



Information Booklet

THE CHILD JUSTICE ACT, ACT NO 75 OF 2008



the doj & cd

Department:
Justice and Constitutional Development
REPUBLIC OF SOUTH AFRICA



CHILD JUSTICE - INFORMATION BOOKLET

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The Constitution of the Republic of South Africa, requires that a 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) is aimed at protecting children's constitutional rights when children are in conflict with the law.



The Child Justice Act is aimed at protecting children's constitutional rights when children are in conflict with the law.

WHAT IS THE CHILD JUSTICE ACT?

The aim of the Child Justice Act is to set up a child justice system for children in conflict with the law. This means that children between the ages of 10 years and 17 years, who are suspected to have committed a crime, will receive additional protection through procedures aimed at preventing them from obtaining criminal records, in appropriate cases.

The Child Justice Act 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 through restorative justice measures, diversions and other alternative sentencing options, where appropriate.

AGE GROUPS COVERED BY THE ACT

According to the Constitution a child is someone who is under the age of 18 years. The Child Justice Act is specifically intended for children in conflict with the law. The Child Justice Act provides for the following age groups:

A child **under the age of 10 years** cannot be arrested. This means that a child under the age of 10 years does not have criminal capacity and cannot be charged or arrested for the commissioning of an offence. In such a case, the child will be referred to the probation officer.

A child **between the ages of 10 and 13 years** is presumed to lack criminal capacity unless the state proves that he or she has criminal capacity. Such a child can be arrested.

A child **between the ages of 14 and 17 years** is said to have criminal capacity and can be arrested.



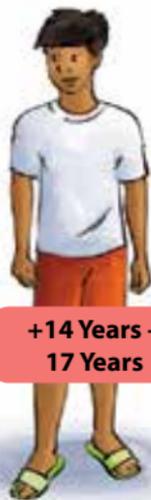
- 10 Years

Cannot be arrested



+10 Years -
13 Years

May be arrested - State
to prove criminal
capacity



+14 Years -
17 Years

May be arrested and prosecuted
and diverted at the discretion of
the prosecutor

TYPES OF OFFENCES

The Child Justice Act 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; assault that includes causing grievous bodily harm; public violence; culpable homicide; and arson.

The most serious offences include, robbery with aggravating circumstances, rape, murder and kidnapping amongst others.

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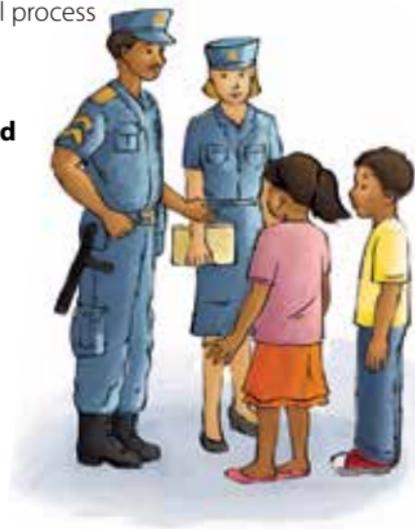
- Minor offences,
- More serious offences,
- Most serious offences

HOW THE CHILD JUSTICE SYSTEM WORKS

In terms of the Child Justice Act, an informal process called a **preliminary inquiry** will be held within 48 hours of the child's arrest.

The preliminary inquiry will be attended by all interested parties, such as:

- A Magistrate,
- The child,
- His or her parent, guardian or appropriate adult,
- A Prosecutor,
- A Probation 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 may be directed to attend school, to attend a diversion programme such as 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 the child complied with the order.



SENTENCING OPTIONS

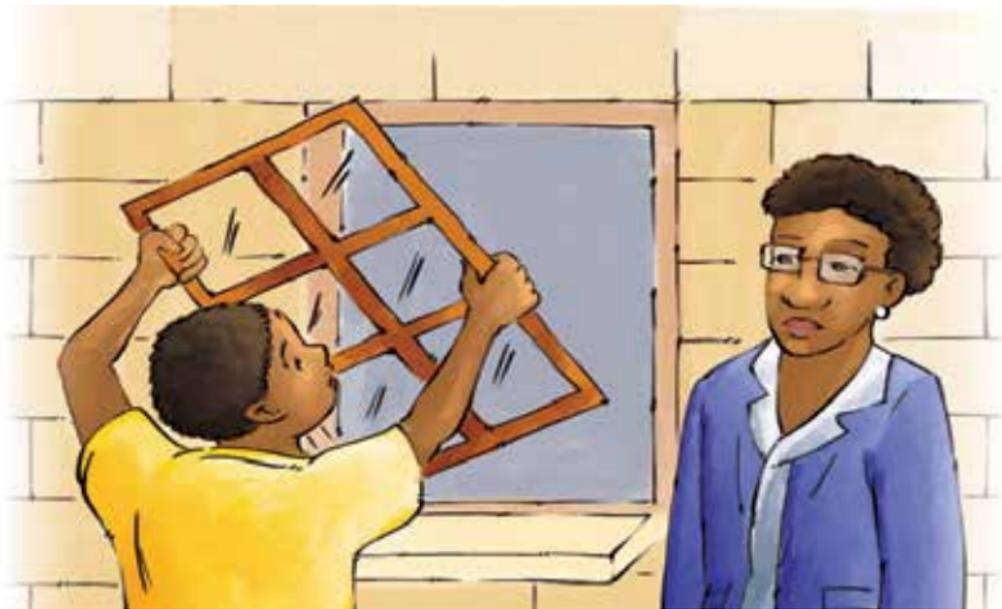
Diversion programs form a large part of the new and different sentencing options that magistrates can use when dealing with children who are in conflict with the law.



SENTENCING OPTIONS INCLUDE THE FOLLOWING:

- **Community based sentence.** This includes community service.
- **Restorative Justice Sentences.** This involves the child offender, the victim, or the families concerned and community members through family group conferences or victim offender mediation.

A fine or alternatives to fine. In instances where the child cannot pay a fine he or she may be ordered to pay a symbolic restitution to a specified person or community charity.



- **Correctional supervision:** This involves the monitoring of the child by a correctional official. This sentence is served in the community.

Compulsory residence in a Child and Youth Care Centres. A child could be sentenced to be placed in a Child and Youth Care Centre for a specified period of time.

- **Direct imprisonment:** A child could be sentenced to direct imprisonment in a Correctional Facility.

BENEFITS OF THE ACT

The Child Justice Act will have long term benefits for children and the country as a whole. It allows for a criminal justice system that protects the rights of children in conflict with the law, it encourages forgiveness and rehabilitation, and looks after the needs and rights of children and their victims.

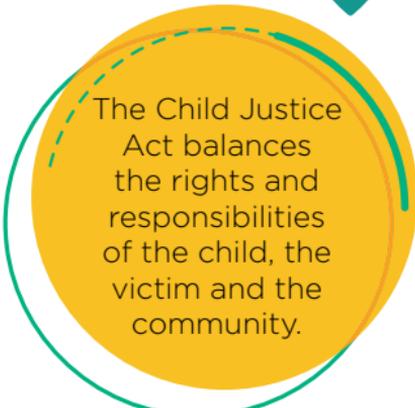
The Child Justice Act allows the child's background or upbringing to be taken into consideration. It ensures that the individual needs and circumstances of children in conflict with the law are assessed when a decision is made about the child.

The Child Justice Act balances the rights and responsibilities of the child, the victim and the community. When considering diversion options the victim's or his/her families' views are also taken into consideration by the prosecutor and the court.

The Child Justice Act also states that the damage caused by the child to 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. This expands and entrenches the notion of restorative justice.

The Child Justice Act makes it easier to help with the rehabilitation and reintegration of the child who is in conflict with the law, into his or her family and society so that he or 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 in detention. This also leads to an increase in the numbers of children in home-based supervision and who are released in the care of their parents, guardians or appropriate adults.



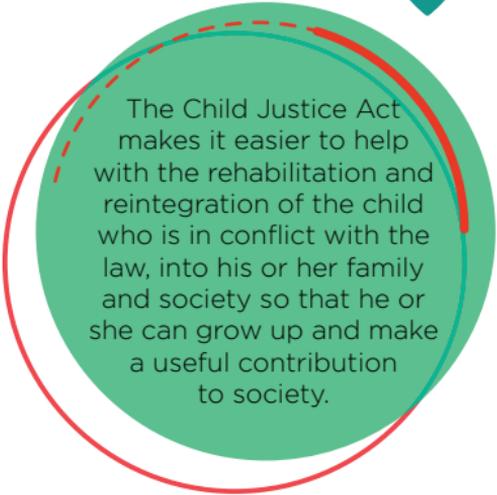
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STEP BY STEP GUIDE ON THE CHILD JUSTICE PROCESS

1. A child is suspected to have committed an offence.
2. If the offence is serious, the child maybe arrested and charged by the police. If the offence is less serious, the child and his or her parent or guardian or appropriate adult, will be warned or handed a notice to appear in court by the police.
3. There are two possibilities at this stage:
 - a. A child under 10 must be referred to a probation officer, or
 - b. A child between the ages of 10 and 17 years must be assessed by probation officer (Social Worker).
4. The parent or guardian or appropriate adult or police bring the child to court.



5. A preliminary inquiry will be held to inquire into the matter to decide on how to proceed with the matter and whether or not the child accepts responsibility for the crime.
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.
 - 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 or she will be brought back to court.
 - d. If no diversion order is made by the court or the child does not comply with the diversion, the case is referred to the Child Justice Court for plea and trial.
7. At the trial the child could be convicted and sentenced or acquitted.



The Child Justice Act makes it easier to help with the rehabilitation and reintegration of the child who is in conflict with the law, into his or her family and society so that he or she can grow up and make a useful contribution to society.

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 decision by the court.

Criminal capacity - the ability to appreciate the difference between right and wrong and the ability to act in accordance with this appreciation.

Diversion programmes - Are programmes offered by the Department of Social Development, Non-Governmental Organisations or Non-Profit Organisations and include life skills programmes, anger management programmes and substance abuse programmes.

Magistrate - Presiding officer who makes decisions on the case in court.

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 - informal hearing where the circumstances of the child are shared with the magistrate to enable him or her to take a decision on how to deal with the child. 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 by way of a fine 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.



The Intersectoral Committee On Child Justice



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THE CHILD JUSTICE ACT, ACT NO 75 OF 2008

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