
- (ii) in order to facilitate research relating to the effectiveness of diversion and trends relating thereto.

(c) Access to the register must be limited as prescribed to persons or organisations requiring the information for the purposes set out in paragraph (b).

Minimum standards applicable to diversion and diversion programmes

55. (1) Diversion programmes, in keeping with the objectives of diversion must be based on the principle of proportionality, and—

- (a) must be structured in such a way so as to strike a balance between the circumstances of the child, the nature of the offence and the interests of society, especially in relation to section 57;
- (b) must be aimed at minimising the potential for recidivism;
- (c) must promote the dignity and well-being of a child, and the development of his or her sense of self-worth and ability to contribute to society;
- (d) may not be exploitative, harmful or hazardous to a child's physical or mental health;
- (e) must be appropriate to the age and maturity of a child;
- (f) may not interfere with a child's schooling; and
- (g) may not be structured in a manner that completely excludes certain children due to a lack of resources, financial or otherwise.

(2) Diversion programmes must, where reasonably possible—

- (a) impart useful skills;
- (b) include a restorative justice element which aims at healing relationships, including the relationship with the victim;
- (c) include an element which seeks to ensure that the child understands the impact of his or her behaviour on others, including the victims of the offence, and may include compensation or restitution;
- (d) be presented in a location reasonably accessible to the child;
- (e) be structured in such a way that they are suitable to be used in a variety of circumstances and for a variety of offences;
- (f) be structured in such way that their effectiveness may be measured; and

- (g) be promoted and developed with the 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.

Selection of diversion option

56. (1) In selecting a specific diversion option for a particular child, a probation officer, in terms of section 41(1)(b), a prosecutor, in terms of section 42(1), an inquiry magistrate in terms of section 50(2) and a presiding officer, in terms of section 68(1)(a), must consider—

- (a) the selection of a diversion option from an appropriate level in terms of section 58;
- (b) a child's cultural, religious and linguistic background;
- (c) the child's educational level, cognitive ability and domestic and environmental circumstances;
- (d) the proportionality of the option recommended or selected to the circumstances of the child, the nature of the offence and the interests of society; and
- (e) the child's age and developmental needs.

(2) Diversion options set out in –

- (a) section 58(3);
- (b) section 58(5); and
- (c) section 58(3) and (5),

may be used in combination, where appropriate, with due regard to the considerations set out in subsection (1).

(3) In addition to the diversion options set out in section 58, a prosecutor, in terms of section 42(1), an inquiry magistrate, in terms of section 50(2), or an officer presiding in a child justice court, in terms of section 68(1)(a), may, in exceptional circumstances, after consideration of all available information, develop an individual diversion option which meets the objectives of diversion in terms of section 52 and, where applicable, the standards set out in section 55.

Diversion of certain sexual offences cases by child below 14 years

57. (1) The diversion of a matter in respect of the offence of rape or compelled rape in circumstances contemplated in item 1, or an offence referred to in item 3 or 4 of Part II of Schedule 3 may be considered at a preliminary inquiry in accordance with section 50 if -

- (a) the child was below the age of 14 years at the time of the commission of the alleged offence; and
- (b) the matter qualifies for diversion in terms of the directives issued by the National Director of Public Prosecutions as contemplated in section 95(4)(a)(i)(bb).

(2) If a child who qualifies for diversion in terms of subsection (1)-

- (a) he or she may only be referred to a diversion programme which has been approved and accredited in terms of section 54(3); and
- (b) an inquiry magistrate in terms of section 50(2) or a presiding officer in terms of section 68(1)(a)–

- (i) may, when selecting such diversion programme, in addition to the factors set out in section 56(1), only consider a diversion option contemplated in section 58(5); and
- (ii) must also consider the contents and duration thereof, in addition to the question of proportionality.

(3) The probation officer must, when making recommendations in terms of section 41(1)(b) in respect of a child who qualifies for diversion as contemplated in subsection (1), provide detailed information on diversion programmes available for the offence in question and in particular on any diversion programme which might be considered in the matter in question.

Diversion options

- 58.** (1) For the purposes of this section—
- (a) “a compulsory school attendance order” means an order issued in the prescribed manner, requiring a child to attend school every day for a specified period of time, which attendance is to be monitored by a specified person;
 - (b) “a family time order” means an order issued in the prescribed manner, requiring a child to spend a specified number of hours with his or her family;
 - (c) “a good behaviour order” means an order issued in the prescribed manner, requiring a child to abide by an agreement made between the child and his or her family to comply with certain standards of behaviour;
 - (d) “a positive peer association order” means an order issued in the prescribed manner, requiring a child to associate with persons who can contribute to the child’s positive behaviour;
 - (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 such order so as to enable such person to monitor the child’s behaviour; and
 - (f) “a supervision and guidance order” means an order issued in the prescribed manner, placing a child under the supervision and guidance of a mentor or peer in order to monitor and guide the child’s behaviour.

(2) In this section diversion options are set out in two levels, with level two comprising the more onerous options.

(3) Level one diversion options include, where applicable in the prescribed manner—

- (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) the issue of a compulsory school attendance order;
- (f) the issue of a family time order;
- (g) the issue of a positive peer association order;
- (h) the issue of a good behaviour order;
- (i) the issue of an order prohibiting the child from visiting, frequenting or appearing at a specified place;
- (j) referral to counseling 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 or institution;

- (m) restitution of a specified object to a specified victim or victims of the alleged offence where the object concerned can be returned or restored;
- (n) performance without remuneration of some service for the benefit of the community under the supervision or control of an organisation or institution, or a specified person or group identified by the probation officer effecting the assessment;
- (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 or institution where the child or his or her family is able to afford this; and
- (q) where there is no identifiable person or persons to whom restitution or compensation can be made, provision of some service or benefit or payment of compensation to a community organisation, charity or welfare organisation.

(4) (a) Where a diversion option referred to in subsection (3) is selected in respect of a child below the age of 14 years, the order may not exceed twelve months in duration if a time period is applicable.

(b) Where a diversion option referred to in subsection (3) is selected in respect of a child who is 14 years or older, the order may not exceed twenty four months in duration if a time period is applicable.

(c) An order exceeding the time period referred to in paragraphs (a) and (b) may be given, in which case the reasons for exceeding the time period must be entered on the record of the proceedings.

(5) Level two diversion options apply to children where a court upon conviction of the child for the offence in question is likely to impose a sentence of imprisonment, and include—

- (a) performance without remuneration of some service for the benefit of the community under the supervision and control of an organisation or institution, or a specified person or group, identified by the probation officer;
- (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; and
- (c) referral to counselling or therapeutic intervention, whether in combination with any of the options referred to in this subsection or not

(6) (a) Where a diversion option referred to in subsection (5) is selected in respect of a child below the age of 14 years, the order may not exceed two years in duration if a time period is applicable, except in the case of a matter which is diverted in terms of section 57, in which case the order may not exceed five years.

(b) Where a diversion option referred to in subsection (5) is selected in respect of a child who is 14 years or older, the order may not exceed four years in duration if a time period is applicable.

(c) An order exceeding the time period referred to in paragraphs (a) and (b) 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 in terms of section 43, 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 at a specified place and time or any other restorative justice option which is in accordance with the definition of "restorative justice" in appropriate cases in lieu of any of the options

referred to in subsections (3) or (5), or in combination with any of the diversion options referred to in subsections (3) or (5).

Monitoring of compliance with diversion order

59. (1) Upon the selection of a diversion option, the magistrate in terms of section 42, inquiry magistrate or child justice court must identify a probation officer or other suitable person to monitor the child's compliance with the diversion order.

(2) In the event of a child failing to comply with the diversion order, the probation officer or person identified in terms of subsection (1) must notify the inquiry magistrate or child justice court in writing of such failure in the prescribed manner.

(3) If it comes to the notice of an 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 inquiry magistrate or child justice court of the child's failure to comply with the diversion order, such inquiry magistrate or child justice court must inquire into the probation officer's or person's failure and if it is found that such 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 inquiry magistrate or child justice court must cause a copy of the finding to this effect to be brought to the attention of the appropriate authority with the view to taking the necessary action; or
- (b) in the case of a person who is not in the employ of the State, the inquiry magistrate or child justice court must notify the Director-General: Social Development with the view to removing that person's name from the system for accreditation as contemplated in section 54(2)(a)(ii).

(4) The procedure set out in subsection (3) does not preclude the application of any other remedy in any other law.

Failure to comply with diversion order

60. (1) If a child fails to comply with any order relating to diversion, the magistrate in terms of section 43, the inquiry magistrate in terms of section 50(2) or child justice court, in the case of diversion contemplated in section 68, may, upon being notified of such failure, in the prescribed manner, issue a warrant for the arrest of the child or a written notice to the child to appear before the magistrate, inquiry magistrate or child justice court.

(2) When a child appears before a magistrate, an inquiry magistrate or child justice court pursuant to a warrant of arrest or written notice, the 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 as to whether the failure is due to fault on the part of the child or not.

(3) If it is found that the failure is not due to fault on the part of the child, the inquiry magistrate or child justice court may-

- (a) continue with the same 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 or added, with or without altered or added conditions.

- (4) If it is found that the failure is due to fault on the part of the child-
- (a) the prosecutor, in the case where the matter was diverted by a prosecutor in terms of section 42(1) or at a preliminary inquiry in terms of section 50(2), may decide to proceed with the prosecution in which case section 50(3) applies with the changes required by the context; or
 - (b) the child justice court, in the case where the matter was diverted by such court in terms of section 68, may record the acknowledgement of responsibility made by the child as an admission as contemplated in section 220 of the Criminal Procedure Act and proceed with the trial.

Family group conference

61. (1) 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 thereof together, supported by their families and other appropriate persons and, attended by persons contemplated in subsection (3)(b), at which a plan is developed on how the child will redress the effects of the offence.

(2) If a child has been referred to appear at a family group conference, a probation officer appointed by the magistrate or inquiry magistrate or child justice court must, within 21 days after such referral, convene the conference or cause the conference to be convened by—

- (a) setting the 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 time and place of the conference.

(3) (a) The family group conference must be facilitated by a family group conference facilitator, who may be a probation officer or a diversion service provider contemplated in section 54(1).

(b) A family group conference may be attended by the following persons:

- (i) The child and his or her parent or an appropriate adult;
- (ii) any person requested by the child;
- (iii) the probation officer, if he or she is not the family group conference facilitator;
- (iv) the prosecutor;
- (v) any police official;
- (vi) the victim of the alleged offence and any other support person of the victim's choice;
- (vii) a member of the community in which the child normally resides; and
- (viii) any person authorised by the family group conference facilitator to attend the conference.

(4) If a family group conference fails to take place at the time and place set for the conference, the probation officer must convene another conference or cause such conference to be convened as contemplated in this section.

(5) Participants in a family group conference must follow the procedure agreed upon by them and may agree to a plan in respect of the child in accordance with subsection (6).

(6) A plan contemplated in subsection (5)—

- (a) may include—
 - (i) the application of any option contained in section 58(3); or

- (ii) any other action appropriate to the child, his or her family and local circumstances which is consistent with the principles contained in this Act; and
- (b) must—
- (i) specify the objectives for the child and the period within which they are to be achieved;
 - (ii) contain details of the services and assistance to be provided to the child and a parent or an appropriate adult;
 - (iii) specify the persons or organisations to provide such services and assistance;
 - (iv) state the responsibilities of the child and of the child's parent or an appropriate adult;
 - (v) state personal objectives for the child and for the child's parent or an appropriate adult;
 - (vi) include such 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 officer or person contemplated in section 59(1).

(b) In the event of 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 such failure, in which case section 60 applies.

(8) If the participants in a family group conference cannot agree on a plan, the conference must be closed and the probation officer must refer the matter back to the magistrate, inquiry magistrate or child justice court for consideration of another diversion option.

(9) No information furnished by the child at a family group conference may be used in any subsequent criminal proceedings arising from the same facts.

Victim-offender mediation

62. (1) 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 thereof together at which a plan is developed on how the child will redress the effects of the offence.

(2) If a child has been referred to appear at a victim-offender mediation, subsections (2), (4), (5), (6), (7), (8) and (9) of section 61 apply with the changes required by the context.

(3) A probation officer appointed by the magistrate, inquiry magistrate or child justice court must convene the victim-offender mediation or cause such mediation to be convened.

(4) The victim-offender mediation must be mediated by a probation officer or a diversion service provider contemplated in section 54(1), which may regulate the procedure to be followed at the mediation

CHAPTER 8

TRIAL IN CHILD JUSTICE COURT

Child justice courts and conduct of trials involving children

- 63.** (1) (a) Any child –
- (i) who is charged with an offence referred to in Part I of Schedule 3 or an offence referred to in items 2, 5 or 6 of Part II of Schedule 3; or
 - (ii) whose matter has not been diverted in terms of Chapter 6 and 7, and who has been dealt with in terms of section 50(3)(b) or (c),
- must appear before a court with the requisite jurisdiction for plea and trial.
- (b) A court contemplated in paragraph (a) must be regarded as a child justice court.
- (c) A child justice court, when dealing with the trial of a child referred to in subsection (1), 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 9.
- (2) Where a child and an adult are charged together at the same trial in respect of the same set of facts in terms of sections 155, 156 and 157 of the Criminal Procedure Act, a court must apply the provisions of –
- (a) this Act in respect of the child; and
 - (b) the Criminal Procedure Act in respect of the person other than the child.
- (3) Before plea in a child justice court, the presiding officer must, in the prescribed manner—
- (a) inform the child of the nature of the allegations against him or her;
 - (b) inform the child of his or her rights; and
 - (c) explain to the child the further procedures to be followed in terms of this Act.
- (4) A child justice court must, during the proceedings, ensure that the best interests of the child are upheld, and to this end –
- (a) may elicit such additional information as may be required 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) At any sitting of a child justice court, no person may be present unless his or her presence is necessary in connection with the proceedings of the child justice court or unless the presiding officer has granted him or her permission to be present.

Referral of children in need of care to children's court

- 64.** If it appears to the presiding officer during the course of proceedings at a child justice court that –
- (i) a child is a child referred to in section 14(4) of the Child Care Act, 1983 (Act No. 74 of 1983), and it is desirable to deal with the child in terms of sections 13, 14 and 15 of the Child Care Act, 1983; or
 - (ii) the child does not live at his or her family home or in appropriate substitute care; or
 - (iii) the child is alleged to have committed a minor offence or offences aimed at meeting the child's basic need for food and warmth,

the presiding officer may order, at a date and time decided by, and upon such conditions as set by the presiding officer, that the child be brought before a children's court referred to in section 5 of that Act and that the child be dealt with under the said sections 13, 14 and 15.

Parental assistance

65. (1) Subject to subsections (2) and (5), a child must be assisted by a parent or an appropriate adult at proceedings in a child justice court.

(2) If a parent or an appropriate adult 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 or an appropriate adult.

(3) The parent of a child or an appropriate adult who has been warned by an inquiry magistrate to attend proceedings in terms of section 50(3), must attend such proceedings, unless he or she has been exempted in terms of subsection (5).

(4) If a parent or appropriate adult has not been warned to attend as contemplated in subsection (3), the child justice court may, at any stage of the proceedings, subpoena or cause to be subpoenaed any parent or appropriate adult to appear at such proceedings.

(5) A parent or an appropriate adult who has been warned to appear as contemplated 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 in question, and if the presiding officer of the child justice court exempts a parent or an appropriate adult, he or she must do so in writing.

(6) Where a child is not assisted by a parent or an appropriate adult and such 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 contemplated in section 47 applies, with the changes required by the context.

Time limits relating to postponements

- 66.** (1) If a child –
- (a) has not been released into the care of his or her parent or an appropriate adult or on his or her own recognisance; or
 - (b) whose application for bail in terms of Chapter 9 of the Criminal Procedure Act –
 - (i) has been refused; or
 - (ii) has been granted but one or more conditions relating thereto has not been complied with,

and the child 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 30 days at a time, unless exceptional circumstances exist.

(2) Section 50(6)(d) of the Criminal Procedure Act applies to a child whose bail application is pending/has not been finalised.

Postponements and time limits relating to conclusion of trials

67. (1) A child justice court must conclude all trials of accused children as speedily as possible and must ensure that postponements in terms of this Act are limited in number and in duration.

(2) Where a child remains in detention in a prison –

- (a) for a period of two years from the date upon which the child was placed in detention in a prison; or
- (b) when the trial of the child has not been concluded within a period of twelve months from the date upon which the child had pleaded to the charge, the child must be released from detention, unless –
 - (i) the child is charged with an offence referred to in item 1, 2, 3, 4, 5, 6, 7, 9, 10, 11, 12, 13(a), 13(b), but excluding possession of a firearm, or 14 of Part I of Schedule 3, or an offence referred to in item 2, 5 or 6 of Part II of Schedule 3, or any conspiracy, incitement or attempt to commit any of these offences listed here, and substantial and compelling reasons exist for not releasing such child from a prison; or;
 - (ii) the court finds that the blame for the delay in concluding the trial can be attributed substantially to the child or any person acting on behalf of the child.

(3) Any decision made in terms of subsection (2), must enter the reasons for such decision on the record of proceedings.

Child justice court may divert matter

68. (1) (a) A child justice court may, at any time before the conclusion of the case for the prosecution, and, with the consent of the prosecutor, make an order for diversion in respect of the child, if the court is satisfied that-

- (i) the child acknowledges or intends to acknowledge responsibility for the alleged offence;
- (ii) there is a *prima facie* case against the child;
- (iii) the child has not been unduly influenced to acknowledge responsibility;
- (iv) the child and his or her parent, or an appropriate adult, consent to diversion and the diversion option; and
- (v) the offence in question is not an offence referred to in item 1, 2, 3, 4, 5, 6, 7, 9, 10, 11, 12, 13(a), 13(b), but excluding possession of only a firearm, or 14 of Part I of Schedule 3, or an offence referred to in item 2, 5 or 6 of Part II of Schedule 3, or any conspiracy, incitement or attempt to commit any of these offences listed here.

(b) Part 2 of Chapter 7 applies with the changes required by the context if the child justice court makes an order contemplated in subsection (1).

(c) A child justice court that makes a diversion order must postpone proceedings pending the child's compliance with the diversion order in question and warn such 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 continued as contemplated in section 60(4)(b).

(2) (a) The child justice court must, upon receipt of a report from the probation officer that the child has successfully complied with the diversion conditions, and if such child justice court is satisfied that the child has so complied, make an order to stop the proceedings.

(b) If an order to stop the proceedings is made in terms of paragraph (a), the child may not be tried on the facts relating to the offence in question.

(3) If a child fails to comply with an order relating to diversion, section 60 applies.

CHAPTER 9 SENTENCING

PART 1: GENERAL

Child to be sentenced in terms of this Chapter

69. 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

70. (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 is appropriate to the child's circumstances and proportionate to the circumstances surrounding the offence;
- (c) promote the reintegration of the child into the family and community;
- (d) ensure that any necessary supervision, guidance, treatment or services which form part of the sentence assist the child in the process of reintegration; and
- (e) use imprisonment only as a measure of last resort.

(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 residential facility or imprisonment, the child justice court should take the following factors into account:

- (a) The seriousness of the offence;
- (b) the protection of the community;
- (c) the severity of the impact of the offence on the victim;
- (d) the previous failure of the child to respond to non-residential alternatives; and
- (e) the desirability of keeping the child out of prison.

Impact of offence on victim

71. (1) For purposes of this section, a victim impact statement means a sworn statement by the victim or someone authorised by the victim to make a statement on behalf of the victim which reflects the physical, psychological, social, financial or any other consequences of the offence for the victim.

(2) The prosecutor may, when adducing evidence or addressing the

court on sentence, consider the interests of a victim of the offence and the impact of the crime on the victim, and, where practicable, furnish the child justice court with a victim impact statement as contemplated in subsection (1).

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

Pre-sentence reports

72. (1) (a) A child justice court imposing a sentence must, subject to paragraph (b), request a pre-sentence report prepared by a probation officer or any other suitable person 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 such 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 residential facility or imprisonment unless a pre-sentence report has first been obtained.

(2) The probation officer or other person must complete the report as soon as possible but no later than one calendar month following the date upon which such report was requested.

(3) Where a probation officer recommends that a child be sentenced to compulsory residence in a residential facility, such recommendation must be supported by a sworn statement or facsimile copy thereof, as prescribed, obtained by the probation officer from the person in charge of such facility, containing current information regarding the availability or otherwise of accommodation for the child in question.

(4) A child justice court that imposes a sentence other than that recommended in the pre-sentence report must record the reasons for the imposition of a different sentence.

PART 2: SENTENCING OPTIONS

Community-based sentences

73. (1) Sentences which allow a child to remain in the community and which may be imposed in terms of this section are the following:

- (a) Any of the options referred to in sections 56(2) and 58(3) and (5) or any combination thereof; and
- (b) any other community-based sentence which is appropriate to the circumstances of the child and in keeping with the principles of this Act.

(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 regular progress reports, in the prescribed manner, indicating such 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 80.

Restorative justice sentences

74. (1) A child justice court that convicts a child of an offence may refer the matter-

- (a) to a family group conference in terms of section 61;
- (b) for victim-offender mediation in terms of section 62; or
- (c) to any other restorative justice process which is in accordance with the definition of "restorative justice".

(2) Upon receipt of the written recommendations from a family group conference, victim-offender mediation or other restorative justice process, the child justice court may impose a sentence by confirming, amending or substituting the recommendations.

(3) If the child justice court does not agree with the terms of the plan made at a family group conference, victim-offender mediation or other restorative justice process, the court may impose any other sentence contemplated in this Chapter and note the reasons for substituting the plan with such sentence on the record of the proceedings.

(4) A child justice court that has imposed a sentence in terms of subsection (1) must –

- (a) request the probation officer concerned to monitor the child's compliance with the sentence referred to in subsection (3) and to provide the court with regular progress reports, in the prescribed manner, indicating such 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 80.

Fine or alternatives to fine

75. (1) A child justice court convicting a child of an offence for which a fine is appropriate must, before the imposition of such fine-

- (a) inquire into the ability of the child or his or her parents or an appropriate adult to pay such fine, whether in full or in instalments; and
- (b) consider whether the failure to pay such 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, group of persons or institution;
- (b) payment of compensation to a specified person, group of persons or institution where the child or his or her family is able to afford this; or
- (c) an obligation on the child to provide some service or benefit or to pay compensation to a community charity or welfare organisation identified by the child concerned or by the child justice court if there is no identifiable person to whom restitution or compensation can be made.

(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 such sentence and to provide the court with regular progress reports, in the prescribed manner, indicating such 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 80.

Sentences involving correctional supervision

76. A child justice court that convicts a child of an offence may impose a sentence of correctional supervision –

- (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 below the age of 14 years, in terms of section 276(1)(h) of the Criminal Procedure Act.

Sentence of compulsory residence in residential facility

77. (1) A child justice court that convicts a child of an offence may sentence a child to compulsory residence in a residential facility.

(2) A sentence referred to in subsection (1) may 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 earliest.

(3) (a) A child who is sentenced in terms of this section, must be taken in the prescribed manner to the facility specified in the order as soon as possible, but not later than one month after the order has been made.

(b) When making the order referred to in subsection (1), the child justice court must –

- (i) specify the facility to which the child must be admitted, with due regard to the sworn statement obtained by the probation officer as contemplated in section 72(3);
- (ii) cause the order to be brought to the attention of relevant functionaries in the prescribed manner;
- (iii) give directions where the child is to be placed for any period before being admitted to the facility specified in the order, preferably in a placement facility but not in a police cell; and
- (iv) direct a probation officer to monitor the movement of the child to the facility, in compliance with the order, and to report to the court in writing once the child has been admitted to the facility.

(c) Where a sworn statement contemplated in section 72(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 Education dealing with the designation of children to residential facilities to furnish a sworn statement or facsimile copy thereof, as prescribed, in respect of the availability or otherwise of accommodation for the child in question.

(d) If the child has not been admitted to the residential facility within one month of the order having been made, as contemplated in paragraph (a) –

- (i) the probation officer; and
 - (ii) the head of the prison or placement facility,
- contemplated in paragraph (b), must immediately submit a written report to the presiding officer who made the order or, if he or she is for any reason not available, to any other presiding officer of the court in question, who must forthwith hold an inquiry and take appropriate action, which may, after consideration of the evidence recorded, include the imposition of an alternative sentence.

(e) If it comes to the notice of a child justice court that the

probation officer or the head of the prison or placement facility has failed to notify the court as contemplated in paragraph (d), the court must inquire into the probation officer's failure and if it is found that such failure is due to the fault of the probation officer, the court must cause a copy of the finding to this effect to be brought to the attention of the appropriate authority with the view to taking the necessary action.

(4) (a) The Cabinet member responsible for education, in consultation with the Cabinet members responsible for social development, justice and constitutional development, safety and security and correctional services, must develop a policy framework and create a procedure to designate and, if necessary, establish and maintain residential facilities to receive children sentenced in terms of this section.

(b) The policy and procedure contemplated in paragraph (a) must be tabled in Parliament within six months of the commencement of this Act and published in the *Gazette*.

(c) Notice of the designation of any facility pursuant to the procedure contemplated in paragraph (b) must be tabled in Parliament within 30 days from such designation.

Sentence of imprisonment

78. (1) A child justice court, when sentencing a child to imprisonment, must only do so as a measure of last resort.

(2) In compliance with our 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 in terms of any relevant law of a child sentenced to any term of imprisonment.

(3) Notwithstanding any provision in this or any other law, a child who was 16 years of age 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, upon conviction, be dealt with in accordance with the provisions of section 51 of that Act.

(4) Subject to subsection (5), a child who was—

- (a) below the age of 16 years; or
- (b) 16 years of age or older and in respect of whom subsection (3) does not apply at the time of the commission of the offence,

may only be sentenced to imprisonment, if such child is convicted of an offence referred to in —

- (i) Part I of Schedule 3;
- (ii) Item 1, 2, 3, 5, 6, 7 or 8 of Part II of Schedule 3;
- (iii) Part II of Schedule 3, excluding the offences referred to in item 1, 2, 3, 5, 6, 7 or 8 of that Part, if substantial and compelling reasons exist for imposing a sentence of imprisonment;
- (iv) Schedule 2, if substantial and compelling reasons exist for imposing a sentence of imprisonment; or
- (v) Schedule 1, if the child has a record of relevant previous convictions or diversions and substantial and compelling reasons exist for imposing a sentence of imprisonment.

(5) A child referred to in subsection (4) may be sentenced to a sentence of imprisonment for a period not exceeding 25 years.

(6) 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 prior to the sentence being announced.

Postponement or suspension of passing of sentence

79. (1) Subject to section 78(3), 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, except that in respect of a child below the age of 14 years, the period of postponement or suspension may not exceed five years.

(2) In addition to the provisions of section 297 of the Criminal Procedure Act, the following may be considered as conditions:

- (a) Fulfillment of or compliance with any option referred to in section 58(3)(a) to (m), (q) and (7) of this Act; and
- (b) a requirement that the child or any other person designated by the child justice court must again appear before that child justice court on a date or dates to be determined by such 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 regular progress reports indicating such compliance.

Failure to comply with certain sentences

80. (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 73, or a restorative justice sentence imposed in terms of section 74, or has failed to pay a fine, restitution or compensation contemplated in section 75, the child may, in the prescribed manner, be brought before the child justice court which imposed the original sentence for the holding of an inquiry into such failure.

(2) If, upon the conclusion of the inquiry, it is found that the child has failed to comply with the sentence contemplated in subsection (1), the child justice court may confirm, amend or substitute the sentence.

CHAPTER 10 LEGAL REPRESENTATION

Requirements to be complied with by legal representatives

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

- (d) ensure that the assessment, preliminary inquiry, trial or any other proceedings in which the child is involved, are concluded without delay and deal with the matter in a manner to ensure that the best interests of the child are at all times of paramount importance; and

- (e) uphold the highest standards of ethical behaviour and professional conduct.

(2) 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) or the best interests of the child, he or she must record his or her displeasure by way of an order which includes an appropriate remedial action or sanction, including any adverse order relating to the fee charged by the legal representative.

Legal representation at assessment or preliminary inquiry

82. Nothing in this Act precludes a child from being represented by a legal representative of his or her own choice, at his or her own expense, at an assessment or a preliminary inquiry if the probation officer, in the case of an assessment, or the inquiry magistrate, in the case of a preliminary inquiry, consents thereto as contemplated in section 39(3)(d) or 45(4), respectively.

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

83. (1) Where a child appears before a child justice court in terms of Chapter 8 and is not represented by a legal representative of his or her own choice, at his or her own expense, and -

- (a) the child is below the age of 14 years;
- (b) the child is below the age of 16 years and is in detention in a prison; or
- (c) it is likely that a sentence contemplated in section 77 may be imposed if the child is convicted of the offence in question,

the presiding officer must refer the child to the legal aid board referred to in section 2 of the Legal Aid Act, 1969 (Act No. 22 of 1969), for the matter to be evaluated by the board as contemplated in section 3B(1)(b) of that Act.

(2) The prosecutor must indicate to the child justice court whether he or she is of the opinion that the matter is a matter contemplated in subsection (1) before the child is asked to plead and, if so, no plea may be taken until the child has been granted a reasonable opportunity to obtain a legal representative or a legal representative has been appointed.

Child may not waive legal representation in certain circumstances

84. (1) A child contemplated in section 83(1) may not 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 note this on the record of the proceedings and a legal representative must, subject to the provisions of the Legal Aid Guide contemplated 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 a manner set out by the Rules of Court.

CHAPTER 11 APPEALS AND AUTOMATIC REVIEW OF CERTAIN CONVICTIONS AND SENTENCES

Appeals

85. (1) An appeal by a child against a conviction, sentence or order as contemplated 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 offence -

- (a) below the age of 14 years; or
- (b) at least 14 years of age but below the age of 16 years and was not assisted by a legal representative at the time of conviction in a regional court or High Court, as the case may be, and has been sentenced to any form of imprisonment that was not wholly suspended,

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

(2) A child contemplated 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.

Automatic review in certain cases

86. (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 offence,-

- (a) below the age of 14 years; or
- (b) at least 14 years of age but below the age of 16 years and was not assisted by a legal representative at the time of conviction in a magistrate's court,

and has been sentenced to any form of imprisonment that was not wholly suspended, or any sentence of compulsory residence in a residential facility, such 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 such imprisonment.

(2) The provisions of subsection (1) do not apply if an appeal has been noted in terms of section 85.

Release on bail pending review or appeal

- 87.** Whenever the release of a child on bail is considered, pending –
- (a) the review of a sentence as contemplated in section 307 of the Criminal Procedure Act; or
 - (b) the appeal against a sentence as contemplated in sections 309(4) and 316 of the Criminal Procedure Act,
- the provisions of section 25 of this Act, dealing with release of children on bail, apply.

CHAPTER 12 RECORDS OF CONVICTION AND SENTENCE

Automatic expungement of records

88. (1) The effect of an expungement of a record contemplated in this section is that the conviction in question falls away and is deemed to have never occurred.

(2) The record of any conviction and sentence imposed upon a child may not be expunged in terms of this Act, except in respect of an offence referred to in Schedule 1 or 2.

(3) The record of any conviction and sentence imposed upon a child convicted of an offence referred to in Schedule 1 or 2 must, subject to subsection (4), be expunged –

(a) in the case of an offence referred to in Schedule 1, after a period of 5 years from the date of imposition of the sentence; and

(b) in the case of an offence referred to in Schedule 2, after a period of 10 years from the date of imposition of the sentence:

Provided that the record of any conviction and sentence imposed upon a child who, on the date of imposition of the sentence in respect of an offence referred to in either Schedule 1 or 2, is –

(i) below the age of 14 years, must be expunged on the date on which that child turns 18 years; or

(ii) 14 years of age or older, must be expunged on the date on which that child turns 21 years,

whichever period referred to in paragraph (a) or (b) expires or event referred to in subparagraph (i) or (ii) occurs first.

(4) (a) The record of any conviction and sentence imposed upon a child in respect of an offence contemplated in subsection (3) may not be expunged if that child is convicted of a similar or more serious offence during the period from the date of imposition of the sentence until the expiry of the period referred to in paragraph (a) or (b) of that subsection or until the occurrence of the event referred to in subparagraph (i) or (ii) of that subsection.

(b) In the case of a dispute or uncertainty as to whether another offence of which a child is convicted during the period or until the event contemplated in subsection (3)(b) is similar 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.

(5) Notwithstanding the provisions of subsection (3), a person who has been convicted of any offence referred to in Schedule 1 or 2, may approach the Cabinet member responsible for the administration of justice by way of petition, supported by relevant affidavits, stating substantial reasons for the application of the expungement of the record of any conviction and sentence imposed in respect of the offence prior to the expiry of the period or the occurrence of the event contemplated in that subsection and the said Cabinet member, may, if he or she is satisfied that the child's future will be affected in a material way if such record is not expunged, direct that the record of the conviction and sentence in question be expunged.

(6) The record of any diversion order made in respect of a child in terms of this Act must be expunged upon the date on which that child turns 21 years of age, unless the child is convicted of any other offence before that date.

(7) The South African Criminal Bureau is responsible for the automatic expungement of the record of any conviction and sentence as contemplated in subsection (3) or (5), and the Director-General: Social Development is responsible for the expungement of the record of a diversion order as contemplated in subsection (6).

CHAPTER 13 GENERAL PROVISIONS

Rules of Court

89. (1) The Cabinet member responsible for the administration of justice must, within 9 months after the commencement of this Act, and 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, including rules of procedure for -

- (a) preliminary inquiries; and
- (b) the manner in which legal representatives must assist the court as contemplated in section 84(2).

(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

90. (1) The Cabinet member responsible for the administration of justice, in consultation with the Cabinet members responsible for social development, safety and security and correctional services, may establish centres to be known as One-Stop Child Justice Centres.

(2) Each Cabinet member referred to in subsection (1) is severally responsible for the provision of such resources and services by their respective departments as may be agreed to enable a One-Stop Child Justice Centre to function effectively.

(3) The objective of a One-Stop Child Justice Centre is to promote co-operation between all Government Departments and other organisations by centralising services aimed at children contemplated in this Act in order to provide an effective mechanism for service delivery.

(4) A One-Stop Child Justice Centre may include—

- (a) offices for use by members of the South African Police Service;
- (b) offices for use by probation officers;
- (c) facilities to accommodate children temporarily, pending the conclusion of a preliminary inquiry;
- (d) offices for use by a child's legal representative;
- (e) offices for use by persons who are able to provide diversion and prevention services;
- (f) offices for use by persons authorised to trace the families of a child;
- (g) offices for use by persons who are able to provide correctional supervision; and
- (h) a children's court.

(5) 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 such One-Stop Child Justice Centres, 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.

Referral of information relating to age to Department of Home Affairs

91. If an inquiry magistrate or child justice court makes a determination of age as contemplated in section 14 or 15, as the case may be, 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, which Department must report back to the inquiry magistrate or child justice court, as the case may be, the probation officer in question, the child and his or her parent or appropriate adult, 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.

Extension of residence in residential facility for purpose of education

92. Upon completion of a sentence contemplated in section 77, the child concerned may request permission in the prescribed manner from the Cabinet member responsible for education, in consultation with the member of the provincial council responsible for education in which the residential facility is situated, to continue to reside at such residential facility for the purposes of completing his or her school education.

Liability for patrimonial loss arising from performance of community service

93. Section 297A of the Criminal Procedure Act applies in respect of an order relating to the performance of community service in terms of this Act.

Involving children in crime to be regarded as aggravating circumstances

94. Any court convicting a person who is 18 years or older of inciting, conspiring with or being an accomplice of a child in the commission of an offence, must regard the fact of the child's involvement as an aggravating factor in sentencing that person.

Regulations, directives, national instructions, policy framework and register

95. (1) The Cabinet member responsible for the administration of justice, after consultation with the Cabinet members responsible for social development, safety and security, education and correctional services, may make regulations regarding—

- (a) intersectoral structures at the national and provincial levels of government and lower court level to monitor and assess the proper application of and compliance with this Act;
- (b) the provision of services to children in detention awaiting trial in respect of education and social services;
- (c) the establishment of One-Stop Child Justice Centres;
- (d) access to the registers contemplated in subsection (6)(b) and sections 28(3) and 54(5);
- (e) the manner of keeping a list of independent observers;
- (f) any form relating to sworn statements relating to secure care facilities or residential facilities; and
- (g) 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 or promote the objects of this Act.

(2) The regulations contemplated in subsection (1)(a) must –

- (a) provide for mechanisms and timeframes relating to the reporting, by the Director-General: Justice and Constitutional Development, to Parliament on such monitoring and assessment;
- (b) allow for the expansion or reduction of the structures referred to in subsection (1)(a), if necessary;
- (c) provide for the establishment of a single database, containing quantitative and qualitative data relating, among others, to -
 - (i) arrest or methods of securing attendance at criminal proceedings;
 - (ii) assessment;
 - (iii) preliminary inquiries;
 - (iv) diversion;
 - (v) children awaiting trial;
 - (vi) bail and placement;
 - (vii) trials;
 - (viii) sentencing;
 - (ix) appeals and reviews; and
 - (x) children below the age of 10 years; and
- (d) provide a compilation of long term studies and analysis of recidivism, crime trends and sentencing trends, amongst other matters.

(3) The regulations contemplated in subsection (1)(b) must be tabled in Parliament for approval within six months after the commencement of this Act.

(4) 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 contemplated in section 10(3);
- (b) in consultation with the Cabinet member responsible for finance, determine the allowances and remuneration of such persons.

(5) (a) The National Director of Public Prosecutions must, in consultation with the Cabinet member responsible for the administration of justice, issue directives regarding -

- (i) all matters which are reasonably necessary or expedient to be provided for in order to achieve the objectives of diversion, the minimum standards

applicable thereto and the factors to be considered when selecting a diversion option, and in particular the following:

- (aa) the diversion of matters in the case of accused persons who, at the time of the commission of an offence or at the institution of criminal proceedings, were 18 years or older but below the age of 21 years, as contemplated in section 4(2)(b);
 - (bb) the diversion of matters in which children below 14 years are accused of having committed rape or compelled rape in circumstances contemplated in item 1, or an offence referred to in item 3 or 4 of Part II of Schedule 3, including the minimum norms for such diversion and the circumstances in which such matters might be diverted; and
 - (cc) the diversion of matters by a prosecutor in respect of minor offences before a preliminary inquiry in terms of Chapter 6; and
- (ii) 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(2).

(b) The Minister 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 within four months after the commencement of this Act.

(d) Any directive issued under this subsection may be amended or withdrawn.

(6) (a) The National Commissioner of the South African Police Service must, in consultation with the Directors-General: Social Development, Justice and Constitutional Development and Education and the Commissioner of Correctional Services, issue national instructions regulating-

- (i) the attendance of and assistance by a parent or an appropriate adult when a child makes a confession, an admission, during a pointing out or during the holding of an identity parade;
- (ii) all aspects relating to the arrest of a child which are not regulated in section 18 of this Act and which, in the opinion of the National Commissioner, require regulation in order to give full effect to that section, including the procedures to be followed when notifying a child's parent or an appropriate adult of such arrest;
- (iii) all aspects relating to the service of a summons which are not regulated in section 19 of this Act 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 warning by a police official which are not regulated in section 20 of this Act and which, in the opinion of the National Commissioner, require regulation in order to give full effect to that section;
- (v) all aspects relating to the protection of children detained in police custody which are not regulated in section 28 of this Act and which, in the opinion of the National Commissioner, require regulation in order to give full effect to that section;
- (vi) all aspects relating to the treatment and conditions of children while in detention at a preliminary inquiry or at a court which are not regulated in section 34 and which, in the opinion of the National Commissioner, require regulation in order to give full effect to that section;

- (vii) all aspects relating to locating a parent or appropriate adult for purposes of attending an assessment as contemplated in section 39 in order to give full effect to that section; and
- (viii) the manner in which police officials who fail to make or furnish a report contemplated in section 21(2), are to be dealt with.

(b) The National Commissioner of the South African Police Service must-

- (i) submit any national instructions contemplated in this subsection to Parliament 30 days before they are issued; and
- (ii) after the expiry of the 30 day period publish them in the *Gazette*.

(c) The first national instructions so issued must be submitted to Parliament within four months after the commencement of this Act.

(d) Any national instructions issued under this subsection may be amended or withdrawn.

(7) (a) The Cabinet member responsible for social development, in consultation with the Cabinet members responsible for justice, education and safety and security, must-

- (i) create a policy framework to develop the capacity within all levels of government, the non-governmental sector and civil society to develop, establish and maintain programmes specifically suited to the needs of children

-

(aa) below the age of 10 years; and

(bb) 10 years of age or older but below 14 years in respect of whom criminal capacity has not been proved as contemplated in section 10, through the provision of financial and technical support; and

- (ii) ensure that such programmes are accredited in terms of the system to be established in terms of section 54.

(b) The Director-General: Social Development or any person designated by such Director-General 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 7(6) and section 10(6).

(c) The register contemplated in paragraph (b) 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.

(d) 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.

(8) For the purposes of section 31, the Director-General: Social Development must, from time to time, provide the Director-General: Justice and Constitutional Development with all relevant information relating to-

(a) the location of all placement facilities in South Africa;

(b) the amenities and features of each facility; and

(c) the level of security offered by each facility.

(9) The Director-General: Justice and Constitutional Development must refer the information contemplated in subsection (8) to all relevant roleplayers as soon as such information becomes available.

Transitional Arrangements

96. (1) 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 contemplated in section 54(2)(b)(iii).

(2) All reform schools as defined in the Child Care Act, 1983 (Act No. 74 of 1983), existing at the commencement of this Act, are deemed to be residential facilities for purposes of this Act.

Repeal or amendment of laws and Schedules to this Act

97. (1) The laws specified in Schedule 6 are hereby repealed or amended to the extent set out in the third column of that Schedule.

(2) (a) The Cabinet member responsible for the administration of justice may amend the amounts determined in Schedules 1, 2, 3, 4 and 5 of this Act by notice in the *Gazette*.

(b) Any amount amended as contemplated in paragraph (a) must, before publication in the *Gazette*, be submitted to and approved by Parliament.

Short title and commencement

98. This Act is called the Child Justice Act, 2007, and takes effect on a date fixed by the President by proclamation in the *Gazette*.

Schedule 1

(Sections 4(2)(b), 5(2)(d), 11(b), (c) and (d), 18(1), 22(1), 24(1), 25(4)(a), 27(a), 31(1)(b), 35(a), 42(1)(a), 44(1)(a)(i), 72(1)(b), 78(4), 88(2), (3)(a) and (5), and 97(2)(a))

1. Robbery, other than robbery with aggravating circumstances, where the amount involved does not exceed R1 500.
2. Fraud, extortion, forgery and uttering or an offence referred to in the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), where the amount involved does not exceed R1 500.
3. 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 R1 500.
4. Malicious injury to property, where the amount involved does not exceed R1 500.
5. Common assault where grievous bodily harm has not been inflicted.
6. Perjury
7. Contempt of Court
8. Public Indecency
9. Bestiality
10. Blasphemy
11. Compounding
12. Administering poisonous or noxious substance
13. *Crimen expositionis infantis*
14. *Crimen iniuria*
15. Defamation
16. Abduction
17. Trespass.
18. Any offence under any law relating to the illicit possession of dependence producing drugs, other than any offence referred to in Item 19 of this Schedule, where the quantity involved does not exceed R1 500 in value.
19. 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 in equivalence with the Adjustment of Fines Act, 1991 (Act 101 of 1991).
20. Any conspiracy, incitement or attempt to commit any offence referred to in this Schedule.

Schedule 2

(Sections 4(2)(b), 5(2)(c), 11(c) and (d), 24(1), 25(4)(b), 27 (a), 31(1)(b), 35(a),
44(1)(a)(ii), 78(4), 88(2), (3)(b) and (5), and 97(2)(a)

1. Public violence.
2. Culpable homicide.
3. Arson, where the damage does not exceed R100 000 in value.
4. Housebreaking, whether under the common law or a statutory provision, with the intent to commit an offence.
5. Robbery, other than robbery with aggravating circumstances, where the amount exceeds R1 500 but does not exceed R100 000.
6. 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 but does not exceed R20 000.
7. Theft, whether under the common law or a statutory provision, or receiving stolen property knowing it to have been stolen, where the amount involved exceeds R1 500 but does not exceed R100 000.
8. Malicious injury to property, where the amount involved exceeds R1 500 but does not exceed R100 000.
9. Assault, involving the infliction of grievous bodily harm.
10. Sexual assault, compelled sexual assault or compelled self-sexual assault as contemplated in sections 5, 6 and 7 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, respectively, other than sexual assault, compelled sexual assault and compelled self-sexual assault contemplated in items 2 and 3 of Part II of Schedule 3.
11. Compelling or causing persons 18 years or older to witness sexual offences, sexual acts or self-masturbation, as contemplated in section 8 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007.
12. Exposure or display of or causing exposure or display of genital organs, anus or female breasts to persons 18 years or older (“flashing”), as contemplated in section 9 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007.
13. Engaging sexual services of persons 18 years or older, as contemplated in section 11 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007.
14. Incest, bestiality and sexual acts with a corpse, as contemplated in sections 12, 13 and 14 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, respectively.
15. Violating a dead body or grave.
16. Defeating or obstructing the course of justice.
17. Any offence referred to in section 1 or 1A of the Intimidation Act, 1982 (Act No. 72 of 1982).
18. Any offence under any law relating to the illicit possession of dependence producing drugs, other than any offence referred to in Item 19 of this Schedule, where the quantity involved exceeds R500 but does not exceed R1 500 in value.
19. Any other statutory offence where the maximum penalty determined by that statute is imprisonment for a period exceeding three months but less than one

- year or a fine in equivalence with the Adjustment of Fines Act, 1991 (Act No. 101 of 1991).
20. Any conspiracy, incitement or attempt to commit any offence referred to in this Schedule.

Schedule 3

PART I

(Sections 5(2)(a) , 11 (e), 16(2)(a)(ii), 11(c), 27(b), 30(1)(b), 30(2), 63(1)(a)(i), 67(2), 68(1)(a)(v), 78(4) and 97(2)(a)

1. Treason.
2. Sedition.
3. Murder.
4. Rape or compelled rape as contemplated in sections 3 and 4 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, respectively–
 - (a) where the child is 14 years or older at the time of the commission of the alleged offence; or
 - (b) where the child is below the age of 14 years at the time of the commission of the alleged offence, and if the offence is committed-
 - (i) in circumstances where the victim was raped more than once whether by the child in question or by any co-perpetrator or accomplice;
 - (ii) by more than one person where such persons acted in the furtherance of a common purpose or a conspiracy;
 - (iii) by a child who has one or more previous convictions for a sexual offence;
 - (iv) where the victim was vulnerable due to a physical or mental disability, old age or infancy;
 - (v) in circumstances involving the infliction of grievous bodily harm;
 - (vi) by a child knowing that he or she has the acquired immune deficiency syndrome or the human-immuno deficiency virus;
5. Sexual exploitation of children, sexual grooming of children, exposure or display of or causing exposure or display of child pornography or pornography to children and using children for or benefiting from child pornography, as contemplated in sections 17, 18, 19 and 20 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, respectively.
6. 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, as contemplated in sections 23, 24, 25, and 26 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, respectively.
7. Trafficking in persons for sexual purposes as contemplated in section 71(1) and Involvement in trafficking in persons for sexual purposes as contemplated in section 71(2) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007
8. Kidnapping
9. Robbery -
 - (a) where there are aggravating circumstances; or
 - (b) involving the taking of a motor-vehicle.

10. 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).
11. 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).
12. 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).
13. 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.
14. Any offence referred to in section 13(f) of the Drugs and Drugs Trafficking Act, 1992 (Act No. 140 of 1992).
15. Fraud, extortion, forgery and uttering or any offence referred to in the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), where the amount involved exceeds R250 000.
16. Any offence under any law relating to the illicit possession of dependence producing drugs, other than an offence referred to in Item 17 of this Part, where the quantity involved exceeds R20 000 in value.
17. Any other statutory offence where the maximum penalty determined by that statute is imprisonment for a period exceeding five years or a fine in equivalence with the Adjustment of Fines Act, 1991 (Act No. 101 of 1991).
18. Any conspiracy, incitement or attempt to commit any offence referred to in this Part.

PART II

(Sections 5(2)(b), 11(c) and (e), 27(b), 30(1)(b), 30(2), 31(1)(b), 35(a), 44(1)(a)(ii), 57(1), 63(1)(a)(i), 67(2), 68(1)(a)(v), 78(4) and 97(2)(a))

1. Rape or compelled rape as contemplated in section 3 and 4 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, respectively, where the child is under the age of 14 years at the time of the commission of the alleged offence, and the rape or compelled rape was committed in circumstances other than those contemplated in item 4(b) of Part I of Schedule 3
2. Sexual assault, compelled sexual assault or compelled self-sexual assault as contemplated 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.
3. Sexual assault, compelled sexual assault or compelled self-sexual assault as contemplated in sections 5, 6 and 7 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, respectively, on a person under the age of 16 years.
4. Acts of consensual sexual penetration with certain children (statutory rape) and acts of consensual sexual violation with certain children (statutory sexual

- assault), as contemplated in sections 15 and 16 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, respectively.
5. Compelling or causing children to witness sexual offences, sexual acts or self-masturbation and exposure or display of or causing of exposure or display of genital organs, anus or female breasts to children ("flashing"), as contemplated in sections 21 and 22 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, respectively.
 6. Exposure or display of or causing exposure or display of child pornography to persons 18 years or older, as contemplated in section 10 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007.
 7. Robbery, other than robbery with aggravating circumstances, where the amount involved exceeds R100 000.
 8. 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 R20 000 but does not exceed R250 000.
 9. Theft, whether under the common law or a statutory provision, or receiving stolen property knowing it to have been stolen, where the amount involved exceeds R100 000.
 10. Malicious injury to property, where the damage involved exceeds R100 000.
 11. Arson, where the damage involved exceeds R100 000.
 12. 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).
 13. Any offence under any law relating to the illicit possession of dependence producing drugs, other than any offence referred to in item 15 of this Part, where the quantity involved exceeds R1 500 but does not exceed R20 000 in value.
 14. Any other 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.
 15. Any other statutory offence where the maximum penalty determined by that statute is imprisonment for a period of more than one year but less than five years or a fine in equivalence with the Adjustment of Fines Act, 1991 (Act No. 101 of 1991).
 16. Any conspiracy, incitement or attempt to commit any offence referred to in this Part

Schedule 4

(Sections 25(4)(c) and 97(2)(a))

1. Treason.
2. Murder.
3. Attempted murder involving the infliction of grievous bodily harm.
4. Rape.
5. Any offence referred to in section 13(f) of the Drugs and Drug Trafficking Act, 1992 (Act No. 140 of 1992), if it is alleged that-
 - (a) the value of the dependence-producing substance in question is more than R50 000,00; or
 - (b) the value of the dependence-producing substance in question is more than R10 000,00 and 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; or
 - (c) the offence was committed by any law enforcement officer.
6. Any offence relating to the dealing in or smuggling of ammunition, firearms, explosives or armament, or the possession of an automatic or semi-automatic firearm, explosives or armament.
7. Any offence in contravention of section 36 of the Arms and Ammunition Act, 1969 (Act No. 75 of 1969), on account of being in possession of more than 1 000 rounds of ammunition intended for firing in an arm contemplated in section 39(2)(a)(i) of that Act.
8. Any offence relating to exchange control, corruption, extortion, fraud, forgery, uttering or theft-
 - (a) involving amounts of more than R500 000,00; or
 - (b) involving amounts of more than R100 000,00, 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; or
 - (c) if it is alleged that the offence was committed by any law enforcement officer-
 - (i) involving amounts of more than R10 000,00; or
 - (ii) as a member of a group of persons, syndicate or any enterprise, acting in the execution or furtherance of a common purpose or conspiracy.
9. Indecent assault on a child under the age of 16 years.
10. An offence referred to in Schedule 1 to the Criminal Procedure Act-
 - (a) and the accused has previously been convicted of an offence referred to in Schedule 1 to the Criminal Procedure Act; or
 - (b) which was allegedly committed whilst he or she was released on bail in respect of an offence referred to in Schedule 1 to the Criminal Procedure Act.

Schedule 5

(Section 25(4)(c))

1. Murder, when-
 - (a) it was planned or premeditated;
 - (b) the victim was-
 - (i) a law enforcement officer performing his or her functions as such, whether on duty or not, or a law enforcement officer who was killed by virtue of his or her holding such a position; or
 - (ii) a person who has given or was likely to give material evidence with reference to any offence referred to in Schedule 1 to the Criminal Procedure Act;
 - (c) the death of the victim was caused by the accused in committing or attempting to commit or after having committed or having attempted to commit one of the following offences:
 - (i) Rape; or
 - (ii) robbery with aggravating circumstances; or
 - (d) the offence was committed by a person, group of persons or syndicate, acting in the execution or furtherance of a common purpose or conspiracy.
2. Rape-
 - (a) when committed-
 - (i) in circumstances where the victim was raped more than once, whether by the accused or by any co-perpetrator or accomplice;
 - (ii) by more than one person, where such persons acted in the execution or furtherance of a common purpose or conspiracy;
 - (iii) by a person who is charged with having committed two or more offences of rape; or
 - (iv) by a person, knowing that he has the acquired immune deficiency syndrome or the human immunodeficiency virus;
 - (b) where the victim-
 - (i) is a girl under the age of 16 years;
 - (ii) is a physically disabled woman who, due to her physical disability, is rendered particularly vulnerable; or
 - (iii) is a mentally ill woman as contemplated in section 1 of the Mental Health Act, 1973 (Act 18 of 1973);
 - (c) involving the infliction of grievous bodily harm.
3. Robbery, involving-
 - (a) the use by the accused or any co-perpetrators or participants of a firearm;
 - (b) the infliction of grievous bodily harm by the accused or any of the co-perpetrators or participants; or
 - (c) the taking of a motor vehicle.
4. Indecent assault on a child under the age of 16 years, involving the infliction of grievous bodily harm.
5. An offence referred to in Schedule 5-
 - (a) and the accused has previously been convicted of an offence referred to in Schedule 5 or this Schedule; or

- (b) which was allegedly committed whilst he or she was released on bail in respect of an offence referred to in Schedule 5 or this Schedule.

SCHEDULE 6

(Section 97(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 |
| Act No. 71 of 1968 | Dangerous Weapons Act, 1968 | <p>Amendment of section 4 by the substitution for subsection (2) of the following subsection:</p> <p>“(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.”.</p> |
| Act No. 51 of 1977 | Criminal Procedure Act, 1977 | <p>(a) Substitution for section 6 of the following section:</p> <p>"Power to withdraw charge, <u>divert matter</u> or stop prosecution</p> <p>6. (1) [An attorney-general] <u>A Director of Public Prosecutions</u> or any person conducting a prosecution at the instance of the State or any body or person conducting a prosecution under section 8, may –</p> <p>(a) before an accused pleads to a charge, withdraw that charge, in which event the accused shall not be entitled to a verdict of acquittal in respect of that charge;</p> <p>(b) at any time after an accused has pleaded, but before conviction, stop the prosecution in respect of that charge, in which event the court trying the accused shall acquit the accused in respect of that charge: Provided that where a prosecution is conducted by a person other than [an attorney-general] a</p> |

Director of Public Prosecutions or a body or person referred to in section 8, the prosecution shall not be stopped unless the **[attorney-general]** Director of Public prosecutions or any person authorized thereto by the **[attorney-general]** Director of Public Prosecutions, whether in general or in any particular case, has consented thereto.

(2) In the case of a person who, at the time of the commission of an offence or at the institution of criminal proceedings, was eighteen years or older but under the age of twenty one years, the Director of Public Prosecutions or a prosecutor designated thereto by the Director may, in exceptional circumstances and in accordance with directives issued by the National Director of Public Prosecutions, if the offence in question is not one of those offences which is excluded from diversion in terms of section 11(e) of the Child Justice Act, 2003 (Act No. XX of 2003), direct that the matter be referred for diversion in terms of Chapter 6 or Part 2 of Chapter 7 of that Act.".

(b) Amendment of section 7 by the substitution for subsection (1) of the following subsection:

"(1) In any case in which **[an attorney-general]** a Director of Public Prosecutions declines to prosecute for an alleged offence-

(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;

(b) a husband, if the said offence

was committed in respect of his wife;

- (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
- (d) the legal guardian or curator of a minor or lunatic, if the said offence was committed against his ward,

may, subject to the provisions of section 9 and section 53(2) of the Child Justice Act, 2003, (Act no xx of 2003), either in person or by a legal representative, institute and conduct a prosecution in respect of such offence in any court competent to try that offence.”.

- (c) Substitution for section 38 of the following section:

“Methods of securing attendance of accused in court

38. (1) The methods of securing the attendance of an accused who is eighteen years of age 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.

(2) 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, 2003 (Act No. xx of 2003).”.

- (d) Amendment of section 50 by the deletion of subsections (4) and (5).

- (e) Amendment of section 55 –
(i) by the substitution for

subsection (1) of the following subsection:

“(1) An accused who is eighteen years of age 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).”.

(ii) by the insertion after subsection (1) of the following subsection:

“(1A) The provisions of sections 47 and 65(7) of the Child Justice Act, 2003 (Act No. xx of 2003), apply to an accused who is under the age of eighteen years and who fails to appear at a preliminary inquiry or child justice court in terms of a summons issued under that Act.”.

(f) Repeal of section 71.

(g) Amendment of section 72 –
(i) by the deletion of paragraph (b) of subsection (1) and paragraph (b) of subsection (2); and

(ii) by the substitution for the introductory part of subsection (1) of the following introductory part:

“(1) If an accused who is eighteen years of age or older 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 –“

(h) Amendment of section 73 by the substitution for subsection (3) of the following subsection:

“(3) [An accused who is under the age of eighteen years may be assisted by his parent or guardian at criminal proceedings, and any] In addition to the provisions of sections 3(f), 39(2), 45(1)(b) and 65 of the Child Justice Act, 2003 (Act No. xx of 2003), 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, 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.”.

(i) Repeal of section 74.

(j) Amendment of section 153 –
(i) by the substitution for subsection (1) of the following subsection:

“(1) In addition to the provisions of section 63(5) of the Child Justice Act, 2003 (Act No. xx of 2003), if [If] 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.”.

(ii) by the deletion of subsection (4).

(k) Substitution for section 211 of the following section:

“Evidence during criminal proceedings of previous convictions

211. Except where otherwise expressly provided by this Act or the Child Justice Act, 2003 (Act No. xx of 2003), 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.”.

(l) Repeal of section 254.

(m) Amendment of section 276A by the substitution for subsections (1) and (2) of the following subsections:

“(1) Punishment shall, subject to the provisions of section 76 of the Child Justice Act, 2003 (Act No. xx of 2003), only be imposed under section 276 (1) (h)-

(a) after a report of a probation officer or a correctional official has been placed before the court; and

(b) for a fixed period not exceeding three years.

(2) Punishment shall, subject to the provisions of section 76 of the Child Justice Act, 2003 (Act No. xx of 2003), only be imposed under section 276 (1) (i)-

(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

(b) for a fixed period not exceeding five years.”.

(n) Repeal of section 290.

(o) Repeal of section 291.

(p) Amendment of section 297 by the deletion of subsection (1A).

(q) Amendment of section 297 by the substitution for the words following on subparagraph (ii) of paragraph (a) of subsection (9) of the following words:

"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 in terms of the Child Justice Act, [which may, where the person concerned is under the age of twenty one years, include an order under the provisions of section 290,] or, in the case of subparagraph (ii), put into operation the sentence which was suspended."

(r) Amendment of section 302 by the substitution for paragraph (i) of subsection (1)(a) of the following paragraph:

"(i) which, in the case of imprisonment (including detention in a **[reform school]** residential facility as defined in section 1 of the **[Child Care Act, 1983 (Act 74 of 1983)]** Child Justice Act, 2003 (Act No. xx of 2003)), 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;”.

(s) Amendment of section 309 by the substitution for paragraph (a) of subsection (1) of the following paragraph:

"(a) Subject to section 85 of the Child Justice Act, 2003 (Act No. XX of 2003), 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[: **Provided that if that person was, at the time of the commission of the offence –**

(i) **below the age of 14 years; or**

(ii) **at least 14 years of age but below the age of 16 years and was not assisted by a legal representative at the time of conviction in a regional court; and**

(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]: 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).".

(t) Amendment of section 309B by the substitution for paragraph (a)

of subsection (1) of the following paragraph:

"(a) Subject to section 85 of the Child Justice Act, 2003 (Act No. XX of 2003), 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."

(u) Amendment of section 309D by the substitution for paragraph (a) of subsection (1) of the following paragraph:

"(a) An accused, other than a child contemplated in the Child Justice Act, 2003 (Act No. XX of 2003), **[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."

(v) Amendment of section 316 by the substitution for paragraph (a) of subsection (1) of the following paragraph:

"(a) Subject to section 85 of the Child Justice Act, 2003 (Act No. XX of 2003), any accused[, **other than an accused contemplated in paragraph (c),]** 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."

(w) Amendment of section 316 by the deletion of paragraph (c) of

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| | | <p>subsection (1).</p> <p>(x) Substitution for section 337 of the following section:</p> <p>“Estimating age of person</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, 2003 (Act No. xx of 2003)</u>, estimate the age of such person by his <u>or her</u> 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 <u>or she</u> was charged if the correct age had been proved.”.</p> |
| Act No. 74 of 1983 | Child Care Act, 1983 | <p>(a) Amendment of section 1 by the deletion of the definition of “reform school”.</p> <p>(b) Amendment of section 1 by the insertion after the definition of “pupil” of the following definition:</p> <p><u>“residential facility’ means a school maintained for the reception, care and training of children sent thereto in terms of the Child Justice Act, 2003 (Act No. XX of 2003).”.</u></p> <p>(c) Amendment of –</p> <p>(i) the definitions of "children's home" and "institution" in section 1;</p> <p>(ii) section 34(4); and</p> <p>(iii) the Schedule,</p> <p>by the substitution for the expression</p> |

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| | | <p>"reform school" wherever it appears in those provisions of the expression "residential facility".</p> <p>(d) 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 23(4)(e) or 72 of the Child Justice Act, 2003 (Act No. xx of 2003)".???</p> <p>(e) Amendment of –</p> <p>(i) the definition of "pupil" in section 1;</p> <p>(ii) section 20(5);</p> <p>(iii) section 33(1);</p> <p>(iv) section 37; and</p> <p>(v) section 53(1)(a),</p> <p>by the substitution for the expression "section 290 of the Criminal Procedure, 1977 (Act No. 51 of 1977)" wherever it appears in those provisions of the expression "section 72 of the Child Justice Act, 2003 (Act No. XX of 2003)".</p> <p>(f) Amendment of –</p> <p>(i) section 30(4);</p> <p>(ii) section 35(1)(b);</p> <p>(iii) section 38(1)(a);</p> <p>(iv) section 53(2); and</p> <p>(v) section 55(3),</p> <p>by the substitution for the expression "Criminal Procedure Act, 1977 (Act No. 51 of 1977)" wherever it appears in those provisions of the expression "Child Justice Act, 2003 (Act No. XX of 2003)".</p> <p>(g) Amendment of section 13(5)(b) by the substitution for the expression "section 74(6) and (7) of the Criminal Procedure Act, 1977 (Act No. 51 of 1977)" of the expression "section 63(7) of the Child Justice Act, 2003 (Act No. XX of 2003)".</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:

"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 and, in the case of a child, also means an assessment as contemplated in the Child Justice Act, 2003 (Act No. XX of 2003);"

(b) Amendment of section 1 by the substitution for the definition of "diversion" of the following definition:

"diversion' means diversion from the formal court procedure with or without conditions and, in the case of a child, also means diversion as contemplated in the Child Justice Act, 2003 (Act No. XX of 2003);".

(c) Amendment of section 1 by the substitution for the definition of "diversion programme" of the following definition:

"diversion programme' means a programme within the context of the family and community –

(a) in respect of a person who is alleged to have committed an offence; and

(b) which is aimed at keeping that person away from the formal court procedure, and in the case of a child also means a diversion programme as contemplated in the Child Justice Act, 2003 (Act No. XX of 2003);".

(d) Amendment of section 1 by the substitution for the definition of

"family group conferencing" of the following definition:

"'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 and, in the case of a child, also means a family group conference contemplated in the Child Justice Act, 2003 (Act No. XX of 2003);".

(e) Amendment of section 3(e) and (f) by the substitution for the expression "reform school" wherever it appears of the expression "residential facility".

(f) Amendment of section 4 by the substitution for subsection (3) of the following subsection:

"(3)(a) If a probationer, other than a probationer who is subject to the provisions of the Child Justice Act, 2003 (Act No. xx of 2003), 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.

(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 *mutatis mutandis*.

(c) If a probationer who is subject to the provisions of the Child Justice Act, 2003 (Act No. xx of 2003), fails to comply with the conditions on which he or she has

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| | | <p><u>been placed under the supervision of a probation officer, the provisions of sections 23(7) and 58 of that Act apply.</u></p> <p>(g) The repeal of section 4B.</p> |
| Act No. 20 of 1992 | Prevention and Treatment of Drug Dependency Act, 1992 | <p>(a) Amendment of section 1 by the deletion of the definition of "reform school".</p> <p>(b) Amendment of section 1 by the insertion after the definition of "regulation" of the following definition: <u>"residential facility" means a school maintained for the reception, care and training of children sent thereto in terms of the Child Justice Act, 2003 (Act No. XX of 2003).</u></p> <p>(c) Amendment of – (i) section 30(1); and (ii) section 31, by the substitution for the expression "reform school" wherever it appears in those provisions of the expression "residential facility".</p> |
| Act No. 59 of 1992 | Social Assistance Act, 1992 | 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 24(4)(e) or 72 of the Child Justice Act, 2003 (Act No. xx of 2003)". |
| Act No. 105 of 1997 | Criminal Law Amendment Act, 1997 | <p>Amendment of section 51—</p> <p>(a) by the deletion of subsections (3)(b) and (7); and</p> <p>(b) by the substitution for subsection (6) of the following subsection:</p> <p>"(6) The provisions of this section [shall not be] — <u>(a) are not</u> applicable in respect of a child who was under the age of 16 years at the time of the commission of the act which constituted the</p> |

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| | | <p>offence in question; and <u>(b) must be read with section 78 of the Child Justice Act, 2003 (Act No. XX of 2003), in respect of a child who was 16 years or older but under the age of 18 years at the time of the commission of the act which constituted the offence in question."</u></p> |
| Act No. 111 of 1998 | Correctional Services Act, 1998 | <p>(a) Amendment of section 43 by the substitution for subsection (4) of the following subsection:</p> <p>"(4) The Commissioner may, in consultation with the Director-General of the Department of [Welfare] Education, transfer a sentenced child to a [reform school] residential facility as contemplated in the Child [Care Act, 1983 (Act No. 74 of 1983)] Justice Act, 2003 (Act No. XX of 2003), and from the date of such transfer the provisions of section [290 of the Criminal Procedure Act] 77 of the Child Justice Act, 2003, will apply."</p> <p>(b) Amendment of – (i) section 50(1); and (ii) section 52(2)(b), 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)(e) of the Child Justice Act, 2003 (Act No. XX of 2003)".</p> <p>(c) Amendment of section 51 by the substitution for paragraph (e) of subsection (1) of the following paragraph:</p> <p>"(e) those placed under the supervision of a correctional official in terms of sections 62(f)[, 71, 290(1)(a) and 290(3)]of the Criminal Procedure Act or section <u>24(4)(e) or 72 of the Child</u></p> |

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| | | <u>Justice Act, 2003 (Act No. XX of 2003).</u> " |
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SCHEDULE 7

(Section 4(3)(b))

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

Explanatory notes:

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

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

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

| Section no | Criminal Procedure Act section heading | Extent to which affected by Child Justice Bill (CJB) |
|------------|--|---|
| 1 | Definitions | |
| 6 | Power to withdraw charge or stop prosecution | * Subsection (1) amended by Schedule 7 CJB * New subsection (2) inserted |
| 7 | Private prosecution on certificate <i>nolle prosequi</i> | Subsection (1) amended by Schedule 7 CJB |
| 8 | Private prosecution under statutory right | |
| 9 | Security by private prosecutor | |
| 10 | Private prosecution in name of private prosecutor | |
| 11 | Failure of private prosecutor to appear | |
| 12 | Mode of conducting private prosecution | |
| 13 | Attorney-general may intervene in private prosecution | |
| 14 | Costs in respect of process | |
| 15 | Costs of private prosecution | |
| 16 | Costs of accused in private prosecution | |
| 17 | Taxation of costs | |
| 18 | Prescription of right to institute prosecution | |
| 19 | Saving as to certain powers conferred by other | |

| Section no | Criminal Procedure Act section heading | Extent to which affected by Child Justice Bill (CJB) |
|-------------------|---|---|
| | laws | |
| 20 | State may seize certain articles | |
| 21 | Article to be seized under search warrant | |
| 22 | Circumstances in which article may be seized without search warrant | |
| 23 | Search of arrested person and seizure of article | |
| 24 | Search of premises | |
| 25 | Power of police to enter premises in connection with State security or any offence | |
| 26 | Entering of premises for purposes of obtaining evidence | |
| 27 | Resistance against entry or search | |
| 28 | Wrongful search an offence, and award of damages | |
| 29 | Search to be conducted in decent and orderly manner | |
| 30 | Disposal by police official of article after seizure | |
| 31 | Disposal of article where no criminal proceedings are instituted or where it is not required for criminal proceedings | |
| 32 | Disposal of article where criminal proceedings are instituted and admission of guilt fine is paid | |
| 33 | Article to be transferred to court for purposes of trial | |
| 34 | Disposal of article after commencement of criminal proceedings | |
| 35 | Forfeiture of article to State | |
| 36 | Disposal of article concerned in an offence committed outside Republic | |
| 37 | Powers in respect of prints and bodily appearance of accused | |
| 38 | Methods of securing attendance of accused in court | Amended by Schedule 7 CJB |
| 39 | Manner and effect of arrest | |
| 40 | Arrest by peace officer without warrant | |
| 41 | Name and address of certain persons and power of arrest by peace officer without warrant | |
| 42 | Arrest by private person without warrant | |
| 43 | Warrant of arrest may be issued by magistrate or justice | To be read with clause 18(2) CJB |
| 44 | Execution of warrants | |
| 45 | Arrest on telegraphic authority | |
| 46 | Non-liability for wrongful arrest | |
| 47 | Private persons to assist in arrest when called upon | |

| Section no | Criminal Procedure Act section heading | Extent to which affected by Child Justice Bill (CJB) |
|-------------------|--|---|
| 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 7 CJB * Subsection (1)(d) referred to in clause 18(5) CJB * Section referred to in clause 44(1)(c) CJB * Subsection (1)(d) referred to in clause 48(5) CJB * Subsection (6) affected by clause 25(4)(c) CJB |
| 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 clause 19(1) CJB |
| 55 | Failure of accused to appear on summons | Subsection (1) amended by Schedule 7 CJB |
| 56 | Written notice as method of securing attendance of accused in magistrate's court | To be read with clause 17(1)(d) CJB |
| 57 | Admission of guilt and payment of fine without appearance in court | |
| 58 | Effect of bail | To be read with clause 25 CJB |
| 59 | Bail before first appearance of accused in lower court | To be read with clause 25(4)(a) CJB |
| 59A | Attorney-general may authorise release on bail | To be read with clause 25(4)(b) CJB |
| 60 | Bail application of accused in court | To be read with clause 25(4)(c) CJB |
| 62 | Court may add further conditions of bail | |
| 63 | Amendment of conditions of bail | |
| 63A | Release or amendment of bail conditions of accused on account of prison conditions | |
| 64 | Proceedings with regard to bail and conditions to be recorded in full | |
| 65 | Appeal to superior court with regard to bail | |
| 65A | Appeal by attorney-general against decision of court to release accused on bail | |
| 66 | Failure by accused to observe condition of bail | |
| 67 | Failure of accused on bail to appear | |

| Section no | Criminal Procedure Act section heading | Extent to which affected by Child Justice Bill (CJB) |
|-------------------|--|--|
| 67A | Criminal liability of a person who is on bail on the ground of failure to appear or to comply with a condition of bail | |
| 68 | Cancellation of bail | |
| 68A | Cancellation of bail at request of accused | |
| 69 | Payment of bail money by third person | |
| 70 | Remission of bail money | |
| 71 | Juvenile may be placed in place of safety or under supervision in lieu of release on bail or detention in custody | * To be repealed by Schedule 7 CJB * Chapter 4 CJB applies |
| 72 | Accused may be released on warning in lieu of bail | To be repealed by Schedule 7 CJB. Clauses 22 and 24 CJB apply |
| 72A | Cancellation of release on warning | |
| 73 | Accused entitled to assistance after arrest and at criminal proceedings | Subsection (3) amended by Schedule 7 CJB |
| 74 | Parent or guardian of accused under eighteen years to attend proceedings | * To be repealed by Schedule 7 CJB * Clauses 3(f), 38(2), 44(1)(b) and 65 CJB apply |
| 75 | Summary trial and court of trial | |
| 76 | Charge-sheet and proof of record of criminal case | |
| 77 | Capacity of accused to understand proceedings | Referred to in clause 49(4)(b) CJB |
| 78 | Mental illness or mental defect and criminal responsibility | Referred to in clause 49(4)(b) CJB |
| 79 | Panel for purposes of enquiry and report under sections 77 and 78 | |
| 80 | Accused may examine charge | |
| 81 | Joinder of charges | |
| 82 | Several charges to be disposed of by same court | |
| 83 | Charge where it is doubtful what offence committed | |
| 84 | Essentials of charge | |
| 85 | Objection to charge | |
| 86 | Court may order that charge be amended | |
| 87 | Court may order delivery of particulars | |
| 88 | Defect in charge cured by evidence | |
| 89 | Previous conviction not to be alleged in charge | |
| 90 | Charge need not specify or negative exception, exemption, proviso, excuse or qualification | |
| 91 | Charge need not state manner or means of act | |
| 92 | Certain omissions or imperfections not to invalidate charge | |

| Section no | Criminal Procedure Act section heading | Extent to which affected by Child Justice Bill (CJB) |
|-------------------|--|---|
| 93 | Alibi and date of act or offence | |
| 94 | Charge may allege commission of offence on divers occasions | |
| 95 | Rules applicable to particular charges | |
| 96 | Naming of company, firm or partnership in charge | |
| 97 | Naming of joint owners of property in charge | |
| 98 | Charge of murder or culpable homicide sufficient if it alleges fact of killing | |
| 99 | Charge relating to document sufficient if it refers to document by name | |
| 100 | Charge alleging theft may allege general deficiency | |
| 101 | Charge relating to false evidence | |
| 102 | Charge relating to insolvency | |
| 103 | Charge alleging intent to defraud need not allege or prove such intent in respect of particular person or mention owner of property or set forth details of deceit | |
| 104 | Reference in charge to objectionable matter not necessary | |
| 105 | Accused to plead to charge | |
| 105A | Plea and sentence agreements | |
| 106 | Pleas | |
| 107 | Truth and publication for public benefit of defamatory matter to be specially pleaded | |
| 108 | Issues raised by plea to be tried | |
| 109 | Accused refusing to plead | |
| 110 | Accused brought before court which has no jurisdiction | |
| 111 | Minister may remove trial to jurisdiction of another attorney-general | |
| 112 | Plea of guilty | |
| 113 | Correction of plea of guilty | |
| 114 | Committal by magistrate's court of accused for sentence by regional court after plea of guilty | |
| 115 | Plea of not guilty and procedure with regard to issues | |
| 115A | Committal of accused for trial by regional court | |
| 116 | Committal of accused for sentence by regional court after trial in magistrate's court | |
| 117 | Committal to superior court in special case | |
| 118 | Non-availability of judicial officer after plea of not guilty | |
| 119 | Accused to plead in magistrate's court on instructions of attorney-general | |

| Section no | Criminal Procedure Act section heading | Extent to which affected by Child Justice Bill (CJB) |
|-------------------|---|---|
| 120 | Charge-sheet and proof of record | |
| 121 | Plea of guilty | |
| 122 | Plea of not guilty | |
| 122A | Accused to plead in magistrate's court on charge to be tried in regional court | |
| 122B | Charge-sheet and proof of record | |
| 122C | Plea of guilty | |
| 122D | Plea of not guilty | |
| 123 | Attorney-general may instruct that preparatory examination be held | |
| 124 | Proceedings preceding holding of preparatory examination to form part of preparatory examination record | |
| 125 | Attorney-general may direct that preparatory examination be conducted at a specified place | |
| 126 | Procedure to be followed by magistrate at preparatory examination | |
| 127 | Recalling of witnesses after conversion of trial into preparatory examination | |
| 128 | Examination of prosecution witnesses at preparatory examination | |
| 129 | Recording of evidence at preparatory examination and proof of record | |
| 130 | Charge to be put at conclusion of evidence for prosecution | |
| 131 | Accused to plead to charge | |
| 132 | Procedure after plea | |
| 133 | Accused may testify at preparatory examination | |
| 134 | Accused may call witnesses at preparatory examination | |
| 135 | Discharge of accused at conclusion of preparatory examination | |
| 136 | Procedure with regard to exhibits at preparatory examination | |
| 137 | Magistrate to transmit record of preparatory examination to attorney-general | |
| 138 | Preparatory examination may be continued before different judicial officer | |
| 139 | Attorney-general may arraign accused for sentence or trial | |
| 140 | Procedure where accused arraigned for sentence | |
| 141 | Procedure where accused arraigned for trial | |
| 142 | Procedure where attorney-general declines to prosecute | |

| Section no | Criminal Procedure Act section heading | Extent to which affected by Child Justice Bill (CJB) |
|-------------------|---|--|
| 143 | Accused may inspect preparatory examination record and is entitled to copy thereof | |
| 144 | Charge in superior court to be laid in an indictment | |
| 145 | Trial in superior court by judge sitting with or without assessors | |
| 146 | Reasons for decision by superior court in criminal trial | |
| 147 | Death or incapacity of assessor | |
| 149 | Change of venue in superior court after indictment has been lodged | |
| 150 | Prosecutor may address court and adduce evidence | |
| 151 | Accused may address court and adduce evidence | |
| 152 | Criminal proceedings to be conducted in open court | |
| 153 | Circumstances in which criminal proceedings shall not take place in open court | * Subsection (4) to be deleted by Schedule 7 CJB * Subsection (1) amended by Schedule 7 CJB |
| 154 | Prohibition of publication of certain information relating to criminal proceedings | Referred to in clause 46 CJB |
| 155 | Persons implicated in same offence may be tried together | Referred to in clause 63(2) CJB |
| 156 | Persons committing separate offences at same time and place may be tried together | Referred to in clause 63(2) CJB |
| 157 | Joinder of accused and separation of trials | Referred to in clause 63(2) CJB |
| 158 | Criminal proceedings to take place in presence of accused | |
| 159 | Circumstances in which criminal proceedings may take place in absence of accused | |
| 160 | Procedure at criminal proceedings where accused is absent | |
| 161 | Witness to testify viva voce | |
| 162 | Witness to be examined under oath | |
| 163 | Affirmation in lieu of oath | |
| 164 | When unsworn or unaffirmed evidence admissible | |
| 165 | Oath, affirmation or admonition may be administered by or through interpreter or intermediary | |
| 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 | |

| Section no | Criminal Procedure Act section heading | Extent to which affected by Child Justice Bill (CJB) |
|-------------------|--|---|
| 169 | Court may adjourn proceedings to any place | |
| 170 | Failure of accused to appear after adjournment or to remain in attendance | |
| 170A | Evidence through intermediaries | |
| 171 | Evidence on commission | |
| 172 | Parties may examine witness | |
| 173 | Evidence on commission part of court record | |
| 174 | Accused may be discharged at close of case for prosecution | |
| 175 | Prosecution and defence may address court at conclusion of evidence | |
| 176 | Judgment may be corrected | |
| 177 | Court may defer final decision | |
| 178 | Arrest of person committing offence in court and removal from court of person disturbing proceedings | |
| 179 | Process for securing attendance of witness | |
| 180 | Service of subpoena | |
| 181 | Pre-payment of witness expenses | |
| 182 | Witness from prison | |
| 183 | Witness to keep police informed of whereabouts | |
| 184 | Witness about to abscond and witness evading service of summons | |
| 185 | Detention of witness | |
| 186 | Court may subpoena witness | |
| 187 | Witness to attend proceedings and to remain in attendance | |
| 188 | Failure by witness to attend or to remain in attendance | |
| 189 | Powers of court with regard to recalcitrant witness | |
| 190 | Impeachment or support of credibility of witness | |
| 191 | Payment of expenses of witness | |
| 191A | Witness services | |
| 192 | Every witness competent and compellable unless expressly excluded | |
| 193 | Court to decide upon competency of witness | |
| 194 | Incompetency due to state of mind | |
| 195 | Evidence for prosecution by husband or wife of accused | |
| 196 | Evidence of accused and husband or wife on behalf of accused | |
| 197 | Privileges of accused when giving evidence | |
| 198 | Privilege arising out of marital state | |

| Section no | Criminal Procedure Act section heading | Extent to which affected by Child Justice Bill (CJB) |
|-------------------|---|---|
| 199 | No witness compelled to answer question which the witness's husband or wife may decline | |
| 200 | Witness not excused from answer establishing civil liability on his part | |
| 201 | Privilege of legal practitioner | |
| 202 | Privilege from disclosure on ground of public policy or public interest | |
| 203 | Witness excused from answering incriminating question | |
| 204 | Incriminating evidence by witness for prosecution | |
| 205 | Judge, regional court magistrate or magistrate may take evidence as to alleged offence | |
| 206 | The law in cases not provided for | |
| 207 | Saving of special provisions in other laws | |
| 208 | Conviction may follow on evidence of single witness | |
| 209 | Conviction may follow on confession by accused | |
| 210 | Irrelevant evidence inadmissible | |
| 211 | Evidence during criminal proceedings of previous convictions | Amended by Schedule 7 CJB |
| 212 | Proof of certain facts by affidavit or certificate | |
| 212A | Proof of certain facts by affidavit from person in foreign country | |
| 212B | Proof of undisputed facts | |
| 213 | Proof of written statement by consent | |
| 214 | Evidence recorded at preparatory examination admissible at trial in certain circumstances | |
| 215 | Evidence recorded at former trial admissible at later trial in certain circumstances | |
| 217 | Admissibility of confession by accused | |
| 218 | Admissibility of facts discovered by means of inadmissible confession | |
| 219 | Confession not admissible against another | |
| 219A | Admissibility of admission by accused | |
| 220 | Admissions | Referred to in clause 60(4)(b) CJB |
| 221 | Admissibility of certain trade or business records | |
| 222 | Application to criminal proceedings of certain provisions of Civil Proceedings Evidence Act, 1965, relating to documentary evidence | |
| 224 | Judicial notice of laws and other published matter | |
| 225 | Evidence of prints or bodily appearance of accused | |
| 226 | Evidence of no sexual intercourse between | |

| Section no | Criminal Procedure Act section heading | Extent to which affected by Child Justice Bill (CJB) |
|-------------------|---|---|
| | spouses admissible | |
| 227 | Evidence of character | |
| 228 | Evidence of disputed writing | |
| 229 | Evidence of times of sunrise and sunset | |
| 230 | Evidence and sufficiency of evidence of appointment to public office | |
| 231 | Evidence of signature of public officer | |
| 232 | Article may be proved in evidence by means of photograph thereof | |
| 233 | Proof of public documents | |
| 234 | Proof of official documents | |
| 235 | Proof of judicial proceedings | |
| 236 | Proof of entries in accounting records and documentation of banks | |
| 236A | Proof of entries in accounting records and documentation of banks in countries outside Republic | |
| 237 | Evidence on charge of bigamy | |
| 238 | Evidence of relationship on charge of incest | |
| 239 | Evidence on charge of infanticide or concealment of birth | |
| 240 | Evidence on charge of receiving stolen property | |
| 241 | Evidence of previous conviction on charge of receiving stolen property | |
| 242 | Evidence on charge of defamation | |
| 243 | Evidence of receipt of money or property and general deficiency on charge of theft | |
| 244 | Evidence on charge relating to seals and stamps | |
| 245 | Evidence on charge of which false representation is element | |
| 246 | Presumptions relating to certain documents | |
| 247 | Presumptions relating to absence from Republic of certain persons | |
| 248 | Presumption that accused possessed particular qualification or acted in particular capacity | |
| 249 | Presumption of failure to pay tax or to furnish information relating to tax | |
| 250 | Presumption of lack of authority | |
| 251 | Unstamped instrument admissible in criminal proceedings | |
| 252 | The law in cases not provided for | |
| 252A | Authority to make use of traps and undercover operations and admissibility of evidence so | |

| Section no | Criminal Procedure Act section heading | Extent to which affected by Child Justice Bill (CJB) |
|-------------------|---|--|
| | obtained | |
| 253 | Saving of special provisions in other laws | |
| 254 | Court may refer juvenile accused to children's court | * To be repealed by Schedule 7 CJB. * Clauses 51 and 64 CJB apply |
| 255 | Court may order enquiry under Prevention and Treatment of Drug Dependency Act, 1992 | |
| 256 | Attempt | |
| 257 | Accessory after the fact | |
| 258 | Murder and attempted murder | |
| 259 | Culpable homicide | |
| 260 | Robbery | |
| 261 | Rape and indecent assault | |
| 262 | Housebreaking with intent to commit an offence | |
| 263 | Statutory offence of breaking and entering or of entering premises | |
| 264 | Theft | |
| 265 | Receiving stolen property knowing it to have been stolen | |
| 266 | Assault with intent to do grievous bodily harm | |
| 267 | Common assault | |
| 268 | Statutory unlawful carnal intercourse | |
| 269 | Sodomy | |
| 270 | Offences not specified in this Chapter | |
| 271 | Previous convictions may be proved | |
| 271A | Certain convictions fall away as previous convictions after expiration of 10 years | |
| 272 | Finger-print record prima facie evidence of conviction | |
| 273 | Evidence of further particulars relating to previous conviction | |
| 274 | Evidence on sentence | To be read with clauses 71 and 72 CJB |
| 275 | Sentence by judicial officer or judge other than judicial officer or judge who convicted accused | |
| 276 | Nature of punishments | Chapter 9 CJB applies |
| 276A | Imposition of correctional supervision, and conversion of imprisonment into correctional supervision and vice versa | Subsections (1) and (2) amended by Schedule 7 CJB |
| 280 | Cumulative or concurrent sentences | |
| 281 | Interpretation of certain provisions in laws relating to imprisonment and fines | |
| 282 | Antedating sentence of imprisonment | |
| 283 | Discretion of court as to punishment | |

| Section no | Criminal Procedure Act section heading | Extent to which affected by Child Justice Bill (CJB) |
|-------------------|---|---|
| 284 | Minimum period of imprisonment four days | Chapter 9 CJB applies |
| 285 | Periodical imprisonment | Chapter 9 CJB applies |
| 286 | Declaration of certain persons as habitual criminals | Chapter 9 CJB applies |
| 286A | Declaration of certain persons as dangerous criminals | Chapter 9 CJB applies |
| 286B | Imprisonment for indefinite period | Chapter 9 CJB applies |
| 287 | Imprisonment in default of payment of fine | Clauses 75 and 80 CJB apply |
| 288 | Recovery of fine | Clauses 75 and 80 CJB apply |
| 289 | Court may enforce payment of fine | Clause 80 CJB applies |
| 290 | Manner of dealing with convicted juvenile | * To be repealed by Schedule 7 CJB. * Clauses 24(4)(e), 73 and 77 CJB apply |
| 291 | Duration of orders under section 290 | To be repealed by Schedule 7 CJB (consequential) |
| 296 | Committal to treatment centre | Chapter 9 CJB applies |
| 297 | Conditional or unconditional postponement or suspension of sentence, and caution or reprimand | * Subsection (1A) to be deleted by Schedule 7 CJB * Subsection (9)(a)(ii) amended by Schedule 7 CJB * To be read with clause 79 CJB |
| 297A | Liability for patrimonial loss arising from performance of community service | To be read with clause 92 CJB |
| 297B | Agreement on operation of suspended sentences | |
| 298 | Sentence may be corrected | |
| 299 | Warrant for the execution of sentence | |
| 300 | Court may award compensation where offence causes damage to or loss of property | |
| 301 | Compensation to innocent purchaser of property unlawfully obtained | |
| 302 | Sentences subject to review in the ordinary course | * Referred to in clauses 85(1) CJB * To be read with clause 86 CJB * Subsection (1)(a)(i) amended by Schedule 7 CJB |
| 303 | Transmission of record | Referred to in clause 16(4)(a)(ii) and (5) CJB |

| Section no | Criminal Procedure Act section heading | Extent to which affected by Child Justice Bill (CJB) |
|-------------------|--|--|
| 304 | Procedure on review | Referred to in clause 11(4)(a)(ii) and (5) CJB |
| 304A | Review of proceedings before sentence | To be read with Chapter 11 CJB |
| 306 | Accused may set down case for argument | To be read with Chapter 11 CJB |
| 307 | Execution of sentence not suspended unless bail granted | Referred to in clause 87(a) CJB |
| 308A | Correctional supervision not suspended unless bail granted | |
| 309 | Appeal from lower court by person convicted | * Referred to in clause 87(b) CJB * Subsection (1)(a) amended by Schedule 7 CJB |
| 309A | Appeal against conviction and sentence of chiefs, headmen and chiefs' deputies | |
| 309B | Application for leave to appeal | * Referred to in clause 85(1) CJB * Subsection (1)(a) amended by Schedule 7 CJB |
| 309C | Petition procedure | |
| 309D | Explanation of certain rights to unrepresented accused | * Subsection (1)(a) amended by Schedule 7 CJB |
| 310 | Appeal from lower court by prosecutor | |
| 310A | Appeal by attorney-general against sentence of lower court | |
| 311 | Appeal to Appellate Division | |
| 312 | Review or appeal and failure to comply with subsection (1) (b) or (2) of section 112 | |
| 313 | Institution of proceedings de novo when conviction set aside on appeal or review | |
| 314 | Obtaining presence of convicted person in lower court after setting aside of sentence or order | |
| 315 | Court of appeal in respect of superior court judgments | |
| 316 | Applications for condonation, for leave to appeal and for leave to lead further evidence | * Referred to in clauses 85(1) and 86(b) CJB * Subsection (1)(a) amended by Schedule 7 CJB * Subsection (i)(c) amended by Schedule 7 |

| Section no | Criminal Procedure Act section heading | Extent to which affected by Child Justice Bill (CJB) |
|-------------------|---|---|
| | | CJB |
| 316B | Appeal by attorney-general against sentence of superior court | |
| 317 | Special entry of irregularity or illegality | |
| 318 | Appeal on special entry under section 317 | |
| 319 | Reservation of question of law | |
| 320 | Report of trial judge to be furnished on appeal | |
| 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 | |
| 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 | |
| 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 | |
| 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 | |
| 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 | |
| 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 | |
| 337 | Estimating age of person | Amended by Schedule 7 CJB |
| 338 | Production of document by accused in criminal proceedings | |
| 339 | Removal of accused from one prison to another for purpose of attending at criminal proceedings | |
| 340 | Prison list of unsentenced prisoners and witnesses | |

| Section no | Criminal Procedure Act section heading | Extent to which affected by Child Justice Bill (CJB) |
|-------------------|--|--|
| | detained | |
| 341 | Compounding of certain minor offences | |
| 342 | Conviction or acquittal no bar to civil action for damages | |
| 342A | Unreasonable delays in trials | Referred to in clause 67(2)(b) CJB; Committee still decide on retention of that clause |
| 344 | Repeal of laws | |
| 345 | Short title and date of commencement | |
| | Schedule 1 | Referred to in Schedule 5, item 10 CJB and in Schedule 6, item 1(b)(ii) CJB |
| | Schedule 2 | |
| | Schedule 3 | |
| | Schedule 4 | |
| | Schedule 5 | Identical to Schedule 5 CJB |
| | Schedule 6 | Identical to Schedule 6 CJB |
| | Schedule 7 | |