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## GENERAL NOTICE

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### NOTICE 583 OF 2014

#### DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

#### INVITATION FOR PROPOSALS

#### ON

#### CATEGORIES OF PERSONS COMPETENT TO CONDUCT EVALUATIONS OF THE CRIMINAL CAPACITY OF CHILDREN IN TERMS OF THE CHILD JUSTICE ACT, 2008

#### 1. INVITATION

- 1.1 The Department of Justice and Constitutional Development invites interested parties to submit written proposals in respect of the categories of persons regarded as being competent to conduct evaluations of the criminal capacity of children (criminal capacity evaluations) in terms of section 11 of the Child Justice Act, 2008 (Act 75 of 2008)(the Act) and the aspects of criminal capacity in respect of each of these categories.
- 1.2 The proposals are required for the purposes of a new notice which is to be issued in terms of section 97(3) of the Act.
- 1.3 This invitation is also available on the website of the Department at the following address: <http://www.justice.gov.za>.
- 1.4 The proposals must be submitted not later than **29 August 2014**, marked for the attention of **Ms T Skhosana**, and –
  - (a) if they are forwarded by post, be addressed to -  
**The Director-General: Justice and Constitutional  
Development  
Private Bag X81  
Pretoria  
0001**
  - (b) if they are delivered by hand, be delivered at –  
**SALU Building, Room 23.03  
315 Thabo Sehume Street  
Pretoria**
  - (c) if they are delivered by e-mail, be e-mailed to  
[thskhosana@justice.gov.za](mailto:thskhosana@justice.gov.za)
  - (d) if they are faxed, be faxed to **086 648 7875**.

- 1.5 For further information, please do not hesitate to contact Ms T Skhosana at 012 406 4769.

## 2. BACKGROUND NOTE

The following background information is furnished in order to assist interested parties in submitting proposals.

- 2.1 The Act, which came into operation on 1 April 2010, establishes a criminal justice system for children who are in conflict with the law and are accused of committing offences. For the purposes of the Act, a child is a person under the age of 18 years and, in certain circumstances, it may include a person who is 18 years or older but under the age of 21.
- 2.2 The State must prove that the child accused had criminal capacity at the time of the offence. Section 7(1) of the Act provides that a child under the age of 10 years does not have criminal capacity and cannot be prosecuted. In terms of section 7(2) of the Act a child who is 10 years or older but under the age of 14 years is presumed to lack criminal capacity unless the State proves beyond reasonable doubt the capacity of a such child to –
- (a) appreciate the difference between right and wrong at the time of the commission of an alleged offence; and
  - (b) act in accordance with that appreciation.
- 2.3 The inquiry magistrate or the child justice court must, in order to make a finding regarding the criminal capacity of a child, consider an assessment report of a probation officer and all evidence placed before him or her, which evidence may include a report of an evaluation referred to in section 11(3) of the Act.
- 2.4.1 In terms of the Act a probation officer must, in the case of a child who is 10 years or older but under the age of 14 years, in the assessment report express a view on the criminal capacity of the child and whether expert evidence referred to in section 11(3) of the Act would be required.
- 2.4.2 Where there is doubt about the criminal capacity of a child, a presiding officer may, in terms of section 11(3) of the Act, order a criminal capacity evaluation by a suitably qualified person which must include an assessment of the cognitive, moral, emotional, psychological and social development of the child. The person identified to conduct the evaluation must furnish a written report of the evaluation.
- 2.5 Section 97(3) of the Act provides that the Minister must by notice in the *Gazette* determine the persons or the category or class of persons who

are competent to conduct the evaluation of the criminal capacity of a child referred to in section 11(3) of the Act.

- 2.6 On 1 April 2010 a notice in terms of section 97(3) of the Act was published in the *Gazette*, determining psychiatrists and clinical psychologists as persons being competent to conduct the evaluation of criminal capacity of a child.
- 2.7 Amendments to section 11(2) and (3) of the Act were effected by section 2 of the Judicial Matters Amendment Act, 2014 (Act 14 of 2014)(the JMA Act, 2014). The amendments require a presiding officer to consider the cognitive, moral, emotional, psychological and social development of the child on the basis of all evidence placed before the court such as the probation officer's report, including the report of the person appointed to evaluate the criminal capacity of the child in terms of section 11(3) of the Act. Section 97(3) of the Act was also amended to make it clear that different categories or classes of persons may be determined for the purposes of assessing the different aspects of development of a child. The amendments were effected on the basis of representations received. The JMA Act, 2014 is not yet in operation. The date of commencement must be fixed by the President by proclamation in the *Gazette*. The JMA Act, 2014 cannot commence before the section 97(3)-notice has been amended.

### 3. NEW NOTICE

A new section 97(3)-notice needs to be prepared with a view to a possible broadening of the present categories of persons, namely psychiatrists and clinical psychologists, who are mandated to conduct the criminal capacity evaluations of children. In addition, the new notice needs to allow for different persons to evaluate different aspects of criminal capacity due to the amendments to section 11(3) of the Act and the consequential amendments to section 97(3).

### 4. MOTIVATION

The proposals submitted in respect of the categories of persons competent to conduct criminal capacity evaluations and the aspects of criminal capacity in respect of each of these categories must be fully motivated with reference to the persons' qualifications, training and experience.

For example:

Category of persons	Aspect of criminal capacity	Motivation
Clinical psychologist	Cognitive, emotional, psychological and social development	