

DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT**NO. 751****27 JULY 2018**

The Amended National Policy Framework on Child Justice was tabled in Parliament on 28 May 2018. In terms of section 93(2)(b) and (d) of the Child Justice Act, 2008 (Act 75 of 2008) the Amended National Policy Framework on Child Justice is hereby published for public comment.

Comments should be submitted on or before 7 September 2018 to Ms Tabane-Shai via email at TTabane@justice.gov.za or hand delivered at Momentum Building, Pretorius Street 329, Pretoria or posted to Ms Tabane-Shai, Private Bag x 81, Pretoria, 0001.

Child Justice Act, 2008: National Policy Framework, 2018



**CHILD JUSTICE ACT, 2008
(ACT NO. 75 of 2008)**

**AMENDED NATIONAL POLICY FRAMEWORK
ON CHILD JUSTICE, 2018**

**DEPARTMENT OF JUSTICE AND CONSTITUTIONAL
DEVELOPMENT**

May 2018

7TH Version

*Child Justice Act, 2008: Amended National Policy Framework, 2018***Table of Contents**

Abbreviations.....	4
Glossary of Terms	4
CHILD JUSTICE NATIONAL POLICY FRAMEWORK, REVIEWED, 2018 (NPF, 2018).....	6
1. Introduction	6
2. Review of the National Policy Framework	8
3. Legislative Requirements for the NPF	11
4. The Legal Framework Applicable to Child Justice	12
4.1. International and Regional Instruments.....	13
4.2. South African Legislation	13
(i) The Constitution of the Republic of South Africa, 1996	13
(ii) The Criminal Procedure Act, 1977 (Act No. 51 of 1977).....	14
(iii) The Children’s Act, 2005.....	14
(iv) The Criminal Law (Sexual Offences and Related Matters) Amendment Act (Act No. 32 of 2007).....	15
(v) The Correctional Services Act, 1998 (Act No. 111 of 1998).....	15
(vi) The Probation Services Act (Act No.116 of 1991)	16
5. Policy Considerations for the Implementation of the Act	17
5.1 Priorities of the NPF.....	17
5.1.1 Building Capacity in the Sector	17
(i) Human Capacity	17
(ii) Training and Education	18
5.1.2 Methods of securing attendance of children at preliminary inquiries.....	19
5.1.3 Ensuring assessment of children	20
5.1.4 Preliminary Inquiries	21
5.1.5. Diversion Services	24
(i) Provisioning of Diversion Services.....	24
(ii) Application of diversion.....	25
5.1.6 Awaiting trial, bail and placement.....	28
5.1.7 Trials.....	29
5.1.8 Sentencing.....	31
5.1.9 Management of Infrastructure for the Implementation of the Act	33
(i) Child and Youth Care Centres	33
(ii) One Stop Child Justice Centres	35
(iii) Correctional Facilities.....	36
5.1.10 Resources and Budgets.....	36
5.1.11 Public Education and Communication.....	36
5.1.12 Development of an integrated information management system.....	37
5.2 Roles and Responsibilities of Stakeholders.....	38
5.2.1. South African Police Service.....	39
5.2.2. Department of Social Development	40
5.2.3. Department of Justice and Constitutional Development	42
5.2.4. National Prosecuting Authority (NPA)	43
5.2.5. Department of Correctional Services	44
5.2.6 Department of Basic Education.....	44
5.2.7 Legal Aid South Africa	45
5.2.8 Department of Home Affairs.....	46
5.2.9 Department of Health.....	47
5.2.10 Civil Society Organisations	47

Child Justice Act, 2008: Amended National Policy Framework, 2018

5.3	Managing Intersectoral Co-ordination	48
5.3.1.	The Directors-General Intersectoral Committee for Child Justice	49
5.3.2.	The National Technical Intersectoral Committee for Child Justice (NT ISCCJ)	50
5.3.3.	The Provincial Child Justice Fora.....	52
5.3.4.	Secretariat Functions by DoJ&CD	53
5.3.5.	Reporting.....	54
6.	Managing the Flow of Children through the System	55
7.	Maximum time-frames for management of cases involving children in conflict with the law	57
8.	Monitoring, Evaluation and Information Management	63
9.	Registers	66
9.1	National Register of Children Diverted:	66
9.2	National Register of Children under the Minimum Age of Criminal Capacity	66
9.3	Register of Children in Detention at Police Cells/ Lock-ups:.....	67
10.	Conclusion.....	67
ANNEXURE A	69

*Child Justice Act, 2008: Amended National Policy Framework, 2018***Abbreviations**

CA	Children's Act
CJA	Child Justice Alliance
CJS	Child Justice System or Criminal Justice System
DBE	Department of Basic Education
DCS	Department of Correctional Services
DG	Director General
DG ISCCJ	Directors-General Intersectoral Committee for Child Justice.
DHA	Department of Home Affairs
DOH	Department of Health
DOJ&CD	Department of Justice and Correctional Services
DSD	Department of Social Development
ISCCJ	Intersectoral Committee on Child Justice
NGO	Non-Governmental Organisation
NPA	National Prosecuting Authority
NPF	National Policy Framework
NT ISCCJ	National Technical Intersectoral Committee for Child Justice
PCJF	Provincial Committee for Child Justice Forum
SAPS	South African Police Service

Glossary of Terms

“Policy Framework” is a description of an interlinked and interdependent set of statements established as a policy guide to action and to support the achievement of the goal of a high quality of services.

“Children in conflict with the law” refers to any person younger than 18 years who comes into contact with the criminal justice system as a result of being suspected of the commissioning of an offence.

NPA (National Prosecuting Authority) means the National Prosecuting Authority established in terms of section 179 of the Constitution of the Republic of South Africa, 1996 and regulated by the National Prosecuting Authority Act, 1998 (Act No. 32 of 1998)

SAPS (South African Police Service) means the South African Police Service established in terms of the South African Police Service Act, 1995 (Act No. 68 of 1995).

National Treasury means National Treasury as established and regulated by the Public Finance Management Act, 1999 (Act No. 1 of 1999).

Child Justice Act, 2008: Amended National Policy Framework, 2018

An important aspect of the evolution of child justice over time has been the change of language and terminology. Some key changes include:

- Juvenile justice to child justice
- Secure care facilities and reform schools to Child and Youth Care Centres
- Juveniles to children
- Prisons to correctional facilities
- Awaiting trial to remand detainees.

*Child Justice Act, 2008: Amended National Policy Framework, 2018***AMENDED NATIONAL POLICY FRAMEWORK ON CHILD JUSTICE, 2018 (NPF, 2018)****1. Introduction**

- 1.1 On 1 April 2010, after more than a decade of advocacy, deliberations, development and drafting, the Child Justice Act, 2008 (Act No. 75 of 2008) (hereinafter referred to as “the Act”) was implemented in South Africa.
- 1.2 One of the main principles of the Act is to minimise children's contact with the criminal justice system, and to use detention only as a measure of last resort and for the shortest appropriate period of time. The Act places a focus on how children are managed in the first 48 hours following the child coming into contact with the system. Provisions encourage the avoidance of arrest, and where children are arrested, encourage their release as soon as possible into the care of their parents, guardians or other suitable adults. In addition, the preliminary inquiry is a key process introduced by the Act. It aims to ensure that a collective, determined effort is made to consider what should be done in the case of each child, and that the inquiry occurs within 48 hours of arrest if the child is detained. In line with the avoidance of prolonged contact with the criminal justice system, the Act has, as one of its main areas of focus, the diversion of children away from formal criminal court procedures into a diversion option or programme. This alternative to the formal criminal justice system is one where the child is held accountable for his or her actions throughout the process. It is worth noting that the Act requires the monitoring of the safety of children being held in police cells upon arrest as this is an area of potential danger for a child. The Act also addresses the issue of re-offending among child offenders which has been attributed, at least in part, to the corrupting and damaging effect that incarceration has on children in conflict with the law. It is in response to this, as well as the constitutional injunction of section 28 (1) (g), that the Act provides for the incarceration of children only as a measure of last resort and for the shortest appropriate period of time.

Child Justice Act, 2008: Amended National Policy Framework, 2018

- 1.3 Section 93(1)(a) to (d) of the Act, requires that the Cabinet member responsible for the administration of justice (currently the Minister of Justice and Correctional Services) (hereinafter referred to as “the Minister”) must, after consultation with those Cabinet members responsible for Safety and Security, Correctional Services, Social Development, Education and Health, adopt a National Policy Framework (NPF).
- 1.4 The NPF is an overarching framework for the implementation of the Act with as aim to ensure a uniform, coordinated and co-operative approach and is supported by relevant national directives, standing instructions, standing operating procedures, guidelines, and circulars of the relevant Government Departments and Institutions concerned.
- 1.5 In compliance with section 93(2)(a) and (b) of the Act the first Child Justice NPF was adopted, tabled in Parliament and published under General Notice 801 of 2010, in Government Gazette No. 33461, dated 13 August 2010, for public comment.
- 1.6 Section 93(2)(c) of the Act, requires the Minister to review the NPF within 3 years of its publication in the *Gazette* and at least once every 5 years thereafter.
- 1.7 Following intensive consultation with role players in the Child Justice Sector, this document sets out the current reviewed, amended and integrated NPF, 2018, inclusive of the outcomes of the reviews thereof. In terms of section 93(2) (c) of the Act the first and second review processes were dealt with since 2013 by the respective Departments and Institutions through the co-ordinated endeavor of the Directors-General Intersectoral Committee for Child Justice. These reviews were however not formally *Gazetted* or tabled. The aim is therefore to publish the Amended NPF, 2018, as a Review of the NPF by the Minister, in a *Gazette* for public comment during the 2018/2019 financial year, after tabling in Parliament.
- 1.8 The Departments and Institutions referred to in section 94(2) of the Act should consider the application of the Pareto Principle (80/20 Principle) in the development of their Annual Performance Plan in relation to the implementation of the Act.

Child Justice Act, 2008: Amended National Policy Framework, 2018

2. Review of the National Policy Framework

- 2.1 The review consultations and recommendations received since 2013, have led to the amendment of the NPF published in 2010, which is now referred to as “Amended NPF on Child Justice, 2018” to distinguish it from the previous 2010 version.
- 2.2 During the review processes since 2013, various challenges in the implementation of the Act were identified, including the following:
- a) The provisions of the Act were not adequately costed before the implementation of the Act and this has led to implementation challenges.
 - b) Implementing Departments/ Institutions did not receive any additional budget for the implementation of the Act and have been compelled to use their baseline budgets for implementation purposes.
 - c) There has been a lack of reliable and detailed data on the implementation of the Act as well as challenges in the collation of the data. This has impacted negatively on the reporting on the implementation of the Act to Parliament, as required in terms of section 96(3) of the Act. Various gaps in reporting on the child justice process have also been identified, which make it difficult to map the flow of children through the child justice system.
 - d) Information Management Systems and the integration of the systems have not been completed. There are also challenges to reference a child through the child justice system in the Information Management System.
 - e) The impact of capacity building has not been measurable yet, and the coordination of intersectoral training therefore requires more consideration.
 - f) Monitoring of children in the child justice system has not been adequately addressed, including the independent oversight of children in detention facilities.
 - g) The poor quality of assessment reports by some probation officers has been of concern as this impact negatively on the efforts to effectively deal with children in conflict with the law.

Child Justice Act, 2008: Amended National Policy Framework, 2018

- h) There is a shortage of properly skilled mental health practitioners to conduct the criminal capacity evaluation of children in terms of section 11(3) of the Act.
- i) Infrastructural challenges play a major role in the successful implementation of the Act, including the lack of mental health facilities, Child and Youth Care Centres and Treatment Centres for children struggling with substance abuse. The distances between courts and mental health facilities and Child and Youth Care Centres have also been highlighted as a challenge.
- j) Availability of diversion programmes in rural areas poses challenges in equal access to services as well as the coverage of different programmes in the country.
- k) The lack of educational programmes and vocational programmes as well as the coverage of these programmes available to sentenced children need more consideration.

2.3 The challenges indicated above are discussed further in the document and are addressed in the Implementation Plan, attached as "Annexure A".

2.4 Intergovernmental relations, specifically with reference to provincial competencies, still poses challenges, for instance different Social Development policies exist in dealing with children in conflict with the law with the result that children are being treated differently in the different provinces. It also impacts on co-ordination of functions including the allocation of resources to Non-Governmental Organisations (NGOs) and the management of Child and Youth Care Centres. In view of the above and especially regarding the challenges relating to the maintenance of Child and Youth Care Centres, the following needs to be borne in mind by the relevant institutions implementing the Act:

- a) Section 100 of the Constitution, 1996 provides the following:

"National intervention in provincial administration

(1) When a province cannot or does not fulfill an executive obligation in terms of the Constitution or legislation, the national executive may

Child Justice Act, 2008: Amended National Policy Framework, 2018

intervene by taking any appropriate steps to ensure fulfilment of that obligation, including-

- (a) issuing a directive to the provincial executive, describing the extent of the failure to fulfil its obligations and stating any steps required to meet its obligations; and
- (b) assuming responsibility for the relevant obligation in that province to the extent necessary to-
 - (i) maintain essential national standards or meet established minimum standards for the rendering of a service;
 - (ii) maintain economic unity;
 - (iii) maintain national security; or
 - (iv) prevent that province from taking unreasonable action that is prejudicial to the interests of another province or to the country as a whole.

(2) If the national executive intervenes in a province in terms of subsection (1) (b) -

- (a) it must submit a written notice of the intervention to the National Council of Provinces within 14 days after the intervention began;
- (b) the intervention must end if the Council disapproves the intervention within 180 days after the intervention began or by the end of that period has not approved the intervention; and
- (c) the Council must, while the intervention continues, review the intervention regularly and may make any appropriate recommendations to the national executive.

(3) National legislation may regulate the process established by this section.”

- b) Section 193 (1) of the Children’s Act, 2005 (Act No. 38 of 2005) provides that the MEC for Social Development must, from money appropriated by the relevant provincial legislature, provide and fund child and youth care centres for that province. Section 193(2) further provides that such child and youth care centres must be managed and maintained in accordance with the Children’s Act, 2005 and must comply with the structural, safety, health and

Child Justice Act, 2008: Amended National Policy Framework, 2018

other requirements of the municipality of the area in which the child and youth care centre is situated.

3. Legislative Requirements for the NPF

3.1 The Act, as detailed in section 93(1) (a) to (d), requires that the Minister must, after consultation with those Cabinet members responsible for Safety and Security, Correctional Services, Social Development, Education and Health, adopt a NPF in order to:-

- (i) ensure a uniform, coordinated and co-operative approach by all government departments, organs of state and institutions in dealing with matters relating to child justice;
- (ii) guide the implementation and administration of this Act;
- (iii) promote cooperation and communication with the non-governmental sector and civil society in order to ensure effective partnerships for the strengthening of the child justice system; and,
- (iv) enhance service delivery as envisaged by this Act by the development of a plan within available resources.

3.2 The responsibility for the appropriate implementing of the NPF lies with the Intersectoral Committee for Child Justice (ISCCJ) whose membership consists of the relevant Directors-General in the Criminal Justice System namely, Justice and Constitutional Development, Social Development, Health, and Education, the National Director of Public Prosecutions, the National Commissioner of the South African Police Service (SAPS) and the Commissioner of Correctional Services (section 94(2) of the Act). This Committee, chaired by the Director-General of Justice and Constitutional Development, is the primary structure responsible for co-ordination and implementation of the Act.

3.3 The NPF, as per the requirements of section 96 (1) of the Act, includes guidelines for:

- a) The implementation of the priorities and strategies contained in the NPF;
- b) measuring progress on the achievement of the NPF;

Child Justice Act, 2008: Amended National Policy Framework, 2018

- c) ensuring that the different organs of state comply with the primary and supporting roles and responsibilities allocated to them in terms of the NPF and the Act;
 - d) monitoring the implementation of the NPF and the Act; and
 - e) the establishment of an integrated information management system to enable effective monitoring, analysis of trends and interventions, to map the flow of children through the child justice system and to provide quantitative and qualitative data.¹ (*relating to a range of relative factors*).
- 3.4 This NPF is aligned to the broad objectives of the Act, and in particular relative to the following:
- (i) Protecting the rights of children as provided for in the Constitution, 1996;
 - (ii) promoting the spirit of *ubuntu* in the child justice system;
 - (iii) providing special treatment for children in the child justice system designed to break the cycle of crime, which will contribute to safer communities, and encourage these children to become law-abiding and productive adults;
 - (iv) preventing 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 suitable to the needs of children and in accordance with the Constitution, including the use of diversion, and
 - (v) promoting co-operation amongst government departments and between Government departments and the non-governmental sector and civil society to ensure an integrated and holistic approach in the implementation of the Act.

4. The Legal Framework Applicable to Child Justice

Whilst the Act is the primary piece of legislation regulating and informing the management of children in conflict with the law within the criminal justice system, various other pieces of legislation and policies are also significant in regulating services provided to these children. Hence the NPF must be read in conjunction with, amongst others, the following legislation, policies, procedures, guidelines and international instruments which relate to children at risk and children in conflict with the law.

¹ Section 96(1) of the Child Justice Act, 2008

Child Justice Act, 2008: Amended National Policy Framework, 2018

4.1. International and Regional Instruments

South Africa, in complying with international and regional instruments relating to children, takes guidance from a number of instruments and in particular the following:

- (i) The Declaration of the Rights of the Child (General Assembly Resolution 1386 (XIV) on 20 November 1959);
- (ii) The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), 1985;
- (iii) The United Nations Convention on the Rights of the Child, 1989 (CRC);
- (iv) The African Charter on the Rights and Welfare of the Child, 1990 (ACRWC);
- (v) United Nations Rules for the Protection of Juveniles Deprived of their Liberty (JDL), 1990;
- (vi) The United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines), 1990;
- (vii) The United Nations Committee on the Rights of the Child General Comment No 10 of 2007 on Juvenile Justice;
- (viii) The United Nations Resolution on the Administration of Human Rights, in Particular Juvenile Justice (A/HRC/10/L.15 on 20 March 2009).

4.2. South African Legislation

In addition to these international and regional instruments, the following South African legislation has a bearing on the Act:

- (i) **The Constitution of the Republic of South Africa, 1996** which sets out the rights of children in general and in the child justice system in particular.
 - a. Section 28(2) provides that a child's interests are of paramount importance in every matter concerning the child.
 - b. Section 28(1)(g) provides for the protection of the child right when detained and states that a child may only be detained as a measure of last resort and only for the shortest appropriate period of time. Children must be detained separately from adults and must be treated in a manner and kept in conditions that take account of the child's age.

Child Justice Act, 2008: Amended National Policy Framework, 2018

- c. Section 35 – the rights applicable to persons when arrested, detained and accused are applicable to children.
- (ii) **The Criminal Procedure Act, 1977 (Act No. 51 of 1977)** (“the CPA”) which applies to all persons in the criminal justice system, including children. Schedule 4 of the Act provides a synopsis of the provisions affected. The following provisions are highlighted:
- a. The Act amended section 7 of the CPA by providing that a private prosecution may not be instituted against a child in respect of whom a matter has been diverted in terms of section 59(2) of the Act;
 - b. The Act amended section 38 of the CPA by providing for new methods of securing the attendance of an accused child at a preliminary inquiry or in a child justice court;
 - c. The Act amended section 153 of the CPA by providing that, in terms of section 65(5) of the Act, no person may be present at the sitting of a child justice court, unless his or her presence is necessary in connection with the proceedings of the child justice court or the presiding officer has granted permission for the person to be there;
 - d. The Act amended section 302 of the CPA by changing the reference to a “reform school” to the term “child and youth care centre” in accordance with section 191(2)(j) of the Children’s Act, 2005;
 - e. The Act amended sections 309 and 316 of the CPA by aligning it with the provisions of section 84 of the Act.
- (iii) **The Children’s Act, 2005** provides for the protection of children in need of care and protection and for the establishment of child and youth care centres which provides for the reception, development and safe care of children in terms of an order under Chapter 10 of the Act. The child and youth care centres are managed by the Department of Social Development and the Department of Basic Education is responsible for the educational programmes of the children sentenced to compulsory residence in a child and youth care centre.

Child Justice Act, 2008: Amended National Policy Framework, 2018

(iv) **The Criminal Law (Sexual Offences and Related Matters)**

Amendment Act (Act No. 32 of 2007) is relevant in terms of the child who has allegedly committed a sexual offence. Sections 15, 16 and 50 have been amended, through the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2015 (Act No. 5 of 2015) (“the Amendment Act”). Section 15 was amended to decriminalise consensual sexual acts with a child who is 12 or older but under the age of 16 years, if the perpetrator was also within the same age group or if he or she was 16 or 17 years, if the age difference (between the victim and offender) is not more than two years. The amendments therefore decriminalise consensual sexual acts of children between the ages of 12 and 17. Section 16 was amended along the same lines and allows the Director of Public Prosecutions to decide whether to prosecute an offender who was 16 or 17 and the difference between the perpetrator and the victim was more than 2 years. Section 50 has been amended to regulate the inclusion of the names of children convicted of a sexual offence in the National Sex Offenders Register and provides that their names may only be included if the court is satisfied that substantial and compelling circumstances exist which justify the inclusion of their names.

(v) **The Correctional Services Act, 1998 (Act No. 111 of 1998)**,

contains provisions which deal specifically with children and provides for the following:

- (a) Section 7(2)(c) provides that children in detention must be kept separate from adult inmates and in accommodation appropriate to their age.
- (b) Section 13(6)(c) provides that in the case of a child, the National Commissioner must notify the appropriate state authorities who have statutory responsibility for the education and welfare of children as well as the parents or next of kin (including relatives) of such a child when the child has been admitted in the Department of Correctional Services facility or transferred to another facility.
- (c) Section 19 provides that –
 - (i) every inmate who is a child and is subject to compulsory education must attend and have access to such educational programmes;

Child Justice Act, 2008: Amended National Policy Framework, 2018

- (ii) where practicable, all children who are inmates and not subject to compulsory education must be allowed access to educational programmes;
 - (iii) the National Commissioner must provide every inmate who is a child with social work services, religious care, recreational programmes and psychological services; and
 - (iv) the National Commissioner must, if practicable, ensure that inmates who are children remain in contact with their families through additional visits and by other means.
- (d) Section 40(3) provides that a child who is a sentenced offender may only do work for the purposes of training aimed at obtaining skills for his or her development and may not be subjected to work if the work that is to be performed is inappropriate for the age of the child or if the work places the child's educational, physical, mental, moral or social well-being at risk.
- (e) ²Section 69 provides that –
- (i) a child who is subject to community corrections may be required to attend educational programmes whether or not he or she is otherwise subject to compulsory education; and
 - (j) the National Commissioner must, in addition to any programmes which the child may be required to take part in, ensure that if the child requires support, he or she has access to adequate social work services, religious care, recreational programmes and psychological services.
- (vi) **The Probation Services Act (Act No.116 of 1991)** contains important provisions relating to child justice, such as those relating to assessment, diversion and restorative justice. In addition to specific provisions in the Act, which spell out the various additional powers, duties and functions of probation officers, the Act also has amended several definitions contained in section 1 of the Probation Services Act, so as to more clearly reflect the intention contemplated by the Act.

² Section 69 should be read in conjunction with generic conditions that apply to community corrections as specified in section 52 of the Correctional Services Act (Act 111, 1998).

Child Justice Act, 2008: Amended National Policy Framework, 2018

5. Policy Considerations for the Implementation of the Act

The successful implementation of the Act depends on the following considerations and requirements:

- (i) **Priorities of the NPF:** Service delivery is based on the key priority areas of performance, as identified by the Act;
- (ii) **Roles and Responsibilities:** Each department/ institute must fulfill its mandate, taking a collective approach that involves other stakeholders, including the civil society; and
- (iii) **Managing Intersectoral Coordination:** The handover of responsibility towards children in conflict with the law between departments must be regulated, well-coordinated and well-managed.
- (iv) **Monitoring and Evaluation:** The implementation of the NPF, the Act and the flow of children through the child justice system must be monitored.

5.1 Priorities of the NPF

The key priorities of the NPF provide for overall guidance in and monitoring of the implementation of the Act and guide the requirements of reporting to Parliament as follows:

The information provided should include comparative analysis of previous financial years and analyses of current trends disaggregated by ages, offences and Provinces, where applicable.

5.1.1 Building Capacity in the Sector

(i) Human Capacity

The implementation of the Act requires capacity building within the Child Justice System both in terms of human resource skills and knowledge. Every government stakeholder is consequently required to provide adequate human resources at every service point. This could be achieved by prioritising the allocation of additional resources and budget to progressively achieve the balance between the service demands and the human

Child Justice Act, 2008: Amended National Policy Framework, 2018

resource capacity at each service point within the child justice system. It is borne in mind that budgetary constraints may hinder speedy provision in this regard.

(ii) Training and Education

- a) The Act establishes specialised services which require specialised skills. Personnel must therefore receive ongoing training to develop the requisite knowledge and skills. This training must be delivered within individual departments to build specific skills aligned to the mandate of such department. It is also necessary that it takes an intersectoral approach since the Act promotes the establishment of a co-ordinated and intersectoral child justice system.
- b) The Act expressly puts emphasis on training and development by certain implementing government stakeholders. Section 97 of the Act requires the National Director of Public Prosecutions, the National Commissioner of the South African Police Service, the Directors-General of Social Development and Health and the National Commissioner of Correctional Services to develop training courses to build skills and sensitivity when dealing with child justice matters. This provision is in line with the International Instruments. For instance, Rule 12 of the Beijing Rules draws attention to the need for specialised training for all law enforcement officials who are involved in the administration of child justice. There is a general opinion that some degree of specialisation amongst legal representatives for children in conflict with the law will establish a good overall standard of representation for children.³
- c) In order to monitor training and development, the following are required:
 - 1) The National Prosecuting Authority must report on the content of the training courses developed to build skills and sensitivity when dealing with child justice matters and on the impact of the training in the Institution.
 - 2) The South African Police Service must report on the content of the training courses developed to build skills and sensitivity when dealing with child justice matters and on the impact of the training in the Department.

³ Zaal, N & Skelton, A. 1998. Providing effective representation for Children in a new Constitutional Era: Lawyers in the Criminal and Children's Courts. SAJHR, p 539 - 559

Child Justice Act, 2008: Amended National Policy Framework, 2018

- 3) The Department of Social Development must report on the content of the training courses developed to build skills and sensitivity when dealing with child justice matters and on the impact of the training in the Department.
 - 4) The Department of Health must report on the content of the training courses developed to build skills and sensitivity when dealing with child justice matters and on the impact of the training in the Department.
 - 5) The Department of Correctional Services must report on the content of the training courses developed to build skills and sensitivity when dealing with child justice matters and on the impact of the training in the Department.
 - 6) Legal Aid South Africa must report on the content of the training courses developed to build skills and sensitivity when dealing with child justice matters and on the impact of the training.
- d) The intersectoral training and capacity building must be ongoing to improve and retain skills within the child justice system and also keep abreast of the progressive reforms brought by legislative developments and case law. Training must remain the standing agenda item in the Intersectoral Committees for Child Justice Fora to respond to the goals of the Act.
- e) It is further encouraged that the training offered by all stakeholders to be registered in terms of the South African Qualifications Authority (SAQA) to ensure that the country builds competencies in child justice.
- f) Awareness raising, education and training must be provided to all role players within the system to ensure a common understanding of the Act and its requirements.

5.1.2 Methods of securing attendance of children at preliminary inquiries

- a) Chapter 3 of the Act regulates the apprehension of a child alleged to have committed a criminal offence. Section 17(1) of the Act provides that the attendance of a child at the preliminary inquiry can be secured through:
- (i) A written notice;
 - (ii) A summons; or

Child Justice Act, 2008: Amended National Policy Framework, 2018

- (iii) An arrest.

- b) In order to monitor the attendance of children at preliminary inquiries, the following are required:
 - (i) The number of children charged must be recorded and reported on by the South African Police Service.
 - (ii) The number of charges against children, disaggregated by province, must be recorded and reported on by the South African Police Service.
 - (iii) The type of offences that children are charged with, disaggregated by province, must be recorded and reported on by the South African Police Service.
 - (iv) The ages of children charged, disaggregated by province, must be recorded and reported on by the South African Police Service.
 - (v) The number of children whose attendance at the preliminary was secured with written notices/summons must be recorded and reported on by the South African Police Service.
 - (vi) The number of children whose attendance at the preliminary was secured with arrest (detention) must be recorded and reported on by the South African Police Service.
 - (vii) The number of children under the age of 10 years handed over by the South African Police Service to the Department of Social Development must be recorded and reported on by the South African Police Service.
 - (viii) The number of children charged with sexual offences must be recorded and reported on by the South African Police Service.
 - (ix) The ages of children charged with sexual offences, disaggregated by province, must be recorded and reported on by the South African Police Service.
 - (x) The sexual offences children are charged with, disaggregated by province, must be recorded and reported on by the South African Police Service.

5.1.3 Ensuring assessment of children

- a) The Act provides that every child alleged to have committed an offence must be assessed within a prescribed time frame, unless assessment has been

Child Justice Act, 2008: Amended National Policy Framework, 2018

dispensed with by the prosecutor, if it is in the best interest of the child to do so. Reasons for the dispensing with the assessment must be entered on the record of the proceedings by the presiding officer. This obligation requires the active participation of the South African Police Service in notifying the probation officer. The Department of Social Development must ensure that probation officers are available and accessible as required by the Act.

- b) In terms of section 34(2) of the Act, a probation officer, who has been notified by a police official that a child has been handed a written notice, served with a summons or arrested, must assess the child before the child appears at a preliminary inquiry within the time periods provided for in the Act.
- c) In order to monitor the assessment of children, the following are required:
 - (i) The number of assessments conducted must be recorded and reported on by the Department of Social Development.
 - (ii) The ages of the children assessed must be recorded and reported on by the Department of Social Development.
 - (iii) The offences committed by children assessed must be recorded and reported on by the Department of Social Development.
 - (iv) The number of children with foreign nationalities assessed must be recorded and reported on by the Department of Social Development.
 - (v) The number of children under the age of 10 years old assessed and the outcomes of these assessments must be recorded and reported on by the Department of Social Development.
 - (vi) The number of children referred for criminal capacity assessment to be reported by Department of Health.
 - (vii) The number of children assessed for criminal capacity assessment to be reported by the Department of Health.

5.1.4 Preliminary Inquiries

- a) A preliminary inquiry is an informal inquisitorial pre-trial procedure. It must be held in respect of every child who is alleged to have committed an offence, except where the:

Child Justice Act, 2008: Amended National Policy Framework, 2018

- (i) Matter has been diverted by a prosecutor before the preliminary inquiry in respect of a schedule 1 offence;
 - (ii) Child is under the minimum age of criminal capacity; or
 - (iii) Matter has been withdrawn/*nolle prosequed*.
- b) In terms of section 50 of the CPA read with section 43 of the Act, a child's appearance at a preliminary inquiry is regarded as his or her first appearance before a lower court.
- c) The objectives of the preliminary inquiry are to:
- (i) Consider the assessment report of the probation officer, with specific reference to:
 - a. The age estimation of the child, if the age is uncertain;
 - b. The view of the probation officer regarding the criminal capacity of the child if the age of the child is equal to or older than the minimum age of criminal capacity but under the age of 14 years and a decision as to whether an evaluation of the criminal capacity of the child by a suitably qualified person is necessary; and
 - c. Whether a further and more detailed assessment of the child is needed;
 - (ii) Establish whether the matter can be diverted before plea;
 - (iii) Identify suitable diversion options, where applicable;
 - (iv) Establish if the matter should be referred to a children's court for a children's court inquiry, if the child seems to be in need of care and protection;
 - (v) Ensure that all available information relevant to the matter is considered;
 - (vi) Ensure that the views of all persons present are considered before a decision is made;
 - (vii) Encourage the participation of the child and his or her parent, guardian or an appropriate adult; and
 - (viii) Determine the release or placement of a child, pending-
 - a. the conclusion of the preliminary inquiry;
 - b. the appearance of the child in a child justice court; or
 - c. the referral of the matter to a children's court, where applicable.

Child Justice Act, 2008: Amended National Policy Framework, 2018

- d) One of the most important decisions emanating from the preliminary inquiry relates to the release or detention of the child. The Act clearly defines both the role-players and the mechanism for holding a preliminary inquiry. Since these requirements must be met by a diverse range of departments and individuals, establishing a court level mechanism for co-operation and co-ordination remains fundamental.
- e) A preliminary inquiry may proceed in the absence of the child's parent, guardian or an appropriate adult if the inquiry magistrate is satisfied that to do so would be in the best interests of the child. If the preliminary inquiry proceeds in the absence of the child's parent, guardian or an appropriate adult, the inquiry magistrate must record the reasons for the decision.
- f) Section 81 of the Act makes it clear that it is not compulsory for a child to be legally represented at the preliminary inquiry but states that nothing precludes a child from being represented by a legal representative. For this reason, the Legal Aid South Africa provides legal aid services in cases where it is deemed necessary for the child to be assisted at preliminary inquiry stage of the proceedings. Legal representation is also a constitutional imperative that must be safeguarded and respected.
- g) In order to monitor the preliminary inquiry elements, the following are required:
- (i) The number of children whose cases were indicated as *nolle prosequi* before the preliminary inquiry must be recorded and reported on by the National Prosecuting Authority.
 - (ii) The number of children referred to the probation officer before the preliminary inquiry because of a lack of criminal capacity must be recorded and reported on by the National Prosecuting Authority.
 - (iii) The number of new preliminary inquiries must be recorded and reported on by the Department of Justice and Constitutional Development.
 - (iv) The outcome of preliminary inquiries must be recorded and reported on by the Department of Justice and Constitutional Development.
 - (v) The number of children represented by Legal Aid SA during the preliminary inquiries must be recorded and reported on by Legal Aid SA.

Child Justice Act, 2008: Amended National Policy Framework, 2018

- (vi) The ages of children represented by Legal Aid SA during the preliminary inquiries must be recorded and reported on by Legal Aid SA.
- (vii) The charges against the children represented by Legal Aid SA during the preliminary inquiries must be recorded and reported on by Legal Aid SA.
- (viii) The outcomes of preliminary inquiries of children represented by Legal Aid SA must be recorded and reported on by Legal Aid SA.
- (ix) The detention/release of children pending the finalization of the preliminary inquiry must be recorded and reported on by the Department of Justice and Constitutional Development.
- (x) The charges against children appearing at preliminary inquiries must be recorded and reported on by the Department of Justice and Constitutional Development.
- (xi) The ages of children appearing at preliminary inquiries must be recorded and reported on by the Department of Justice and Constitutional Development.

5.1.5. Diversion Services

(i) Provisioning of Diversion Services

- a) The implementation of the Act heralds a new era in the regulation of diversion service providers and programmes. In this regard, the Act, more particularly section 56 (2)(a) of the Act, places the responsibility of establishing and maintaining an accreditation system for diversion service providers and programmes on the Minister of Social Development.
- b) The Act introduces the requirement that a child may only be referred to a diversion service provider or programme that is accredited in terms of the Act. These service providers include government, non-governmental and educational bodies. It is envisaged that accreditation will ensure that service providers meet minimum standards and facilitate meaningful outcomes in diversion programmes. In addition to accreditation of diversion programmes being a requirement of the Act, the Act also provides for quality assurance, and the monitoring and evaluation of programmes and service providers.
- c) Consequently, the Department of Social Development developed a National Policy Framework and System for Accreditation of Diversion Service Providers

Child Justice Act, 2008: Amended National Policy Framework, 2018

and Programmes in South Africa. This Policy Framework outlines a management framework for the accreditation, quality monitoring and quality improvement of diversion service providers and programmes. It addresses the accreditation of:-

- (i) Service providers that provide rehabilitation and developmental services and programmes as diversion and sentence options to children at risk and children in conflict with the law; as well as
 - (ii) The content for diversion programmes and alternative sentences (offered either by government departments or service providers).
- d) It is the responsibility of the Department of Social Development to ensure that children who have been diverted are effectively reintegrated into society through restorative justice and diversion programmes that can give such children second chances to improve their lives and become productive citizens. To this end section 56(2)(a)(iii) of the Act further requires that the Department of Social Development ensures the availability of resources to implement diversion programmes.

In order to monitor the above aspects, the following are required:

- (i) The number of accredited diversion service providers and programmes, disaggregated by province must be recorded and reported on by the Department of Social Development.
- (ii) The accredited diversion service providers and programmes must be published in the *Government Gazette* by the Department of Social Development.

(ii) Application of diversion

- a) One of the primary objectives of the Act is to divert children in conflict with the law away from the formal criminal justice system, where appropriate. Diversion of child offenders therefore plays a central role in the Act. In this regard the Act provides for the possibility of diversion in all matters. There is no exclusion from the possibility of diversion based solely on the nature of the offence, and any child accused of committing any crime can therefore be diverted from the criminal justice system, if desirable in the circumstances.

Child Justice Act, 2008: Amended National Policy Framework, 2018

- b) The Act also provides a framework for diversion and therefore reduces the risk of discriminatory applications and practices relating to diversion. Diversion may be considered throughout the child justice process up until before closure of the case for the prosecution.
- c) In terms of section 51 of the Act, the objectives of diversion are to:
- (i) Deal with a child outside the formal criminal justice system in appropriate cases;
 - (ii) Encourage the child to be accountable for the harm caused by him or her;
 - (iii) Meet the particular needs of the individual child;
 - (iv) Promote the reintegration of the child into his or her family and community;
 - (v) Provide an opportunity to those affected by the harm to express their views on its impact on them;
 - (vi) Encourage the rendering to the victim of some symbolic benefit or the delivery of some object as compensation for the harm;
 - (vii) Promote reconciliation between the child and the person or community affected by the harm caused by the child;
 - (viii) Prevent stigmatising the child and prevent the adverse consequences flowing from being subject to the criminal justice system;
 - (ix) Reduce the potential for re-offending;
 - (x) Prevent the child from having a criminal record; and
 - (xi) Promote the dignity and well-being of the child, and the development of his or her sense of self-worth and ability to contribute to society.
- d) A matter may, after consideration of all relevant information presented at a preliminary inquiry, or during a trial, including whether the child has a record of previous diversions, be considered for diversion, if:
- (i) The child acknowledges responsibility for the offence;
 - (ii) The child has not been unduly influenced to acknowledge responsibility;
 - (iii) There is a *prima facie* case against the child;
 - (iv) The child and, if available, his or her parent, an appropriate adult or a guardian, consent to diversion; and

Child Justice Act, 2008: Amended National Policy Framework, 2018

- (v) The Prosecutor or the Director of Public Prosecutions indicates that the matter may be diverted (section 52 of the Act).
- e) In terms of section 41 of the Act, the prosecutor may divert a child accused of committing a Schedule 1 offence before the preliminary inquiry. Schedule 1 offences include common assault; statutory rape; illicit possession of dependence producing drugs, where the quantity does not exceed R500; theft, where the amount does not exceed R2 500; etc. If the prosecutor or Director of Public Prosecutions indicates that a matter may be diverted, the inquiry magistrate may divert any suitable matter during the preliminary inquiry, and the child justice court can divert any suitable matter at any time during the trial, but before closure of the case for the State. Matters may only be diverted during the preliminary inquiry and the proceedings in the child justice court, if the prosecutor indicates that the matter may be diverted.
- f) In order to monitor the diversion processes, the following are required:
- (i) The number of diversions before the preliminary inquiry (section 41) must be recorded and reported on by the National Prosecuting Authority.
 - (ii) The number of diversions during the preliminary inquiry must be recorded and reported on by the National Prosecuting Authority.
 - (iii) The number of diversions during the trial must be recorded and reported on by the National Prosecuting Authority.
 - (iv) The types of offences diverted must be recorded and reported on by the National Prosecuting Authority.
 - (v) The ages of children diverted must be recorded and reported on by the National Prosecuting Authority.
 - (vi) The number of children that went through diversion programmes must be recorded and reported on by the Department of Social Development.
 - (vii) The outcome of diversion orders must be recorded and reported on by the Department of Social Development.
 - (viii) The number of children ordered to complete residential diversion orders in Child and Youth Care Centres must be recorded and reported on by the Department of Social Development.
 - (ix) The offences committed by children completing residential diversions in in Child and Youth Care Centres must be recorded and reported on by the Department of Social Development.

Child Justice Act, 2008: Amended National Policy Framework, 2018

- (x) The average duration of residential diversion orders completed in Child and Youth Care Centre must be recorded and reported on by the Department of Social Development.
- (xi) The ages of children ordered to complete residential diversion orders in Child and Youth Care Centre must be recorded and reported on by the Department of Social Development.

5.1.6 Awaiting trial, bail and placement

- a) The decision to grant bail or to detain a child pending trial and the placement of the child while in detention primarily falls under the discretion of the judiciary.
- b) The preliminary inquiry magistrate must decide on the release or placement of the child, waiting finalisation of the preliminary inquiry or trial, if the matter has been referred to the child justice court for trial. If the child is to be released, the inquiry magistrate must decide whether the child may be released in the care of a parent, guardian or an appropriate adult. The child may also be released on bail or on his/her own recognizance. If the child is to be detained, the inquiry magistrate must decide whether detention should be in prison, a police lockup or in a Child and Youth Care Centre.
- c) While awaiting trial in detention in correctional facilities or in a Child and Youth Care Centre, the Act provides that the child should appear before the presiding officer within prescribed periods of time. If the child is detained awaiting trial, the court must consider the continued detention of the child at each appearance.
- d) In order to monitor the detention of children, the following are required:
 - (i) The number of remand detainee children in Correctional Facilities must be monitored, recorded and reported on by the Department of Correctional Services, disaggregated by Province.
 - (ii) The duration of the time spent in detention by remand detainee children in Correctional Facilities must be monitored, recorded and reported on by the Department of Correctional Services.

Child Justice Act, 2008: Amended National Policy Framework, 2018

- (iii) The ages of remand detainee children in detention in Correctional Facilities must be recorded and reported on by the Department of Correctional Services.
- (iv) The number of remand detainee children granted bail (but not paid) and detained in Correctional Facilities (including the amount of bail set) must be recorded and reported on by the Department of Correctional Services.
- (v) The number of remand detainee children that escaped from detention in Correctional Facilities and those that absconded from community corrections must be monitored, recorded and reported on by the Department of Correctional Services.
- (vi) The number of children awaiting trial in Child and Youth Care Centres must be monitored, recorded and reported on by the Department of Social Development disaggregated by Province.
- (vii) The duration of the time spent in detention awaiting trial in Child and Youth Care Centres must be monitored, recorded and reported on by the Department of Social Development.
- (viii) The ages of children awaiting trial in Child and Youth Care Centres must be recorded and reported on by the Department of Social Development.
- (ix) The number of children that escaped from detention while awaiting trial in Child and Youth Care Centres must be monitored recorded and reported on by the Department of Social Development.
- (x) The number of children released into the care of a parent/guardian/appropriate adult, awaiting trial, must be recorded and reported on by the Department of Justice and Constitutional Development.
- (xi) The number of children released on bail must be recorded and reported on by the Department of Justice and Constitutional Development.
- (xii) The number of children released on their own recognizance must be recorded and reported on by the Department of Justice and Constitutional Development.

5.1.7 Trials

- a) If a charge against a child was not withdrawn, diverted or referred to the children's court during the preliminary inquiry, the matter must be referred to the child justice court for trial.

Child Justice Act, 2008: Amended National Policy Framework, 2018

- b) Section 83 of the Act prohibits a child from waiving his or her right to legal presentation when appearing before a child justice court. Section 82 of the Act gives a child access to legal representation at the State's expense by Legal Aid South Africa.
- c) In order to monitor the trial processes, the following are required:
- (i) The number of new trials in the child justice courts must be recorded and reported on by the Department of Justice and Constitutional Development.
 - (ii) The outcomes of trials in the child justice courts must be recorded and reported on by the Department of Justice and Constitutional Development.
 - (iii) The charges against children in the child justice courts must be recorded and reported on by the Department of Justice and Constitutional Development.
 - (iv) The ages of children appearing in the child justice courts must be recorded and reported on by the Department of Justice and Constitutional Development.
 - (v) The number of children represented by Legal Aid South Africa during trial must be recorded and reported on by Legal Aid South Africa.
 - (vi) The charges against children represented by Legal Aid South Africa during trial must be recorded and reported on by Legal Aid South Africa.
 - (vii) The outcomes of the trials against children represented by Legal Aid South Africa during trial must be recorded and reported on by Legal Aid South Africa.
 - (viii) The number of persons charged in terms of section 141(1)(d) read with section 305(1)(c) of the Children's Act, 2005 for using a child to commit a crime must be recorded and reported on by the South African Police Service.
 - (ix) The number of persons prosecuted in terms of section 141(1)(d) read with section 305(1)(c) of the Children's Act, 2005 for using a child to commit a crime must be recorded and reported on by the Department of Justice and Constitutional Development.
 - (x) The outcomes of cases where persons were prosecuted in terms of section 141(1)(d) read with section 305(1)(c) of the Children's Act, 2005 for using a child to commit a crime must be recorded and reported on by the Department of Justice and Constitutional Development.
 - (xi) The number of appeals and reviews lodged and finalised must be recorded and reported on by the Department of Justice and Constitutional Development.

Child Justice Act, 2008: Amended National Policy Framework, 2018

5.1.8 Sentencing

- a) The Act creates an effective sentencing framework for children to give effect to the constitutional mandate and international obligations that set the standards for sentencing in the Act, and the caution that detention of children should be a measure of last resort and for the shortest appropriate period of time. This is evident from, amongst others, section 3 on the general principles of the Act and section 69 which set out the objectives of sentencing. The sentencing framework in the Act therefore prioritises the use of alternative or non-custodial sentences and creates an approach to ensure that residential sentences are a last resort.
- b) Interdepartmental co-operation is required because sentencing is not just the responsibility of the presiding officer. Probation officers are responsible for compiling pre-sentence reports and monitoring non-custodial sentences, while the prosecution is responsible for obtaining victim impact statements, where appropriate, and guiding the court to an appropriate sentence. In addition, the new sentence category of compulsory residence in a Child and Youth Care Centre, created by section 76(3) of the Act, requires considerable co-ordination between Child and Youth Care Centres and the courts in the review of such a sentence.
- c) Furthermore, the managers of Child and Youth Care Centres, in cases where children are sentenced in terms of section 76(3) of the Act, have to ensure that they perform their responsibilities towards the child with the utmost care in order to give effect to section 28(1)(g) of the Constitution. This is because if they do not provide quality interventions and service during the time spent in the Child and Youth Care Centre in terms of section 76(3) of the Act, the child runs the risk of a sentence of imprisonment at the end of the Child and Youth Care Centre component of the sentence.
- d) All departmental role-players will ensure that systems are put in place to ensure that monitoring of non-custodial sentences; the execution of sentences in terms of section 76(3) of the Act and the designation of a Child and Youth Care Centres

Child Justice Act, 2008: Amended National Policy Framework, 2018

in terms of section 76(4) are effected as expeditiously as possible in the best interests of the affected children.

- e) In order to monitor the sentencing processes, the following are required:
- (i) The types of sentences imposed by child justice courts must be recorded and reported on by the Department of Justice and Constitutional Development.
 - (ii) The charges children are convicted of in child justice courts must be recorded and reported on by the Department of Justice and Constitutional Development.
 - (iii) The ages of children convicted in child justice courts must be recorded and reported on by the Department of Justice and Constitutional Development.
 - (iv) The number of children sentenced to imprisonment in Correctional Facilities must be recorded and reported on by the Department of Correctional Services disaggregated by Province.
 - (v) The ages of children sentenced to imprisonment must be recorded and reported on by the Department of Correctional Services.
 - (vi) The offences committed by sentenced children detained in Correctional Facilities must be recorded and reported on by the Department of Correctional Services.
 - (vii) The duration of the sentences of imprisonment of the children in Correctional Facilities must be recorded and reported on by the Department of Correctional Services.
 - (viii) The number of sentenced children in Correctional Facilities that escaped and those that absconded from community corrections must be recorded and reported on by the Department of Correctional Services.
 - (ix) The educational programmes offered in Correctional Facilities must be recorded and reported on by the Department of Correctional Services.
 - (x) The number of children placed under the system of community corrections must be recorded and reported on by the Department of Correctional Services.
 - (xi) The ages of children sentenced to compulsory residence in Child and Youth Care Centres must be recorded and reported on by the Department of Social Development.
 - (xii) The number of sentenced children in Child and Youth Care Centres must be recorded and reported on by the Department of Social Development disaggregated by Province.
 - (xiii) The offences committed by sentenced children in Child and Youth Care Centres must be recorded and reported on by the Department of Social Development.

Child Justice Act, 2008: Amended National Policy Framework, 2018

- (xiv) The duration of the sentences of compulsory residence in Child and Youth Care Centres must be recorded and reported on by the Department of Social Development.
- (xv) The number of sentenced children in Child and Youth Care Centres that escaped must be recorded and reported on by the Department of Social Development.
- (xvi) The number of children sentenced in terms of section 76(3) of the Act in Child and Youth Care Centres must be recorded and reported on by the Department of Social Development.
- (xvii) The educational programmes offered in Child and Youth Care Centres must be recorded and reported on by the Department of Basic Education.

5.1.9 Management of Infrastructure for the Implementation of the Act

The establishment and management of child-friendly infrastructure, such as courts and facilities for awaiting trial and sentenced children, should receive priority attention by all Departments, within the available resources of the State. This is to safeguard the right of children not to be detained except as a measure of last resort, and if detained, to be kept separately from adults, boys to be kept separately from girls, and also be treated in a manner that takes account of their age, as provided by section 28(1)(g) of the Constitution, 1996. Where separate child-appropriate facilities cannot be built, alternative measures must be taken to ensure that children are kept separately from detained adults.

(i) Child and Youth Care Centres

- a) Section 196 of the Children's Act, 2005 defines a Child and Youth Care Centre as a facility for the provision of residential care to more than 6 children outside the child's family environment. This definition covers not just children's homes but also places of safety, secure care centres and shelters for street children.
- b) Section 196(4) of the Children's Act, 2005 provides that all existing government children's homes, places of safety, secure care facilities, schools of industries and reform schools must be registered as Child and Youth Care Centres within two years of the commencement of the relevant provisions in the Children's Act, 2005.

Child Justice Act, 2008: Amended National Policy Framework, 2018

- c) In terms of the Children's Act, 2005 these centres must offer a therapeutic programme designed for the residential care of children outside the family environment, which may include a programme designed for, among other purposes:

“the reception, development and secure care of children awaiting trial or sentence;”

- d) Secure care is defined as a residential facility and/or programme of intervention which ensures the appropriate physical, behavioural and emotional containment of children who are charged with criminal offences and who are awaiting trial or have been sentenced. Such a facility provides an environment, milieu and programme conducive to the care, safety and healthy development of each child while at the same time ensuring the protection of communities.
- e) Secure care therefore forms part of one of the programmes included under the broad term of a Child and Youth Care Centre and as such must comply with all the prescriptions, as outlined for Child and Youth Care Centres in terms of the Children's Act, 2005.
- f) The Department of Social Development developed national guidelines for the establishment of the Child and Youth Care Centres, and must ensure that intersectoral consultation is done prior the establishment process to ensure that these Centres are established at places where the demand is collectively identified.
- g) In order to monitor the management of Child and Youth Care Centres, the following are required:
- (i) The number of Child and Youth Care Centres (Secure Care) disaggregated by province (differentiating between facilities catering for sentenced children and children awaiting trial) must be recorded and reported on by the Department of Social Development.
 - (ii) The available bed space in Child and Youth Care Centres (Secure Care) for sentenced children and children awaiting trial must be recorded and reported on by the Department of Social Development disaggregated by Province.

Child Justice Act, 2008: Amended National Policy Framework, 2018

(ii) One Stop Child Justice Centres

- a) Section 89(1) of the Act states that the Minister of Justice and Correctional Services may, in consultation with the Ministers of Social Development and Safety and Security, establish One Stop Child Justice Centres. These centres are intended to bring all services required by a child in conflict with the law under one roof to ensure 'an integrated and holistic approach in the implementation of this Act.'⁴
- b) The Act further holds the selected Ministers severally responsible for the resourcing of these Centres by their respective Departments, including the provision of services for the effective functioning of these Centres. In compliance with this provision, the resourcing stakeholders must sign a Service Level Agreement or similar agreement outlining the different roles and responsibilities of these stakeholders, including the resource commitments. The development of the Service Level Agreement must be facilitated by the concerned Provincial Child Justice Forum, recommended by the National Operational Intersectoral Committee for Child Justice and approved by the Directors-General Intersectoral Committee for Child Justice.
- c) The responsible Ministers may delegate the signing of the Service Level Agreement to their respective accounting officers or heads of participating Departments or Institutions.
- d) As required by section 89(5) of the Act, an intersectoral management committee must be established at each One Stop Child Justice Centre. It must draw its membership from the senior officials of the participating stakeholders, including the civil society organizations operating at each Centre.
- e) The National Guidelines for the establishment and management of the One Stop Child Justice Centres has been developed by the National Operational Intersectoral Committee for Child Justice and approved by the Child Justice Directors- General Intersectoral Committee for Child Justice.
- f) The establishment of the One Stop Child Justice Centres may be incrementally realised subject to the availability of resources and funding constraints. It is further

⁴ Section 89(3) of the Child Justice Act, 2008

Child Justice Act, 2008: Amended National Policy Framework, 2018

encouraged that existing buildings be used to establish these Centres, where possible.

- g) The management and performance of the exiting One Stop Child Justice Centres to be reported on by the Department of Justice and Constitutional Development.

(iii) Correctional Facilities

The number of Correctional Facilities catering for the detention of children in conflict with the law, disaggregated by province (differentiating between facilities catering for sentenced children and children awaiting trial) must be recorded and reported on by the Department of Correctional Services.

5.1.10 Resources and Budgets

- a) The implementation of the Act places increased demands on the Fiscus. In the absence of sufficient funding, limited services can be provided, particularly in the more rural and outlying areas. South Africa, given its international obligations, is compelled to increasingly give effect to the domestic legislation and the undertakings it makes to meet the set implementation priorities.
- b) The Departments/ Institutions are implementing the Act within existing budgets and are reprioritizing current budget allocations to ensure an effective child justice system in South Africa.
- c) Costing of the further and appropriated implementation of the Act should be prioritised during the review of the Act.

5.1.11 Public Education and Communication

- a) The Act has been in operation since 2010, but it still requires extensive communication in terms of *ubuntu* and Batho Pele-principles, with civil society, children, their families and communities. Government and civil society must therefore engage in awareness-raising and public education on an ongoing basis as part of the efforts to prevent crime.

Child Justice Act, 2008: Amended National Policy Framework, 2018

- b) One of the aims of the Act is to recognise the present realities of crime in the country and the need to be proactive in crime prevention by placing increased emphasis on the effective rehabilitation and reintegration of children in order to minimize the potential to reoffend. Section 2(b)(iv) of the Act requires the involvement of parents, families, victims and, where appropriate, other members of communities affected by the crime in procedures in terms of the Act to encourage the reintegration of children. The special treatment of children in conflict with the law in the child justice system, designed to break the cycle of violence, will contribute to safer communities, and encourage children to become law-abiding citizens and productive adults. An integral part of achieving this objective depends on the co-operation of and acceptance of children in conflict with the law by their families, communities and society in general. Effective public education on and communication and awareness raising about the child justice system and the benefits, not only to the children but to society in general, of treating children in conflict with the law differently forms an essential part of the successful implementation and application of the Act and crime prevention.
- c) The intersectoral public education programmes are requested to maintain the integrated implementation of the Act. Each Department/ Institution must develop educational interventions to reach out to children and community members.
- d) Each Department / Institution must submit on an annual basis their respective prevention interventions including content and implementation of the plan to the Intersectoral Committee for Child Justice.
- e) All relevant public education and communication campaigns dealt with by all the implementing Departments/Institutions must be recorded and reported on by each Department / Institution.

5.1.12 Development of an integrated information management system

- a) Section 96(1)(e) of the Act requires the establishment of an integrated information management system to enable effective monitoring, analysis of trends and interventions to map the flow of children through the child justice system and to provide qualitative and quantitative data relating to various identified areas.

Child Justice Act, 2008: Amended National Policy Framework, 2018

- b) The Integrated Justice System (IJS) Programme is a multi-year inter-departmental programme focused on the modernization of the CJS. This is a joint venture between the Justice, Crime Prevention and Security (JCPS) Cluster Departments/ Institutions. One of the primary objectives of the programme is to electronically integrate the end-to-end criminal justice business processes (i.e. from the report of a crime to the unconditional release of a convicted person) and the related inter-departmental information exchanges. The process focuses on integrations of Departmental systems where the operational transactional data collected and processed by a Department will then be communicated between the Departmental systems on a real-time basis. The inter-departmental data transmission is enabled through the use of a central IJS Transversal Hub. As the operational transactional data flows from the Departmental application system via the Departmental End-point through the IJS Transversal Hub, statistical data is collected from the operational transactional real time data- flowing through the IJS Transversal Hub. The statistical data will then be processed and displayed on the IJS Transversal Extranet Portal. The statistical data, as prescribed by the Act, will form part of the data displayed on the IJS Transversal Extranet Portal. The display mechanism on the IJS Transversal Extranet Portal has been developed, but is not yet fully functional due to the limited amount of operational transactional data transmitted through the Hub as result of the limited number of inter-Departmental information exchanges currently implemented. Until the time when all the relevant Child related data is transmitted through the IJS Transversal Hub, statistics will be captured by the Departmental systems and extracted for manual submission to IJS Transversal for compilation of a combined data set and submitted to the Department of Justice and Constitutional Development.
- c) Until the finalisation of the IJS Programme, each Department/ Institution is responsible for its data collection, management and reporting to Parliament.

5.2 Roles and Responsibilities of Stakeholders

All Departments/ Institutions responsible for the implementation of the Act must comply with the timeframes provided for in the Act and must submit their Annual Reports on the implementation of the Act, as prescribed by the Act. Each role player in the child justice environment has roles and responsibilities for which it is accountable in terms of the Act and these are summarised below:

Child Justice Act, 2008: Amended National Policy Framework, 2018

5.2.1. South African Police Service

The South African Police Service is the first point of contact for a child in conflict with the law and the Act affords the South African Police Service the following responsibilities:

- (i) Ensure the child's appearance at a preliminary inquiry, primarily by means of alternative methods provided for in the Act, other than arrest (arrest may only be used as a measure of last resort);
- (ii) Explain to the child suspect and his or her parent / guardian / an appropriate adult of procedure that will be followed (including the fact that the child will be assessed by a probation officer) and that the child has a right to legal representation, and if the family cannot afford their own legal representative, Legal Aid SA will assign a legal representative to the child. The Police must initiate contact with the nearest Legal Aid SA office if appropriate in the circumstances;
- (iii) Inform a probation officer *immediately* of the apprehended child, but if that is not possible, not later than 24 hours after the apprehension of such child, by means of either a written notice, summons or arrest, in order for an assessment to be done. The Police must keep the database of the probation officers received from the Department of Social Development;
- (iv) Notify the parent, appropriate adult or guardian of the child of the child's arrest and where he or she is being taken;
- (v) Release, where appropriate, a child older than 10 years who is suspected of having committed an offence(s) referred to in schedule 1, into the care of their parents, a guardian or an appropriate adult;
- (vi) To place, a child younger than 10 years, in the care of his or her parents, a guardian or an appropriate adult, or in a place of temporary safe care in accordance with the Children's Act, 2005, and inform the probation officer accordingly;
- (vii) Ensure the safety and care of the child whilst in the SAPS holding cell. The Station Commander of each police station must record the details on the detention of all children in police cells or lock-ups in a register in a manner that is clearly distinguishable from the details of adults;

Child Justice Act, 2008: Amended National Policy Framework, 2018

- (viii) Treat the child in custody in a manner and in conditions that take into account the age and gender of the child. This includes the provision of a mattress, blanket, food, sanitary towels and access to a toilet and washing facilities. Children must also be kept separately from adults, and boys should be kept separately from girls;
- (ix) Provide medical care by taking the child to a district surgeon or hospital for medical treatment, where necessary. This includes medical care when the child shows severe psychological trauma or injuries;
- (x) Transport the child to and from detention facilities, such as the Correctional Services Awaiting Trial Centres, Child and Youth Care Centres and the court;
- (xi) Provide services in relation to appearance of the child in court (the transfer of the child from the holding cells to the court, maintaining order and safety in the court, investigating criminal cases and the performance of court orderly duties);
- (xii) Issue a certificate for the expungement of a criminal record of a child, as contemplated in section 87(5)(b) of the Act.

5.2.2. Department of Social Development

The provincial Department of Social Development is responsible for:

- (i) Providing a probation officer to conduct an assessment of all children apprehended on allegations of having committed a criminal offence. In the event that a child is arrested an assessment must be done within 48 hours. The Department of Social Development must provide SAPS with the database of local probation officers;
- (ii) Providing a probation officer to present the recommendations following that assessment regarding the possible referral of a child to the children's court and/or counselling, the placement of a child should he or she not be released; and on the appropriateness of diversion including recommendations regarding a particular service provider or particular diversion options;
- (iii) Probation officers will also express a view on the criminal capacity of a child between the ages 10 and under 14 years as well as enquiring whether a child has been used by an adult to commit the crime;
- (iv) Ensuring the availability of a probation officer to perform duties in court, such as giving oral evidence, submitting assessment and pre-sentence reports and

Child Justice Act, 2008: Amended National Policy Framework, 2018

- participating in the preliminary inquiry. The probation officer should also furnish the inquiry magistrate with an estimation of the child's age, if applicable;
- (v) The management of children placed under probation, home-based supervision or released under pre-trial supervision orders;
 - (vi) Providing support, where possible, to the South African Police Service in family finding duties if a child is brought to assessment or the preliminary inquiry or court without a parent or guardian. The probation officer will instruct the assistant probation officer, or a designated family finder, to trace the parent or guardian and to bring them to court to assist the child in the case before court;
 - (vii) The delivery of all accredited diversion programmes, either directly and/ or through the contracting of external service providers. This includes monitoring and reporting on compliance, and making recommendations in the event of non-compliance by the child;
 - (viii) Ensuring the quality of such programmes *via* the Accreditation of Diversion Service Providers and Programmes;
 - (ix) Managing and monitoring children serving all non-custodial or community-based sentences and diversion orders;
 - (x) Submission of compliance/non-compliance reports (Form 9) in respect of diversion orders to the prosecutor and the clerk of the court;
 - (xi) Establishing and maintaining two registers, one for children under 10 years of age and one for children participating in diversion programmes as part of a process to monitor the effectiveness of the Department of Social Development's Prevention and Early Intervention programmes. (Described more fully in the Chapter: Monitoring and Evaluation);
 - (xii) Providing a pre-sentence report within 6 weeks when requested by the child justice court prior to the imposition of sentence;
 - (xiii) The provision and management of Child and Youth Care Centres for children awaiting trial in terms of the Children's Act (38 of 2005). From time to time a list with all the information relevant to the location of all Child and Youth Care Centres in South Africa, the amenities and features of each centre and the level of security offered by each centre must be provided by the Department of Social Development to the South African Police Service and to the Department of Justice and Constitutional Development;
 - (xiv) Develop the National Guidelines for the establishment and management of Child and Youth Care Centres, in consultation with the implementing stakeholders;

Child Justice Act, 2008: Amended National Policy Framework, 2018

- (xv) The submission of a report by the Head of the Child and Youth Care Centre on the child's completion of a compulsory residential sentence in such Centre to the child justice court which imposed the sentence in terms of section 76 of the Act.

In addition the Director-General: Department of Social Development must, in the prescribed manner, expunge the record of any diversion order made in respect of a child in terms of this Act on the date on which that child turns 21 years of age, unless the child has been convicted of any other offence before that date or has failed to comply with the diversion order in question.

5.2.3. Department of Justice and Constitutional Development

The Department of Justice and Constitutional Development is responsible for the application of the Act and therefore has to provide for a range of resources and services, which include:

- (i) The provision of human resources within the courts to ensure service delivery and these include-
 - a) An interpreter;
 - b) Clerical staff; and
 - c) Supervisory functions.
- (ii) Ensuring that children who are sentenced to Child and Youth Care Centres are transferred as soon as possible, but not later than one month after the order was made in terms of section 76 (4)(a) of the Act;
- (iii) Submission of diversion orders and compliance/ non-compliance report (Form 9) in respect of diversion orders to the designated official in the Department of Social Development;
- (iv) Establishment of a court in any One Stop Child Justice Centre established as prescribed in section 2 of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944), and read with section 89 of the Act and the One Stop Child Justice Centre Guidelines;
- (v) Providing a Secretariat for the DG's ISCCJ, National Operational ISCCJ and provincial child justice forums;
- (vi) Maintaining and reviewing the Act, in consultation with the other relevant government departments and civil society stakeholders;
- (vii) Review this NPF at least once every five years;

Child Justice Act, 2008: Amended National Policy Framework, 2018

- (viii) Monitoring of and reporting on the impact of the implementation of the Act, in consultation with the other relevant Departments/ Institutions, and civil society stakeholders; etc.

5.2.4. National Prosecuting Authority (NPA)

The National Prosecuting Authority is responsible for:

- (i) The appointment and management of prosecutors for the implementation of the Act;
- (ii) The prosecutor participates in the preliminary inquiry, and gives an indication at any time during inquiry that the matter may be diverted, provided that all the requirements of diversion in terms of section 51(1) if the Act have been met;
- (iii) Decision making, as *dominus litis*, with regards to whether or not to prosecute the child offender or to divert the matter;
- (iv) If the child is charged with an offence listed in Schedule 1, the prosecutor may decide to divert the matter, and the diversion order is made an order of court in chambers. If no diversion decision is made at this stage, the matter proceeds to the preliminary inquiry;
- (v) The prosecutor participates in the preliminary inquiry, and gives an indication at any time during the preliminary inquiry, providing that all the requirements of diversion are met as provided in section 51(1) of the Act, that diversion may take place;
- (vi) If the matter is not diverted, withdrawn or referred to the children's court at the preliminary inquiry, the matter proceeds to plea and trial in the child justice court;
- (vii) Only the Director of Public Prosecutions and / or a Deputy Director of Public Prosecutions can decide on the diversion of a child who has allegedly committed a Schedule 3-offence. This decision by the Director of Public Prosecutions cannot be delegated to another person, as per section 52(3)(d) of the Act. A Director of Public Prosecutions or a prosecutor authorised in writing, has to issue a certificate to detain, in a prison, a child 14 years or older but below the age of 16;
- (viii) Ensuring that the required input is received from victims and relevant others during the preliminary inquiry or during the trial in the child justice court;

Child Justice Act, 2008: Amended National Policy Framework, 2018

- (ix) Reviewing the recommendations of the probation officer in agreeing to divert to appropriate diversion programmes;
- (x) Making a decision as to whether or not to prosecute a child 10 years or older but below the age of 14 years and who is presumed to lack criminal capacity taking into consideration, amongst others, the factors listed in section 10(1) of the Act;
- (xi) Monitor the reports on compliance/ non-compliance reports (Form 9) in respect of diversion orders and the submission of these reports to the clerk of the court.

5.2.5. Department of Correctional Services

The role of the Department of Correctional Services is to:

- (i) Detain remand detainee- and sentenced children separately from adults as well as in facilities appropriate to their ages;
- (ii) Provide food (of a nutritional value as per sec 8(2) of the Correctional Services Act and Regulation 4(10)(c)), basic health care services and medical treatment to ensure the safety of the child;
- (iii) Provide remand detainee- and sentenced children with services and programmes such as social work, spiritual care, recreational and correctional programmes as well as psychological services;
- (iv) Provide profiling services and develop correctional sentence plans for sentenced children;
- (v) Provide educational programmes for remand detainee- and sentenced children in line with section 19 of the Correctional Services Act;
- (vi) Manage children placed under the system of community corrections;
- (vii) Inform the appropriate state authorities who have statutory responsibility for the education and welfare of children as well as the parents, legal guardians or next of kin of the child when the child is transferred from one facility to another; and
- (viii) Allow legal representatives to consult with the remand detainee- and sentenced children.

5.2.6 Department of Basic Education

The Department of Basic Education is responsible for:

- (i) Providing educational programmes to children sentenced to compulsory residence in Child and Youth Care Centres;

Child Justice Act, 2008: Amended National Policy Framework, 2018

- (ii) Assisting the Department of Social Development, with the monitoring of compulsory school attendance orders, which can be imposed by a child justice court as either a diversion option or a non-custodial sanction;

5.2.7 Legal Aid South Africa

- a) Legal Aid South Africa provides legal assistance to children and has a Legal Aid Guide which can be accessed online⁵. In terms of the Legal Aid South Africa Act, 2014 (Act No. 39 of 2014), the Legal Aid Guide will shortly be replaced by Rules promulgated in terms of the Act, as well as a Legal Aid Manual, both of which will be available on the website.
- b) In terms of the Act, Legal Aid South Africa has the following responsibilities:
- (i) Provide legal representation to children in conflict with the law as all children are entitled to legal representation and cannot waive their right thereto when appearing before a child justice court;
 - (ii) Allow the child, as far as possible to give independent instructions regarding the case;
 - (iii) Explain the child's rights and duties and promote diversion, where appropriate, without unduly influencing the child;
 - (iv) Assist the child at a preliminary inquiry, where required to do so and with negotiations regarding diversion;
 - (v) Ensuring that the assessment, preliminary inquiry, trial or other proceedings in which the child is involved, are conducted 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;
 - (vi) Assist the child in plea proceedings and trial matters, and where necessary in appeal or review procedures;
 - (vii) Appoint, if necessary, a legal representative to assist the court if the child refuses legal representation, does not wish to have a legal representative or declines to give instructions to an appointed legal representative;

⁵ <http://www.legal-aid.co.za/index.php/Legal-Aid-Board-Guide.html>

Child Justice Act, 2008: Amended National Policy Framework, 2018

- (viii) Make available a database of Legal Aid SA offices to all role players via the ISCCJ on a quarterly basis.
- c) Because section 43(3)(c) of the Act states that a child's appearance at a preliminary inquiry is regarded as his or her first appearance before a lower court in terms of section 50 of the Criminal Procedure Act, it therefore forms part of a criminal trial and in terms of section 35 (3) of the Constitution every accused person has a right to a fair trial which includes the right to legal representation at state expense where substantial injustice would otherwise result. Substantial injustice would almost always result in the case of a child in conflict with the law. Legal representation should therefore be available to children appearing in preliminary inquiries, and should not be discretionary.
- d) Where these appearances occur in a normal trial court, Legal Aid SA has indicated that they should not have any resource constraints as the practitioner that normally covers the court will have to deal with the preliminary inquiries. However, in areas where separate Preliminary Inquiry Courts have been established, additional human resources may be required to service these courts.
- e) In addition to providing legal representation as required by the Act, Legal Aid SA undertakes strategic litigation in matters that affect children's rights where the matter involves constitutional questions, or will have an impact on a larger number of children.

5.2.8 Department of Home Affairs

The Department of Home Affairs has a responsibility in terms of issuing identification documents, and in particular has to:

- (i) Issue an identification document for the child⁶ in cases where the inquiry magistrate, child justice court or any other court makes a determination of the age of a child offender. A copy of such determination must be referred to the Department of Home Affairs for consideration;

⁶ Unaccompanied foreign minors who cannot be reunited with their parents or caregivers should be treated in the same manner as South African children in need of care and a court order facilitated via DSD

Child Justice Act, 2008: Amended National Policy Framework, 2018

- (ii) Report back to the inquiry magistrate or child justice court, the probation officer, the child and his or her parent, appropriate adult or guardian, once the age has been registered.

5.2.9 Department of Health

It is the Department of Health's responsibility to:

- (i) Provide mental health-facilities for children who are referred to mental health-facilities for observation/ criminal capacity evaluations, or who are declared as State patients because of a mental health-challenge;
- (ii) Assist with the provision of a suitably qualified person to conduct a criminal capacity evaluation and expert evidence regarding whether a child has criminal capacity in cases where the age of the child is equal to or older than the minimum age of criminal capacity but under the age of 14 years and the State has to prove criminal capacity.

5.2.10 Civil Society Organisations

The role of the civil society is of great importance in strengthening the child justice system through effective partnerships with government and through on-going communication, co-operation and collaboration. They have a role to play in, amongst others:

- (i) Offering a range of programmes for diversions or community-based sentencing options. While it is the overall responsibility of the Department of Social Development to develop, implement and manage diversion and treatment programmes, the Department of Social Development also work co-operatively and provide funding for a wide range of civil society organisations offering diversion and community-based programmes;
- (ii) Meet the requirements for the *Minimum Norms and Standards for Diversion Programmes* and should be accredited according to the Accreditation Framework managed by the Department of Social Development. Section 56(2)(f) of the Act stipulates that a certificate of accreditation once issued will be valid for a maximum of 4 years. A policy decision has been taken to allow the Department

Child Justice Act, 2008: Amended National Policy Framework, 2018

of Social Development and civil society organisations' service providers 2 years to fully implement this accreditation process;

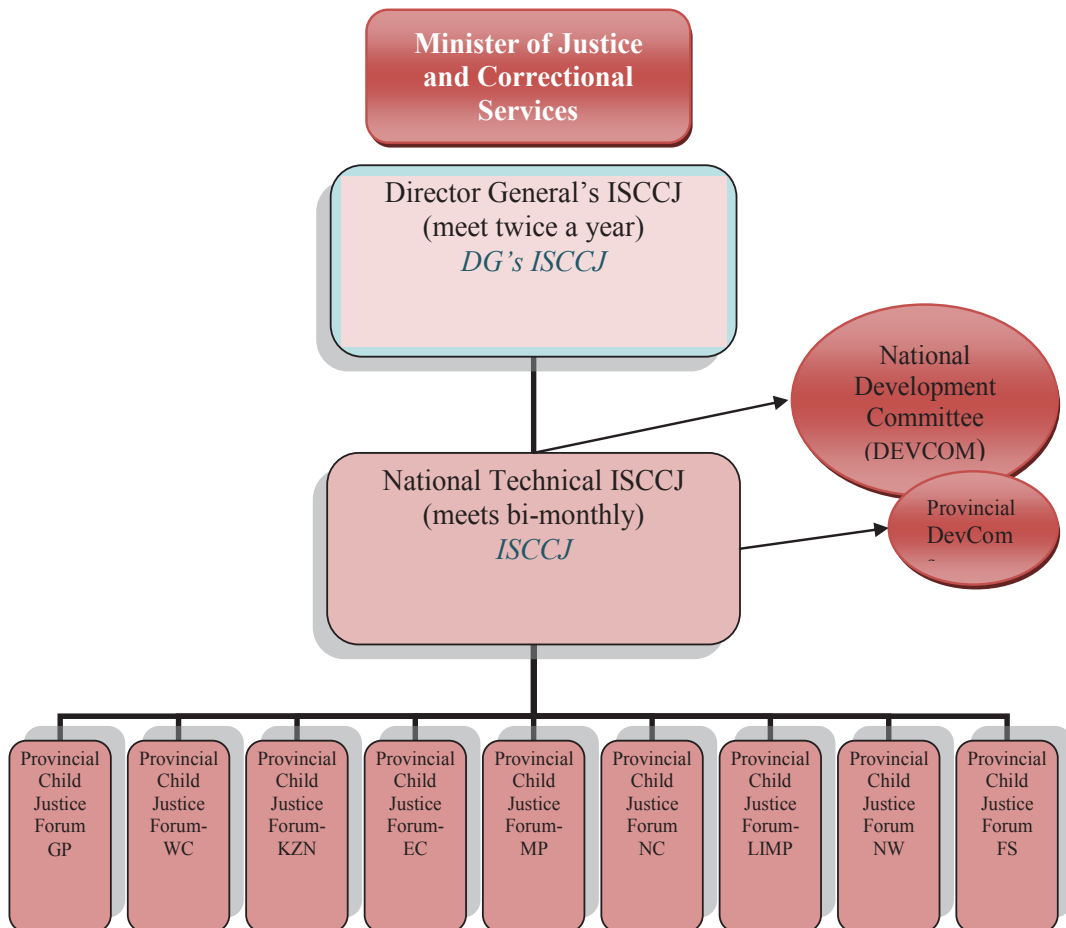
- (iii) Provide information and assistance through their experience and research activities, to monitor the implementation of the NPF and the Act;
- (iv) Share information when different organs of state fail to comply with their primary roles and responsibilities allocated to them in terms of this NPF and the Act.
- (v) Non-Governmental Organisations that are members of the PCJF and the NT ISCCJ must develop and submit prevention intervention plans to the PCJF and NT ISCCJ on an annual basis.
- (vi) Non-Governmental Organisations must report on the implementation of their prevention intervention plans.

5.3 Managing Intersectoral Co-ordination

The responsibility for ensuring compliance and supporting a uniform, coordinated and co-operative approach by all government departments, organs of state lies squarely within the mandate of the Directors-General Intersectoral Committee for Child Justice (DG ISCCJ).

Child Justice Act, 2008: Amended National Policy Framework, 2018

The diagram of the governance structures for child justice is depicted below:



5.3.1. The Directors-General Intersectoral Committee for Child Justice

- a) Section 94 of the Act provides for the establishment of “a Committee to be known as the Intersectoral Committee for Child Justice” which must meet at least twice a year. This Committee is responsible for developing this NPF and then measuring progress and monitoring compliance against this framework and the Act. This Committee is referred to as the DG ISCCJ.

Child Justice Act, 2008: Amended National Policy Framework, 2018

- b) The Intersectoral Committee for Child Justice comprises of the:
- (i) Director-General: Justice and Constitutional Development, who is the chairperson of the Committee;
 - (ii) National Director of Public Prosecutions;
 - (iii) National Commissioner of the South African Police Service;
 - (iv) National Commissioner of Correctional Services;
 - (v) Director-General: Social Development;
 - (vi) Director-General: Education; and
 - (vii) Director-General: Health.
- c) The DG ISCCJ is the most senior structure in a series of intersectoral committees which are in place at national, provincial and regional/ local levels in order to provide a vehicle for communication on, and the co-ordination of, services to children in conflict with the law. The DG ISCCJ chair is the Director-General of the Department of Justice and Constitutional Development and is expected to report directly to the Minister of Justice and Correctional Services.
- d) The DG ISCCJ may commission research studies to ensure the effective implementation of the Act.

5.3.2. The National Technical Intersectoral Committee for Child Justice (NT ISCCJ)

- a) Whilst the Act provides for the establishment of a DG ISCCJ which is comprised of Directors- General and which meets at least twice a year, there is an acknowledgement that in practice there is a need for a National Technical ISCCJ (NT ISCCJ) which is comprised of senior departmental officials. This committee meets bi-monthly. It provides technical support to the DG ISCCJ to ensure the achievement of the responsibilities, functions and duties assigned to the DG ISCCJ by section 96 of the Act.
- b) The NT ISCCJ comprises of senior officials designated by the Directors-General of:
- (i) Justice and Constitutional Development;
 - (ii) National Prosecuting Authority;

Child Justice Act, 2008: Amended National Policy Framework, 2018

- (iii) South African Police Service;
- (iv) Department of Correctional Services;
- (v) Department of Social Development;
- (vi) Department of Basic Education;
- (vii) Department of Health;

As well as the senior representatives from:-

- (viii) Department of Home Affairs;
- (ix) Legal Aid South Africa;
- (x) IJS Transversal; and the
- (xi) Chairperson of each of the 9 Provincial Child Justice Fora⁷.(PCJF).

- c) Section 93 (1) (c) of the Act also requires that the ISCCJ promotes co-operation and communication with the non-governmental sector⁸ and civil society in order to ensure effective partnerships for the strengthening of the child justice system. In order to facilitate this, the National Technical ISCCJ is also constituted by the civil society organisations representatives drawn from the:
- (i) Child Justice Alliance;
 - (ii) Chapter 9 Institutions; and
 - (iii) Other civil society organisations to give expert/technical input or advice, where necessary.
- d) The National Technical ISCCJ is chaired by the Department of Justice and Constitutional Development with the Department of Social Development as the deputy chairperson. The deputy chairperson shall preside at meetings of the committee in the absence of the chairperson and shall assist the chair in his/her functions.

⁷ The NT ISCCJ meeting should be attended by the Chair of the PCJF. When the PCJF chair is not available to attend a NT ISCCJ meeting, the deputy chair should attend in his/her absence. While many provincial representatives may be Justice Officials, it should be emphasized that by their attendance of NT ISCCJ meetings they are representing their provincial child justice fora and not the Department of Justice and Constitutional Development. Travel to the NT ISCCJ meetings should be covered by that Department in which the chair or deputy chair is employed

⁸ While the implementation of the Act requires the services of a number of NGOs in terms of diversion, restorative justice, etc, engagement with those NGOs who render a direct service to one or more of the Departments should be through bilateral meetings rather than via the NT ISCCJ.

Child Justice Act, 2008: Amended National Policy Framework, 2018

- e) In the absence of both the chair and deputy chair, the members present at a meeting must elect a person from among their members to preside at the meeting.
- f) The mandate of the Committee is to ensure the effective implementation of the Act with specific focus on:-
- (i) Coordinating, monitoring and supporting activities carried out in respect of the Act;
 - (ii) Interventions where necessary to ensure that the prescribed procedures, roles, responsibilities, functions, and duties are adhered to and achieved;
 - (iii) Identifying problem areas and recommending solutions thereto for the effective implementation of the Act;
 - (iv) Monitoring the implementation of interventions;
 - (v) Making decisions in respect of matters in dispute;
 - (vi) Receiving progress reports from provincial structures and NGOs;
 - (vii) Reporting to the DG ISCCJ which must make policy and strategy decisions in terms of sections 94 to 97 of the Child Justice Act, 2008; and
 - (viii) Assist the DG ISCCJ in monitoring the compilation of Annual Reports by the reporting Departments/ institutions for submission to Parliament in compliance with section 96(3) of the Act; and
 - (ix) Dealing with any other task assigned by the DG ISCCJ.

Each meeting therefore should have an agenda which allows for discussion around the above issues.

5.3.3. The Provincial Child Justice Fora

Provincial Child Justice Forums (PCJFs) are directly responsible for managing service delivery and for monitoring compliance against the Act at the regional level. They are constituted by representatives of the implementing Departments/ institutions. They also draw representatives from the provincial NGOs and must define their own rules of engagement in respect of civil society organisations and include partner civil society organisations in meetings as per the relevance to that particular province. Among their responsibilities, the PCJFs are required to:

- (i) Monitor the provincial implementation of the Act;

Child Justice Act, 2008: Amended National Policy Framework, 2018

- (ii) Identify challenges and resolve them to ensure the effective establishment of the child justice system at provincial level;
- (iii) Escalate unresolved challenges to the NT ISCCJ for consideration and possible solution;
- (iv) Report bi-monthly to the NT ISCCJ of the progress in the provincial implementation of the Act. This includes the submission of Departmental Annual Reports to the NT ISCCJ to ensure that the reporting members of the NT ISCCJ incorporate the provincial inputs into the National Departmental Annual Reports that must be submitted to Parliament in compliance with section 96(3) of the Act. The bi-monthly reports must reach the secretariat not later 2 weeks before the date of the next NT ISCCJ meeting;
- (v) Make necessary decisions for the effective implementation of the Act at provincial level;
- (vi) Meet either once a month or bi-monthly depending on the needs of each province; etc.

5.3.4. Secretariat Functions by DoJ&CD

The Department of Justice and Constitutional Development must provide the secretariat for meetings of the Intersectoral committees. There must a secretariat office established at national DoJ&CD and adequately capacitated to provide the following responsibilities and duties:

- (i) Compile Annual Meeting Calendar for both the DG ISCCJ and NT ISCCJ, and circulate to members not later than 31 December of each year. Section 95(a) of the Act requires the DG ISCCJ to meet at least twice a year, while the NT ISCCJ meets bi-monthly. The DG ISCCJ may decide to hold more than 2 meetings per annum depending on the needs;
- (ii) Convene and coordinate meetings, in consultation with the chairs of the ISCCJs;
- (iii) Prepare the Briefing Notes for the chairpersons of the DG ISCCJ and NT ISCCJ at least 2 weeks before the date of the next meeting;
- (iv) Prepare a draft agenda in consultation with the chairpersons, and ensure that it is circulated seven (7) days before the meeting;
- (v) Take or record minutes during meetings and circulate them to the ISCCJ members not later than 2 weeks after each meeting held;

Child Justice Act, 2008: Amended National Policy Framework, 2018

- (vi) Compile the Meeting Resolutions and circulate it to members for execution. The resolutions must be recorded only where there is consensus. The secretariat must monitor the execution of tasks/ resolutions by the relevant members;
- (vii) Compile reports for submission to the Minister of Justice and Correctional Services within one month after each meeting held by the DG ISCCJ. These reports must be approved by the chair of the DG ISCCJ before submission to the Minister in compliance with section 95(b) of the Act;
- (viii) Ensure that Departmental and Provincial reports are received not later than 2 weeks before the date of the next meeting;
- (ix) Distribute to committee members reports / documents to be read in preparation for the meeting not later than 1 week before the date of the next meeting;
- (x) Maintaining the membership directories and the attendance list to be circulated at each meeting;
- (xi) Ensure that a quorum for each meeting is met. The quorum will be decided by each Committee. In the absence of a quorum, the meeting may be adjourned and the minutes should record the reasons for the absence of a quorum together with the names of those present. No decision shall be taken at a meeting in the absence of a quorum;
- (xii) Ensure that the meeting logistics are met;
- (xiii) Perform any other function or duty related to the effective functioning of both Intersectoral Committees' meetings.

Though the ISCCJ is a committee of equals in which members are held accountable by their peers, the Act establishes the Department of Justice and Constitutional Development as the lead Department. Each Department must ensure compliance with their individual obligations, functions and responsibilities in terms of the Act and this NPF.

5.3.5. Reporting

- (i) Each implementing Department/ Institution must submit reports of performance to their respective Committees timeously, i.e. not later than the dates set by each Committee;

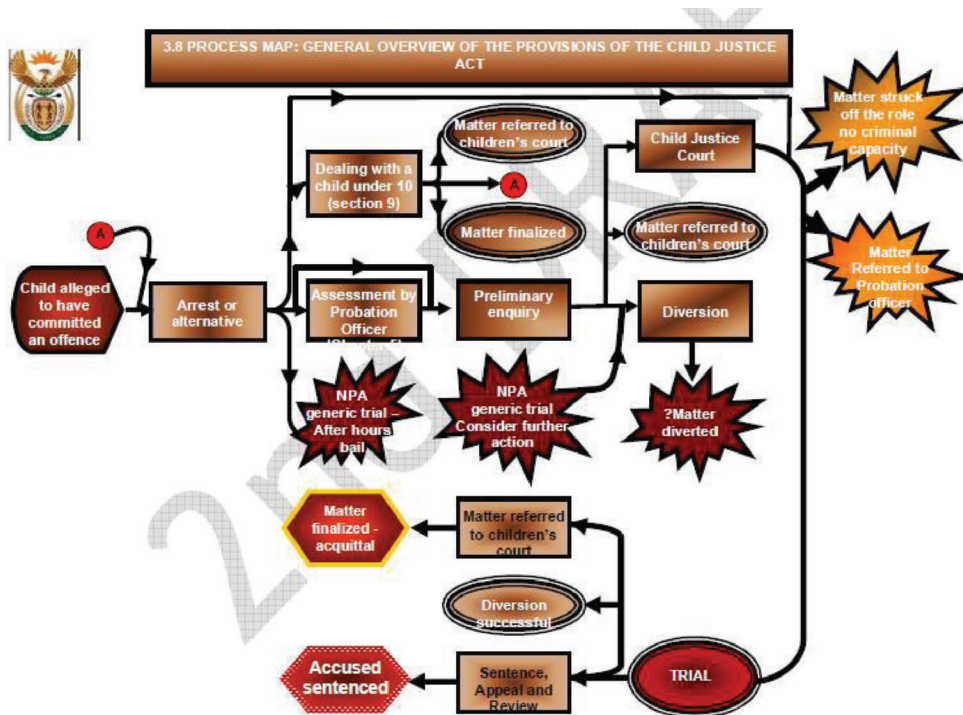
Child Justice Act, 2008: Amended National Policy Framework, 2018

- (ii) The approved Departmental Annual Reports by all the implementing Departments/ Institutions must be submitted to the DG ISCCJ *via* the Secretariat not later than 30 June of the succeeding year for consideration;
- (iii) The heads of the implementing Departments/ Institutions must submit his/ her approved Annual Report to the Director-General of the Department of Justice and Constitutional Development not later than 31 August of the succeeding year;
- (iv) Each report must cover performance on the key priority areas identified in this NPF and by any governance structure and against any agreed upon deliverables in accordance to the period of reporting;
- (v) Each report must give an impact analysis on each key priority area to indicate as to whether the aspirations of the Act are achieved;
- (vi) Reports on statistics must be accompanied by an analysis with a comparison of performance of 1 or 2 previous years, or as decided by the NT ISCCJ/ DG ISCCJ.
- (vii) It must be noted that the DG ISCCJ will consider all Departmental Annual Reports before they are submitted to Parliament and advise the Departments, where necessary;
- (viii) The accounting officers or heads of the reporting Departments/ Institutions must sign off on the Annual Reports and recommend the submission to Parliament by the respective Minister.

6. Managing the Flow of Children through the System

- a) The child justice system, like the rest of the criminal justice system, involves moving a child, or person, through a range of sequential processes all managed by different Departments. A process flow map which describes the route followed by children through the child justice system and which shows the various transitional and decision making points is illustrated hereunder:

Child Justice Act, 2008: Amended National Policy Framework, 2018



- b) In any system which involves the movement of a case from one Department to another, there is the risk that there will be a gap in service during this transition. In the child justice system this could negatively impact on the appropriate handling of the child’s case. This NPF thus aims to improve inter-departmental co-ordination in order to improve the transition of the child’s case between those Departments.
- c) There are several non-negotiable principles of intersectoral co-operation:-
 - (i) There is a need for regular operational meetings between role-players in order to ensure that each Department not only takes ownership of their own area of responsibility but also ensures that the interface between Departments is well managed;
 - (ii) It is essential that the child is at the centre of this process, and there should be acute awareness of all role-players that delays, particularly those which cause children to remain in detention, are extremely detrimental to the child’s well-being;
 - (iii) The child should be moving through the system in a manner that promotes his or her safety and well-being as a priority; and

Child Justice Act, 2008: Amended National Policy Framework, 2018

- (iv) The changing of shifts or the allocation of different responsibilities to arresting officers and investigating officers should all be managed in such a way as to have minimum negative impact on children in the system;
 - (v) The development of interdepartmental and intersectoral Protocols, Service Level Agreements, guidelines or any relevant documents is encouraged to ensure proper co-ordination. The DG ISCCJ must set dates on which these protocols must reviewed and amended, where necessary;
 - (vi) The governance structures for child justice and the signatories must ensure the effective implementation and compliance with all protocols and other related agreements.
- d) There are numerous areas where decision making and services overlap and this requires co-operation and interaction between the various role-players in respect of a single child.
- e) The PCJFs should take primary responsibility for identifying and resolving problems which occur at the interface between Departments. Issues which cannot be resolved regionally must be escalated to the National Technical ISCCJ.

7. Maximum time-frames for management of cases involving children in conflict with the law

In line with the principle that children's contact with the criminal justice system should be kept to a minimum and that children should be detained as a measure of last resort and only for the shortest appropriate period of time, the Act prescribes certain time periods as follows:

Section	Matter dealt with	Responsibility	Prescribed time period
Section 18	Written notice to child to appear in court; and notification of probation officer	Police official.	Notifying the probation officer immediately but not later than 24 hours after handing written notice to child.
Section 19	Summons to child to appear in court; and notification of probation officer	Police official.	Notifying the probation officer immediately but not later than 24 hours

Child Justice Act, 2008: Amended National Policy Framework, 2018

Section	Matter dealt with	Responsibility	Prescribed time period
			after handing summons to child.
Section 20(4)	Notification to probation officer of arrest of child	Police official, where possible the police official who arrested the child	Notifying the probation officer immediately but not later than 24 hours after arrest
Section 20(5)	An arrested child to be taken to court for a preliminary inquiry.	Police official	As soon as possible but not later than 48 hours after arrest
Section 22	Release of child on written notice into care of parent, appropriate adult or guardian, if the child is in detention for an offence referred to in Schedule 1, unless there is a substantial risk that the child may harm any person.	Police official	As soon as possible and before the child appears at the preliminary inquiry.
Section 26	Consider the placement of the child in a suitable child and youth care centre	Police official	Prior to a child's first appearance at a preliminary inquiry within 48 hours after arrest
Section 30	Reconsideration of placement of child in a prison	Presiding officer ordering the detention of the child in prison	Direct that the child be brought before him or her or any other court every 14 days to reconsider the order.
Section 31	Error regarding placement	Person admitting the child where a child is placed in a child and youth care centre, police cell or lock-up or a person, to whose attention it comes that an error has been made	Commit the child as per the court order, but must, as soon as practicable, but not later than the next court day, refer the child back to the presiding officer in question for the error to be corrected.

Child Justice Act, 2008: Amended National Policy Framework, 2018

Section	Matter dealt with	Responsibility	Prescribed time period
		regarding placement.	
Section 33(2)(c)	Transporting of a child to or from the preliminary inquiry or child justice court, separately from adults: Provided that where it is not possible to transport the child separately from an adult, the police official must submit a written report to the presiding officer, furnishing reasons for non-compliance.	Police official	Within 48 hours of the transportation.
Section 34(2)	Assessment of child older than 10 years of age	Probation Officer	Assessment of child before the child appears at a preliminary inquiry within the time periods provided for in section 43(3)(b).
Section 34(3)	Assessment of child younger than 10 years of age	Probation Officer	Make arrangements to assess the child within seven days of the notification
Section 40(5)	Submission of assessment report to prosecutor	Probation Officer	Before the commencement of a preliminary inquiry, within time periods referred to in section 43(3)(b)
Section 41(2)	Diversion by prosecutor before preliminary inquiry in respect of offences referred to in Schedule 1	Prosecutor	After assessment of the child, except if the prosecutor has dispensed with the assessment if it is in the best interests of the child to do so; and before a preliminary inquiry.
Section 43(3)(b)	Preliminary Inquiry	Presiding Officer, supported by prosecutor, police and probation officer	PI must be held within 48 hours of arrest if a child is arrested and remains in detention; or within the time periods specified in the written notice or summons.

Child Justice Act, 2008: Amended National Policy Framework, 2018

Section	Matter dealt with	Responsibility	Prescribed time period
Section 48	Postponement of preliminary inquiry	Inquiry Magistrate	<p>* For a period not exceeding 48 hours, for specific reasons mentioned in section 48(1);</p> <p>* For a further period not exceeding 48 hours, if the postponement is likely to increase the prospects of diversion, after which the preliminary inquiry must be closed if it has not been concluded;</p> <p>* for a period not exceeding 14 days, if the probation officer has recommended a more detailed assessment of the child; or in order to obtain the written indication from the Director of Public Prosecutions having jurisdiction for diversion of a Schedule 3-offence; or</p> <p>* for a period determined by the inquiry magistrate where-</p> <p># the child is in need of medical treatment for illness, injury or severe psychological trauma; or</p> <p># the child has been referred for a decision relating to mental illness or defect in terms of section 77 or 78 of the Criminal Procedure Act.</p>
Section 53	Duration of diversion orders:	Presiding Officer	<p>* Level 1-diversion option:</p> <p># For a child under the age of 14years, order may not exceed 12 months;</p>

Child Justice Act, 2008: Amended National Policy Framework, 2018

Section	Matter dealt with	Responsibility	Prescribed time period
			<p># For a child 14 years or older, order may not exceed 24 months, except if reasons are given for an order exceeding the time period, on the record of the proceedings.</p> <p>* Level 2 diversion-order: # for a child under the age of 14 years, order may not exceed 24 months; # for a child older than 14 years, order may not exceed 48 hours, except if the reasons are entered on the record of the proceedings.</p>
Section 66	Time limits relating to postponements of trial in child justice court	Presiding Officer of child justice court	<p>* Must conclude all trials of children as speedily as possible and must ensure that postponements in terms of this Act are limited in number and duration.</p> <p>* If a 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 14 days at a time.</p> <p>* If a child is in detention in a child and youth care centre, 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;</p>

Child Justice Act, 2008: Amended National Policy Framework, 2018

Section	Matter dealt with	Responsibility	Prescribed time period
			* If a child has been released, the child justice court may, prior to the commencement of a trial, not postpone the proceedings for a period longer than 60 days at a time.
Section 71	Pre-sentence reports	Probation Officer	Must complete the report as soon as possible but no later than six weeks following the date on which the report was requested.
Section 76	Sentence of compulsory residence in child and youth care centre	Child justice court; and police (transport of child).	<p>* For a period not exceeding five years or for a period which may not exceed the date on which the child turns 21 years of age, whichever date is the earliest.</p> <p>* Child sentenced in terms of this section, must be taken to the centre specified as soon as possible, but not later than 1 month after the order was made.</p> <p>* Presiding officer must cause the matter to be retained on the court roll for one month, and must, at the re-appearance of the matter, inquire whether the child has been admitted to the child and youth care centre.</p>
Section 77	Sentence of imprisonment	Child justice court	*May not impose sentence of imprisonment on child who is under the age of 14 years at the time of being sentenced for the offence.

Child Justice Act, 2008: Amended National Policy Framework, 2018

Section	Matter dealt with	Responsibility	Prescribed time period
			*A child of 14 years or older at the time of being sentenced may be sentenced to imprisonment for a period not exceeding 25 years.

In addition, while children's cases should be completed as soon as possible, the members of the DG ISCCJ and NT ISCCJ have agreed on the following maximum time-frames for the management of children in conflict with the law:

- (i) For cases involving children heard in District Courts: 3 – 6 months;
- (ii) For cases involving children heard in Regional Courts: 6 – 9 months; and
- (iii) For cases involving children heard in High Courts: 9 – 12 months.

These case cycle and turn-around times will also be monitored by the ISCCJ.

8. Monitoring, Evaluation and Information Management

- a) The Act requires a monitoring and evaluation component in support of the implementation of the Act. This is in line with international trends which note that “when government officials and the institutions making up the child (juvenile (sic)) justice system do not have information either about the functioning of the system or the children who are in contact with it, abuse, violence and exploitation can occur with impunity, and the experience of the child is unlikely to be in his or her best interests. A child may spend long periods deprived of liberty or be sentenced to a measure that is inappropriate for ensuring his or her welfare. A delay in a child's case before the courts may go unnoticed for months or even years. Government officials may find it difficult to assess the impact of new child (juvenile (sic)) justice policies or guidelines. In short, a failure to carefully record and strategically make use of child (juvenile (sic)) justice related information contributes to a failure to ensure the protection of the child in conflict with the law”
- b) The Act addresses this need by providing for the establishment of an integrated information management system which should:-
- (i) enable effective monitoring;

Child Justice Act, 2008: Amended National Policy Framework, 2018

- (ii) allow for the analysis of trends and interventions, to map the flow of children through the child justice system, and
 - (iii) provide quantitative and qualitative data relating to, at least, the following:
 - a. Arrest or methods of securing attendance at criminal proceedings;
 - b. Assessment;
 - c. Preliminary inquiries;
 - d. Diversion;
 - e. Children awaiting trial;
 - f. Bail and placement;
 - g. Trials;
 - h. Sentencing;
 - i. Appeals and reviews;
 - j. Sexual offences committed by children; and
 - k. Children who lack criminal capacity.
- c) The Key Performance Indicators to monitor and evaluate the implementation of the Act were aligned to the following 15 key indicators as developed by UNICEF:

Child Justice Act, 2008: Amended National Policy Framework, 2018

Indicator		Definition
Quantitative Indicators		
1	Children in conflict with the law	▪ Number of children arrested during a 12 month period per 100,000 child population
2	Children in detention (CORE)	▪ Number of children in detention per 100,000 child population
3	Children in pre-sentence detention (CORE)	▪ Number of children in pre-sentence detention per 100,000 child population
4	Duration of pre-sentence detention	▪ Time spent in detention by children before sentencing
5	Duration of sentenced detention	▪ Time spent in detention by children after sentencing
6	Child deaths in detention	▪ Number of child deaths in detention during a 12 month period, per 1,000 children detained
7	Separation from adults	▪ Percentage of children in detention not wholly separated from adults
8	Contact with parents and family	▪ Percentage of children in detention who have been visited by, or visited, parents, guardian or an adult family member in the last 3 months
9	Custodial sentencing (CORE)	▪ Percentage of children sentenced receiving a custodial sentence
10	Pre-sentence diversion (CORE)	▪ Percentage of children diverted or sentenced who enter a pre-sentence diversion scheme
11	Aftercare	▪ Percentage of children released from detention receiving aftercare
Policy Indicators		
12	Regular independent inspections	▪ Existence of a system guaranteeing regular independent inspection of places of detention ▪ Percentage of places of detention that have received an independent inspection visit in the last 12 months
13	Complaints mechanism	▪ Existence of a complaints system for children in detention ▪ Percentage of places of detention operating a complaints system
14	Specialised juvenile justice system (CORE)	▪ Existence of a specialised juvenile justice system
15	Prevention	▪ Existence of a national plan for the prevention of child involvement in crime

(Note: the United Nations use "arrested" in the sample table above whereas in the South African context "charged" would be more appropriate)

In response to the requirements around monitoring and evaluation the DOJ&CD should:

- (i) Utilise the National Technical ISCCJ, which collects and analyses data *via* a set of data collection templates which are given to each Department, to analyse trends in the flow of children through the child justice system;
- (ii) Through the ISCCJ Secretariat and IJS Transversal, maintain this data base of quantitative and qualitative data relating to the requirements of the Act;
- (iii) The DOJ&CD developed an Integrated Case Management System Child Justice Module which will connect the data collection tool with the Integrated Justice System (IJS)⁹.

⁹ In the longer term the intention is to manage all data collection and statistical analysis via an integrated electronic system currently in development as one of the initiatives under the South

Child Justice Act, 2008: Amended National Policy Framework, 2018

(iv) Commission research to respond to particular issues in the Act.

The processes above will allow the Minister as the Cabinet member responsible for the administration of Justice, as per section 96 (3) of the Act, to co-ordinate the submission of Annual Reports to Parliament, by each Department/ Institution that is represented in the DG ISCCJ on the implementation of the Act an annual basis.

9. Registers

The Act also provides for certain Departments to keep records around specific aspects of the Act as follows:

9.1 National Register of Children Diverted: In terms of section 60 (1) of the Act, the Department of Social Development must establish and maintain a National Register of Children in respect of whom a Diversion Order has been made, with information provided by the clerk of the child justice court. The Director-General: Social Development must on a regular basis inspect the register with a view to identifying possible interventions and issuing the necessary instructions.

9.2 National Register of Children under the Minimum Age of Criminal Capacity: In terms of Section 97 (6) (a) of the Act, the Director General: Department of Social Development must keep a register, as prescribed, of children under the minimum age of criminal capacity in respect of whom a decision has been made and recorded by a probation officer in terms of section 9(6) regarding the outcome of the assessment.

African Government's Justice, Crime Prevention and Security (JCPS) Cluster's Programme of Action - namely the development of the Integrated Justice System (IJS)

The vision of the Integrated Justice System (IJS) Programme is to bring about the integration of the various business and system processes that make up the criminal justice system, thereby enabling the Cluster Departments to deliver effective and efficient criminal justice to the citizen. The envisaged benefits of this programme will be the introduction of electronic information sharing to reduce administrative delays, enabling the various justice service providers to respond efficiently and provide tools for the effective management and planning of the criminal justice system.

Child Justice Act, 2008: Amended National Policy Framework, 2018

9.3 Register of Children in Detention at Police Cells/ Lock-ups: The South African Police Service is required, in terms of section 28(3) of the Act, to ensure that a register is kept at every police station in which the details regarding the detention of children in police cells or lock-ups are recorded in a manner clearly distinguishable from those of adults (SAPS 14).

The Station Commander must also in terms of section 28 (2) (a) of the Act, submit a report to the National Commissioner of Police, detailing all complaints or observations about an injury sustained or severe psychological trauma suffered by a child while in custody in police cells (the SAPS 583 register).

10. Conclusion

As has been highlighted above the vision underpinning the Act is that if child offenders are dealt with appropriately, the vast majority of them will grow up to become law-abiding, effective citizens. If a child comes in conflict with the law this can be seen as an opportunity to effect meaningful change in that child's life and set him or her back on the path of conformity with the legally accepted rules and norms. An over-reaction can have the effect of the child seeing himself or herself as a victim of the system, and therefore failing to take responsibility for his or her actions.

The Act aims to ensure that the response to each child's offence is individualised and proportionate, not only to the offence, but also to the reality that the offender is not a fully responsible adult. Thus the Act recognises that children who commit crimes can and should be given a chance to change their ways.

In some cases this can be achieved through the opportunity of diversion. This ensures that the child takes responsibility for his or her behaviour and is linked with services that address identified risk factors for that individual child. The advantage of diversion is that it avoids stigmatisation of the child as a criminal and does not result in a criminal record. In other cases, it is necessary for children to go through a court process, and if found guilty, he or she will obtain a criminal record. In those cases, the sentencing provisions of the Act again provide scope for 'a second chance' through a range of options, which can be creatively applied.

Child Justice Act, 2008: Amended National Policy Framework, 2018

The Act aims to limit the use of custodial sentencing, and particularly imprisonment, so that it is only applied as a last resort, and for the shortest appropriate period of time. This is based on the idea that young offenders are very amenable to change and that children should be reintegrated into society as law-abiding citizens.

The number of Key Priority Areas in the NPF was increased during the review process to eliminate gaps in the areas of reporting identified in various reports on the implementation of the Act, including a report by the Parliamentary Researchers published in May 2015 and to address challenges identified since the implementation of the Act. The Key Priority Areas were also broadened to identify and include the specific information/ data that the implementing Departments / Institutions should be focusing on in their Annual Reports on the Implementation of the Act to provide a clearer picture of the flow of children through the child justice system. The review of the NPF will therefore result in the improvement of the reporting on the implementation of the Act, taking lessons learned into account.

This NPF, 2018 will be implemented and monitored by the various partners comprising the DG's ISCCJ and NT ISCCJ, to ensure that the best interests and rights of children in conflict with the law are promoted and protected.

The NPF, 2018, will be reviewed at 5-year intervals after *Gazetting* thereof, to ensure that the Framework and policies are kept updated and relevant to children's practical situations.

The implementation plan to deal with the Key Priority Areas are attached hereto as an Annexure, and outlines the activities to eliminate the challenges identified during the review process.

ANNEXURE A**INTERSECTORAL IMPLEMENTATION PLAN OF THE NATIONAL POLICY FRAMEWORK FOR CHILD JUSTICE**

Each Department to develop specific key indicators to monitor the implementation of the key priority areas in the NPF and to report on the key priority areas in the NPF, including the specific data requirements referred to in heading 5 of the NPF.

Key Priority Area 1: Building Capacity in the Sector

Objective indicator	Activities	Output	Baseline	Time frames	Progress Report	Responsible Department
Training and Education	Provide training as per operational requirements	Improved service delivery in the child justice system	Child Justice Act	Annually	Quarterly	All implementing departments/ institutions
	Monitor and evaluate the impact of the training (effect on service delivery in child justice)	Improved service delivery in the child justice system	National Policy Framework	Annually	Quarterly	All implementing departments/ institutions

Key Priority Area 2 : Methods of securing attendance of children at preliminary inquiries

Objective indicator	Activities	Baseline	Time frames	Progress Report	Responsible Department
Provisioning of adequate policing services to children in conflict with the law	Dealing with children in conflict with the law in terms of the provisions of the Act	Child Justice Act National Instruction 2/2010 National Instruction 3/2010 SAPS Annual Report	Annually	Quarterly	SAPS

Key Priority 3 : Ensuring assessment of children

Objective indicator	Activities	Output	Baseline	Time frames	Progress Report	Responsible Department
Assessment of children charged	Ensuring uniformity in the reporting format	Standardised reporting format	DSD Report framework template	Annually	Quarterly	DSD
Criminal capacity assessments/evaluations of children in terms section 11(3)	Ensure the availability of adequate mental health care practitioners to conduct the evaluations by	Widespread of mental health care practitioners in all Provinces	Government Gazette	Annually	Quarterly	DOH

Child Justice Act, 2008: Amended National Policy Framework, 2018

Objective indicator	Activities	Output	Baseline	Time frames	Progress Report	Responsible Department
	inviting private practitioners to express their availability to assist with these evaluations and by offering training to mental health practitioners to develop reports for courts					

Key Priority Area 4: Preliminary Inquiries

Objective indicator	Activities	Output	Baseline	Time frames	Progress Report	Responsible Department
To hold preliminary inquiries	Ensuring uniformity in conducting preliminary inquiries	Standardised procedure followed in preliminary inquiries	Bench manual (OCJ) NPA Directives on Child Justice	Annually	Quarterly	OCJ/ NPA
Speedy finalisation of preliminary inquiries	Finalising preliminary inquiries within 90 days after first appearance	Elimination of unreasonable delay in the finalisation of	Child Justice Act DoJ & CD 2017/2018	Annually	Quarterly	DoJ & CD

Child Justice Act, 2008: Amended National Policy Framework, 2018

Objective indicator	Activities	Output	Baseline	Time frames	Progress Report	Responsible Department
		preliminary inquiries	APP			

Key Priority Area 5: Diversion Services

Objective indicator	Activities	Output	Baseline	Time frames	Progress Report	Responsible Department
Availability of diversion services in all districts	Ensure that there are accredited diversion sites in all districts	Equal access to diversion services	Government Gazette	Annually	Quarterly	DSD
		Accredited diversion services				
Report on the outcome of diversion orders	Submission Compliance/ non-compliance Report following diversion orders	Maintain diversion register	Diversion Register	Annually	Quarterly	DSD
	Submission of the compliance/ non-compliance report to the diversion register	Maintain diversion register	Diversion Circular 97 of 2016/ Form 9/ court book	Annually	Quarterly	DoJ & CD

Key Priority Area 6: Awaiting trial and bail and placement

Objective indicator	Activities	Output	Baseline	Time frames	Progress Report	Responsible Department
Speedy finalisation of child justice cases	Ensuring that the child pleads within three (3) months after first appearance	Elimination of unreasonable delay in the finalisation of child justice cases	Norms and standards for the performance of judicial functions	Annually	Quarterly	NPA

Key Priority Area 7: Trials

Objective indicator	Activities	Output	Baseline	Time frames	Progress Report	Responsible Department
Speedy finalisation of child justice cases	Finalising child justice cases within six (6) months after plea	Elimination of unreasonable delay in the finalisation of child justice cases	Norms and standards for the performance of judicial functions	Annually	Quarterly	OCJ

Key Priority Area 8: Sentencing

Objective indicator	Activities	Output	Baseline	Time frames	Progress Report	Responsible Department
Encourage the utilisation of restorative justice sentencing	Ensure awareness raising on the various restorative justice sentencing	Restorative justice options utilised	ADRM	Annually	Quarterly	NPA/DSD/OCJ

Child Justice Act, 2008: Amended National Policy Framework, 2018

Objective indicator	Activities	Output	Baseline	Time frames	Progress Report	Responsible Department
options	options					

Key Priority Area 9: Management of Infrastructure for the Implementation of the Act

Objective indicator	Activities	Output	Baseline	Time frames	Progress Report	Responsible Department
Identification of services available to children in conflict with the law	Consolidate the mapping of services available to children in conflict with the law	Identifying the gaps in services to children in conflict with the law	Existing geographical information on services to children in conflict with the law	Annually	Quarterly	IJS (DSD/DCS/DoJ & CD/SAPS/ Legal Aid SA/NPA/DOH)
Provisioning of educational programmes to all children in Child and Youth Care Centres	Ensuring proper teaching and learning to children in Child and Youth Care Centres	Availability of educational programmes	National Schools Curriculum	Annually	Quarterly	DBE
	Resourcing and implementation of vocational programmes to children in Child and Youth Care Centres	Availability of vocational programmes	Developed vocational programmes	Annually	Quarterly	DSD

Key Priority Area 10: Resources and Budgets

Objective indicator	Activities	Output	Baseline	Time frames	Progress Report	Responsible Department
Proper costing of the implementation of the Act	Cost the roles and responsibilities of each implementing department/institution	Adequate resources allocated to implement the Act	Baseline budget of each department/institution	Annually	Quarterly	IJS/DSD/DCS/DoJ & CD/SAPS/ Legal Aid SA/NPA/DOH/DBE

Key Priority Area 11: Public Education and Communication

Objective indicator	Activities	Output	Baseline	Time frames	Progress Report	Responsible Department
Popularising the provisions of the Act with children and community members	Developing and submission of prevention intervention plans to the ISCCJ	Increased awareness of provisions of the Act	Prevention intervention plans	Annually	Quarterly	DSD/DCS/DoJ & CD/SAPS/ Legal Aid SA/NPA/DOH/DBE/ NGO's
Popularising the provisions of the Act with traditional leaders and Queens (pending promulgation of the Traditional Courts Act by Parliament)	Training of traditional leaders and Queens on the Act after enactment of the Traditional Courts Bill	Increased awareness of provisions of the Act by traditional leaders and Queens	Child Justice Act Traditional Courts Bill	Annually	Quarterly	DSD/DCS/DoJ & CD/SAPS/ Legal Aid SA/NPA/DOH/DBE/ NGO'S

Key Priority Area 12: Development of an integrated information management system

Objective indicator	Activities	Output	Baseline	Time frames	Progress Report	Responsible Department
Development of an integrated electronic information management systems	Integration of the information management systems of the various JCPS Cluster departments/ institutions	Exchange of electronic information	Existing information management systems	Annually	Quarterly	IJS/DSD/DCS/ DoJ & CD/SAPS/ Legal Aid SA/NPA/DOH/DBE

Key Priority Area 13: Monitoring and evaluation

Objective indicator	Activities	Output	Baseline	Time frames	Progress Report	Responsible Department
Monitoring the implementation of the National Policy Framework and the Act	Reporting on the implementation of the Act in line with the NPF	Uniformity and collaboration in the implementation of the Act	Annual Reports NPF	Annually	Quarterly	IJS/DSD/DCS/ DoJ & CD/SAPS/ Legal Aid SA/NPA/DOH/DBE
	Conducting of research on the impact of the Act	Uniformity and collaboration in the implementation of the Act	Impact Research Report	Annually	Quarterly	IJS/DSD/DCS/ DoJ & CD/SAPS/ Legal Aid SA/NPA/DOH/DBE

Child Justice Act, 2008: Amended National Policy Framework, 2018

Objective indicator	Activities	Output	Baseline	Time frames	Progress Report	Responsible Department
	Review and amendment of the Act	Uniformity and collaboration in the implementation of the Act	Amendments to the Act Reviewed NPF	Annually	Quarterly	IJS/DSD/DCS/ DoJ & CD/SAPS/ Legal Aid SANPA/DOH/DBE