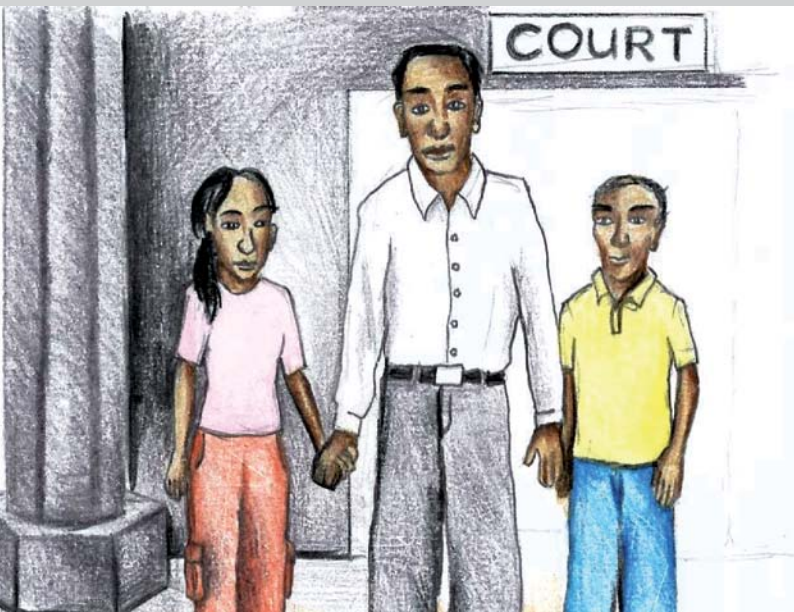


THE CHILD JUSTICE ACT, 2008 (ACT NO 75 OF 2008)



INFORMATION BOOKLET



the doj & cd

Department:
Justice and Constitutional Development
REPUBLIC OF SOUTH AFRICA



STAND TOGETHER FOR RIGHTS

Isinyalo i Justice

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The Constitution of the Republic of South Africa, which is the highest law in the country, says that the child's best interests must be considered in every decision made about the child.

The government of South Africa continues to work hard to protect children's rights.

The Child Justice Act, 2008 (Act 75 of 2008), herein after referred to as the CJA, is another effort by government that is aimed at protecting children's constitutional rights when children are in conflict with the law. The CJA was signed into law on 14 May 2008 and started to work on 1 April 2010.

WHAT IS THE CJA?

Prior to 1 April 2010, children who committed crime were dealt with, in terms of the Criminal Procedure Act, 1977 (Act 51 of 1977) which also deals with adults who commit crime.

The aim of the CJA is to set up a child justice system for children in conflict with the law. This means that children under the age of 18, who are suspected to have committed crime, will not be dealt with in terms of the normal criminal procedure which is used for adults, but the child justice process will be followed.

The CJA seeks to ensure that child justice matters are managed in a rights-based manner and to assist children suspected of committing crime to turn their lives around and become productive members of society by engaging with the child in restorative justice measures, diversions and other alternative sentencing options.

AGE GROUPS COVERED BY THE ACT

According to the CJA, a child is someone who is under the age of 18. The CJA is specifically intended for children between the ages 10 and 18. The CJA states that:

- A child **under the age of 10 years** cannot be arrested! This means that a child under 10 years does not have criminal capacity and cannot be charged or arrested for an offence. In such a case, the child will be referred to the Children's Court.
- A child **older than 10 years but below the ages of 14** years is presumed to lack criminal capacity unless the state proves that he/she has criminal capacity. Such a child can be arrested.
- A child **above 14, but under 18 years of age**, is said to have criminal capacity and can be arrested.

		
- 10 yrs	+ 10 yrs -14 yrs	+14 yrs
Cannot be arrested	May be arrested - state to prove criminal capacity	May be arrested and prosecuted and at the discretion of the prosecutor diverted

TYPES OF OFFENCES

The CJA provides for three different categories of offences:

- **Minor offences** include theft of property worth not more than R2500, malicious damage to property that is not more than R1500 and common assault.
- **More serious offences** include theft of property worth more than R2500; robbery, but not robbery with aggravating circumstances; assault that includes causing grievous bodily harm; public violence; culpable homicide; and arson.
- The **most serious offences** include robbery, rape, murder and kidnapping amongst others.

HOW THE CHILD JUSTICE SYSTEM WORKS

In terms of the CJA, an informal process called a **preliminary inquiry** will be held within 48 hours of the child's arrest, before the first court appearance.

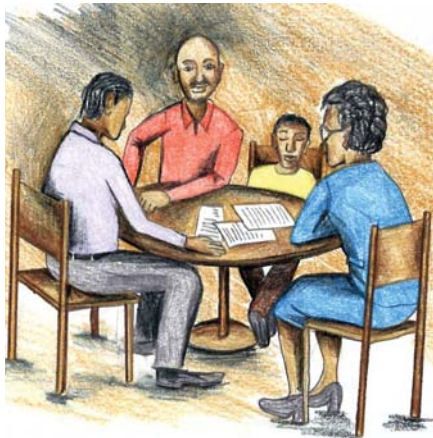
The preliminary inquiry will be attended by many different people, such as:

- A Magistrate,
- The child,
- His/her parents,
- A Prosecutor,
- A Probation Officer,



- The arresting police officer, and
- A Legal Aid Attorney.

These people will meet to speak to the child and talk about the factors that may have led the child to do the crime. They will also try to find ways of assisting the child to accept that he/she did wrong and that he or she has responsibility for the crime.



In the case where the child accepts that he or she has done wrong, a plan is created to resolve the original crime in such a way that he or she does not continue to commit crime and violence.

- The plan could involve the diversion of the child. This means that the child may be asked to take part in programs that will teach him or her not to commit crime. The child will **NOT** be imprisoned but rather be directed to care and rehabilitation centres, youth care centres or school programs or a life skills program, an anger management program or a drug abuse program and so forth.
- Where the preliminary inquiry decides that the child should be attending some form of diversion programme, the Magistrate will make that decision an order of court.

The Magistrate will order the probation officer or another suitable person to monitor the child and report back to the court as to whether he/she did as was ordered.

SENTENCING OPTIONS

Diversion programs form part of the new and different sentencing options that magistrates can use when dealing with children who are in conflict with the law. Sentencing options include the following:

- **Community-based options:** this involves a number of diversion options such as, a family group conference, restorative justice options and so forth.



- **Restorative justice options:** "restorative justice" means an approach that involves the child offender, the victim, the families concerned, and community members who all identify the damage, the needs and obligations that arise as a result of the child's act. If the child accepts responsibility and makes some effort to prevent this type of incident this can promote reconciliation.

This process may be handled through a Family Group Conference, a victim and offender mediation process and/or another restorative justice process.

- **A Fine or symbolic restitution:** An offer to pay a fine or make another form of symbolic restitution, such as fixing a broken window from his or her own pocket money, is another way of making restitution. An obligation may rest on the child to provide some service or benefit, provided that the child is 15 years or older. This is another option that the court may consider.



- **Correctional supervision:** A child could be sentenced by the court to undergo correctional supervision. In such a case the child will be supervised by the Department of Correctional Services to do what is listed in the court order.
- **Attendance of a non-custodial sanctions program:** A child could be ordered to attend a non-custodial sanction program such as a school program.

- **Youth Care Centres:** A child could be sentenced to live in a child and youth care centre for a period of time.
- **Direct imprisonment:** A child could be sentenced to be placed in direct imprisonment.

The CJA prioritises sanctions that keep children out of prison.

BENEFITS OF THE ACT

The CJA will have long term benefits for children and the country as a whole. It allows for a justice system that heals children and those who were affected by a child's action, encourages forgiveness and rehabilitation, and looks after the needs and rights of children and victims.

The CJA allows the child's background or upbringing to be taken into consideration. It ensures that the individual needs and circumstances of certain children in conflict with the law are assessed when a decision is made about the child.

The CJA balances the rights and responsibilities of the child, the victim and the community. When considering diversion options before a trial, the victim's or his/her families' views are also to be taken into consideration by the prosecutor and the court.

The CJA also states that the damage caused by the child on the victim should be considered. The victim or someone representing the victim may submit a statement that reflects the physical, psychological, social, financial, or any other impact that may have been caused as a result of the crime on the victim. This helps make a healing and peace-making process happen and further expands and entrenches the notion of restorative justice.

The CJA makes it easier to help the rehabilitation and integration of the child who is in conflict with the law, into society so that he/she can grow up and make a useful contribution to society.

Courts continue to prioritise and fast-track children's matters in the child justice system and this leads to the reduction of children awaiting trial. This also leads to an increase in the numbers of children in home-based supervision and in secure care facilities.



STEP BY STEP GUIDE ON THE CHILD JUSTICE PROCESS

1. A child is suspected to have committed an offence. In the event of an offence that is not serious, the child will not be arrested but be warned to appear in court.
2. If the offence is serious, the child is **informed, arrested and charged** by the police. If the offence is less serious, the child and his/her parents or care givers, is warned or summonsed to appear in court by the police.
3. There are two possibilities at this stage:
 - a. A child under 10 may be referred to a children's court, or

- b. The child above 10 years must be assessed by a probation officer (Social Worker).
4. The parents or other care givers or police bring the child to court.
5. A preliminary inquiry will be set-up to inquire into the matter and how the child may be assisted if he or she accepts responsibility.
6. At the preliminary inquiry there are four possible steps that may be taken:
 - a. If the child is in need of care and protection, the matter will be referred to the children's court which will determine the best possible environment for the child.
 - b. At the preliminary inquiry, the probation officer's assessment report will be considered to determine if the child has criminal capacity. The child could then be referred to the Children's Court or be diverted.
 - c. If the child accepts responsibility, it may recommend at the preliminary inquiry that the child be diverted. If the child does not complete or comply with the diversion, he/she will be brought back to court.
 - d. If no diversion order made by the court or the child does not comply with the diversion, the case is referred to the Child Justice Court for trial.
7. At the trial the child could be convicted and sentenced or acquitted.

GLOSSARY

- **Attorney** - Lawyer/ legal representative for the child in court.
- **Child Justice System** - Procedures to be followed when a child is in the child justice court.
- **Correctional supervision** - Is a form of sentence whereby a child is monitored by the correctional officers.
- **Court order** - It is a court decision that can be taken at any stage of the case e.g. child is ordered by court to go for mental observation.
- **Criminal capacity** - To be in a position to appreciate consequences of your actions. For example, do you understand that stealing is wrong? If the answer is yes, you might have criminal capacity. If the answer is no, then maybe, you may not have criminal capacity as a child.
- **Diversion programmes** - Are programmes offered by the Department of Social Development, Non-Government Organisations or Non-Profit Organisations to teach or monitor the child offender. Diversion programs are offered by many organisations which the Department of Social Development has accredited. The development of the Accreditation Framework by the Department of Social Development is meant to assist with identifying which organisations run diversion programs.
- **Magistrate** - Presiding officer /a person who listens to the case in court and makes a decision based on the law.

- **Non-custodial sanctions programme** - Where sentences which do not warrant the child being placed in detention are ordered and the child is not sent to prison.
- **Preliminary inquiry** - Hearing in a room which is in the court building where the circumstances which led the child to commit the offence are discussed. The magistrate, child, parent, prosecutor, victims and any other person whom the court may require, need to be present.
- **Probation Officer** - Is a social worker dealing with the assessment of children who are accused of committing an offence.
- **Prosecutor** - Person who prosecutes the case in court on behalf of the state and victims.
- **Restitution** - Means paying back or fixing what has been damaged or broken.
- **Rights-based manner** - Approach whereby the rights of the child are considered and it is understood that he/she is vulnerable, due to his/her age.



NOTES





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