

- (d) the previous failure of the child to respond to non-residential alternatives, if applicable; and
- (e) the desirability of keeping the child out of prison.

Impact of offence on victim

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

(2) The prosecutor may, when adducing evidence or addressing the court on sentence, consider the interests of a victim of the offence and the impact of the crime on the victim, and, where practicable, furnish the child justice court with a victim impact statement provided for in subsection (1).

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

Pre-sentence reports

71. (1) (a) A child justice court imposing a sentence must, subject to paragraph (b), request a pre-sentence report prepared by a probation officer prior to the imposition of sentence.

(b) A child justice court may dispense with a pre-sentence report where a child is convicted of an offence referred to in Schedule 1 or where requiring the report would cause undue delay in the conclusion of the case, to the prejudice of the child, but no child justice court sentencing a child may impose a sentence involving compulsory residence in a child and youth care centre providing a programme referred to in section 191(2)(j) of the Children's Act or imprisonment, unless a pre-sentence report has first been obtained.

(2) The 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.

(3) Where a probation officer recommends that a child be sentenced to compulsory residence in a child and youth care centre providing a programme referred to in section 191(2)(j) of the Children's Act, the recommendation must be supported by current and reliable information, obtained by the probation officer from the person in charge of that centre, regarding the availability or otherwise of accommodation for the child in question.

(4) A child justice court may impose a sentence other than that recommended in the pre-sentence report and must, in that event, enter the reasons for the imposition of a different sentence on the record of the proceedings.

PART 2: SENTENCING OPTIONS

Community-based sentences

72. (1) A community-based sentence is a sentence which allows a child to remain in the community and includes any of the options referred to in section 53, as sentencing options, or any combination thereof and a sentence involving correctional supervision referred to in section 75.

(2) A child justice court that has imposed a community-based sentence in terms of subsection (1) must –

- (a) request the probation officer concerned to monitor the child's compliance with the relevant order and to provide the court with progress reports, in the prescribed manner, indicating compliance; and
- (b) warn the child that any failure to comply with the sentence will result in **[the child]** him or her being brought back before the child justice court for an inquiry to be held in terms of section 79.

Restorative justice sentences

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

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

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

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

(4) A child justice court that has imposed a sentence in terms of subsection (2) must –

- (a) request the probation officer concerned to monitor the child's compliance with the sentence referred to in subsection (2) and to provide the court with progress reports, in the prescribed manner, indicating compliance; and
- (b) warn the child that any failure to comply with the sentence will result in the child being brought back before the child justice court for an inquiry to be held in terms of section 79.

Fine or alternatives to fine

74. (1) A child justice court convicting a child of an offence for which a fine is appropriate must, before imposing a fine-

- (a) inquire into the ability of the child or his or her parents or an appropriate adult to pay the fine, whether in full or in instalments; and
- (b) consider whether the failure to pay the fine may cause the child to be imprisoned.

(2) A child justice court may consider the imposition of any of the following options as an alternative to the payment of a fine:

- (a) Symbolic restitution to a specified person, persons, group of persons or community, charity or welfare organisation or institution;
- (b) payment of compensation to a specified person, persons, group of persons or community, charity or welfare organisation or institution where the child or his or her family is able to afford this;

all children convicted in terms of this Act: Provided that if a child was, at the time of the commission of the alleged offence[.]-

- (a) under the age of 16 years; or
- (b) 16 years or older but under the age of 18 years, and has been sentenced to any form of imprisonment that was not wholly suspended, or any sentence of compulsory residence in a child and youth care centre providing a programme provided for in section 191(2)(j) of the Children's Act,

the sentence is subject to review in terms of section 304 of the Criminal Procedure Act by a judge of the High Court having jurisdiction, irrespective of the duration of the sentence.

(2) The provisions of subsection (1) do not apply if an appeal has been noted in terms of section 84.

Release on bail pending review or appeal

- 86.** Whenever the release of a child on bail is considered, pending –
- (a) the review of a sentence as provided for in section 307 of the Criminal Procedure Act; or
 - (b) the appeal against a sentence as provided for in sections 309(4) and 316 of the Criminal Procedure Act,

the provisions of section 25 of this Act, dealing with the release of children on bail, apply.

CHAPTER 13 RECORDS OF CONVICTION AND SENTENCE

Expungement of records of certain convictions and diversion orders

87. (1) (a) Where a court has convicted a child of an offence referred to in Schedule 1 or 2, the conviction and sentence in question fall away as a previous conviction and the criminal record of that child must, subject to subsections (2), (3) and (5), on the written application of the child, his or her parent or appropriate adult (hereafter referred to as the applicant), in the prescribed form, be expunged after a period of –

- (i) **[a period of]** five years has elapsed after the date of conviction **[of the offence]** in the case of an offence referred to in Schedule 1; or
- (ii) **[a period of]** 10 years has elapsed after the date of conviction **[of the offence]** in the case of an offence referred to in Schedule 2,

unless during that period the child is convicted of a similar or more serious offence.

(b) In the case of a dispute or uncertainty as to whether another offence of which a child is convicted during the period is similar to or more serious than the offence in respect of which a record exists, the opinion of the Cabinet member responsible for the administration of justice prevails.

(2) The Director-General: Justice and Constitutional Development must, on receipt of the written application of an applicant referred to in subsection (1), issue a prescribed certificate of expungement, directing that the conviction and sentence of the child **[in question]** be expunged, if the Director-General is satisfied that the child complies with the criteria set out in subsection (1).

(3) Notwithstanding the provisions of subsection (1), the Cabinet member responsible for the administration of justice may, on receipt of an applicant's

written application in the prescribed form, issue a prescribed certificate of expungement, directing that the conviction and sentence of the child **[in question]** be expunged, if he or she is satisfied that exceptional circumstances exist which justify expungement, where, in the case of the child –

- (a) the period of five years, referred to in subsection (1)(a)(i); or
- (b) the period of 10 years, referred to in subsection (1)(a)(ii),

has not yet elapsed, if the Cabinet member responsible for the administration of justice is satisfied that the child otherwise complies with the criteria set out in subsection (1).

(4) An applicant to whom a certificate of expungement has been issued as provided for in subsection (2) or (3) must, in the prescribed manner, submit the certificate to the head of the Criminal Record Centre of the South African Police Service, to be dealt with in accordance with subsection (5).

(5) (a) **The head of the Criminal Record Centre of the South African Police Service or a senior person or persons at the rank of Director or above, employed at the Centre, who has or have been authorised, in writing, by the head of the Centre to do so, must expunge the criminal record of a child if he or she is furnished by the applicant with a certificate of expungement [by the Director-General: Justice and Constitutional Development] as provided for in subsection (2) or [by the Cabinet member responsible for the administration of justice as provided for in subsection] (3).**

(b) **The head of the Criminal Record Centre of the South African Police Service must, on the written request of an applicant, [furnish the applicant with a certificate in accordance with national instructions issued by the National Commissioner of the South African Police Service], which does not reflect [the] any criminal record of a child which has been expunged in terms of this section] in writing, confirm that the criminal record of the child has been expunged.**

(c) Any person who-

- (i) without the authority of a certificate of expungement as provided for in this section; or
- (ii) intentionally or in a grossly negligent manner, expunges the criminal record of any child **[or issues a certificate in accordance with paragraph (b)]**, is guilty of an offence and is, if convicted, liable to a fine or to a sentence of imprisonment for a period not exceeding 10 years¹ **[imprisonment]** or to both **[the] a fine and the imprisonment.**

(6) The Director-General: 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.

CHAPTER 14 GENERAL PROVISIONS

Rules of Court

88. (1) The Cabinet member responsible for the administration of justice may, after due consideration of any proposal put forward by the Rules Board for Courts of Law, established by section 2 of the Rules Board for Courts of Law Act,

- (c) withdraw or vary any notice under this subsection.

Referral of information relating to age to Department of Home Affairs

90. (1) If an inquiry magistrate, child justice court or any other court makes a determination of age as provided for in section 14 or 15 that is not supported by a valid birth certificate, identity document or passport, a copy of the record of the determination must be forwarded to the Department of Home Affairs to consider the issuing of an identification document to the person concerned.

(2) The Department of Home Affairs must report back to the inquiry magistrate or child justice court, the probation officer in question, the child and his or her parent or appropriate adult, in the manner prescribed by the Cabinet member responsible for the administration of justice, in consultation with the Cabinet member responsible for home affairs, that the age has been registered.

Liability for patrimonial loss arising from execution of diversion order

91. Section 297A of the Criminal Procedure Act applies, with the changes required by the context, in the case of any patrimonial loss suffered by any person as a result of a delict committed by a child during the execution of a diversion order made in terms of this Act.

Children used by adults to commit crime

92. If it comes to the attention of any court official or probation officer that a child has been used by an adult to commit a crime referred to in Schedule 1 or 2 of the Criminal Procedure Act, that adult must be reported to the South African Police Service for the consideration of a prosecution as provided for in section 141(1)(d), read with section 305(1)(c), of the Children's Act, and the fact of the adult's involvement must be taken into account when determining the treatment of the child in the child justice system.

National policy framework

93. (1) The Cabinet member responsible for the administration of justice must, after consultation with the Cabinet members responsible for safety and security, correctional services, social development, education and health, adopt a national policy framework, relating to all matters dealt with in this Act, in order to—

- (a) ensure a uniform, co-ordinated and cooperative approach by all [G]overnment departments, organs of state and institutions in dealing with matters relating to child justice;
- (b) guide the implementation and administration of this Act;
- (c) 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
- (d) enhance service delivery as envisaged in this Act by the development of a plan within available resources[; and
- (e) **develop the capacity within all levels of government, the non-governmental sector and civil society to develop, establish and maintain programmes for diversion and community-based sentencing,**

*leave 56
at moment*

and ensure that these programmes are accredited in [terms of] accordance with the system to be established in terms of section 56].

(2) The Cabinet member responsible for the administration of justice must—

- (a) within two months after the commencement of this Act, adopt and table the policy framework in Parliament;
- (b) publish the policy framework in the *Gazette* for public comment[s] two months after it has been tabled in Parliament;
- (c) review the policy framework within three years after its publication in the *Gazette* and at least once every five years thereafter; and
- (d) amend the policy framework when required, in which case the amendments must be tabled in Parliament and published in the *Gazette* for public comment[s], as provided for in paragraph (b).

Establishment of Intersectoral Committee

94. (1) There is hereby established a Committee to be known as the Intersectoral Committee for Child Justice.

(2) The Committee must consist of—

- (a) the Director-General: Justice and Constitutional Development, who is the chairperson of the Committee;
- (b) the National Director of Public Prosecutions;
- (c) the National Commissioner of the South African Police Service;
- (d) the Commissioner of Correctional Services;
- (e) the Director-General: Social Development;
- (f) the Director-General: Education; and
- (g) the Director-General: Health.

(3) A member of the Committee may designate a senior official in his or her Department as an alternate to attend a meeting of the Committee in his or her place.

(4) (a) The Committee must designate one of its members as deputy chairperson of the Committee, and when the chairperson is not available, the deputy chairperson acts as chairperson.

(b) If neither the chairperson nor deputy chairperson is available, the members present at a meeting must elect a person from among their **[own ranks]** number to preside at that meeting.

(5) The Committee may invite —

- (a) representatives from the non-governmental sector and civil society to its meetings with the view to fostering co-operation between government and civil society in the implementation of this Act; and
- (b) persons to its meetings, when necessary, **[to obtain]** for technical assistance, support or advice **[the Committee might require]**.

Meetings of Intersectoral Committee

95. The Intersectoral Committee must—

- (a) meet at least twice every year on a date and at the time and place determined by the chairperson; and
- (b) report in writing to the Cabinet member responsible for the administration of justice within one month of every meeting.

- (ii) children who are 11 years at the time of the commission of the alleged offence;
- (iii) children who are 12 years at the time of the commission of the alleged offence;
- (iv) children who are 13 years at the time of the commission of the alleged offence;
- (b) sentences imposed on the children in the categories referred to in paragraph (a), if they were convicted;
- (c) the number of children referred to in paragraph (a) whose matters did not go to trial, as provided for in section 10(2)(b) on the grounds that the prosecutor was of the view that criminal capacity would not be proved and reasons for that decision in each case;
- (d) the number of children referred to in paragraph (a) whose matters were dealt with in accordance with section 11, whether expert evidence was led, and the outcome of each matter regarding the establishment of criminal capacity;
- (e) an analysis of the statistics referred to in paragraphs (a) to (d); and
- (f) a recommendation[,] based on the analysis as to whether the minimum age of criminal capacity should remain at **[ten] 10** years as provided for in section 7(1) or whether the minimum age of criminal capacity should be raised.

(5) The Cabinet member responsible for the administration of justice must, on receipt of the report referred to in subsection (4), submit the report to Cabinet for approval, and thereafter to Parliament for consideration.

Regulations, directives, national instructions and register

97. (1) The Cabinet member responsible for the administration of justice after consultation, where appropriate, with the Cabinet members responsible for social development, safety and security, education, **[and] correctional services and health[,]** may make regulations regarding any matter which is required or permitted by this Act to be prescribed by regulation or any other matter which is necessary or expedient to prescribe in order to achieve **[or promote]** the objects of this Act.

(2) The regulations referred to in subsection (1) **must be tabled in Parliament for approval [by Parliament] before the commencement of this Act.**

(3) The Cabinet member responsible for the administration of justice must by notice in the *Gazette*-

- (a) determine the persons or the category or class of persons who are competent to conduct the evaluation of the criminal capacity of a child referred to in section 11(3); and
- (b) in consultation with the Cabinet member responsible for finance, determine the allowances and remuneration of those persons.

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

- (i) regarding all matters which are reasonably necessary or expedient to be provided for in order to achieve the objectives of this Act, including diversion, the minimum standards applicable thereto and the factors to be considered when selecting a diversion option, and in particular the following: **[The diversion of matters -]**

- (aa) The diversion of matters, in the case of accused persons who, at the time **[of the institution of criminal proceedings]** referred to in section 4(1)(b), were 18 years or older but under the age of 21 years, as provided for in section 4(2);
and
- (bb) by a prosecutor in respect of minor offences before a preliminary inquiry in terms of Chapter 6;
- (ii) regarding the manner in which matters must be dealt with where an error as to age has been discovered subsequent to the matter being diverted as referred to in section 16; and
- (iii) determining the exceptional circumstances in which a matter may be diverted, as provided for in section 52(3).

(b) The Cabinet member responsible for the administration of justice must submit directives issued under this subsection to Parliament for approval, before publication in the *Gazette*.

(c) The first directives so issued must be submitted to Parliament before the commencement of this Act.

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

(e) The National Director of Public Prosecutions must develop training courses which must –

- (i) include training on the directives referred to in this subsection;
- (ii) include social context training in respect of child justice; and
- (iii) provide for and promote the use of uniform norms, standards and procedures, to ensure that all prosecutors are able to deal with child justice matters in an appropriate, efficient and sensitive manner.

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

- (i) the attendance of and assistance by a parent or an appropriate adult when a child makes a confession, an admission, during a pointing-out or during the holding of an identity parade;
- (ii) all aspects relating to the arrest of a child which are not regulated in section 20 and which, in the opinion of the National Commissioner, require regulation in order to give full effect to that section, including what constitutes compelling reasons justifying an arrest in the case of offences referred to in Schedule 1 and the procedures to be followed when notifying a child's parent or an appropriate adult of the arrest;
- (iii) all aspects relating to the service of a summons which are not regulated in section 19 and which, in the opinion of the National Commissioner, require regulation in order to give full effect to that section;
- (iv) all aspects relating to a written notice by a police official which are not regulated in sections 18 and 23 and which, in the opinion of the National Commissioner, require regulation in order to give full effect to that section;
- (v) all aspects relating to the protection of children detained in police custody which are not regulated in section 28 and which, in the opinion of the National Commissioner, require regulation in order to give full effect to that section;
- (vi) all aspects relating to the treatment and conditions of children while in detention at a police cell or lock-up, preliminary inquiry or at a court which are

not regulated in sections 28 and 33 and which, in the opinion of the National Commissioner, require regulation in order to give full effect to that section, including the provision of adequate exercise at police cells and the transportation of children to and from court;

- (vii) all aspects relating to locating a parent or appropriate adult for purposes of attending an assessment as provided for in section 38(6) in order to give full effect to that section;
- (viii) the manner in which police officials **[who fail to make or] must** furnish a report as provided for in section 22(2) **[, are to be dealt with]**; and
- (ix) the issuing of a certificate expunging the criminal record of a child referred to in section 87(5)(b).

(b) The **[National Commissioner of the South African Police Service]** Cabinet member responsible for safety and security must-

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

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

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

(e) The National Commissioner of the South African Police Service must develop training courses which must -

- (i) include training on the national instructions referred to in this subsection;
- (ii) include social context training in respect of child justice; and
- (iii) provide for and promote the use of uniform norms, standards and procedures, to ensure that all police officials are able to deal with child justice matters in an appropriate, efficient and sensitive manner.

(6) (a) The Director-General: Social Development or any person designated by him or her must keep a register, as prescribed, of children in respect of whom a decision has been made and recorded by a probation officer in terms of section 9(6).

(b) The register referred to in paragraph (a) must include the following:

- (i) The personal details of each child;
- (ii) details of the offence in relation to which the decision was made;
- (iii) the decision that was made in respect of the child; and
- (iv) particulars of the child's compliance with the decision, if applicable.

(c) Access to the register must be limited, as prescribed, to persons or organisations requiring the information for the purposes of record-keeping, monitoring and research.

(7) For the purposes of section 29, the Director-General: Social Development must, from time to time, provide the Director-General: Justice and Constitutional Development and the National Commissioner of the South African Police Service with all relevant information relating to-

- (a) the location of all child and youth care centres in South Africa;
- (b) the amenities and features of each centre; and
- (c) the level of security offered by each centre.

(8) The Directors-General: Social Development and Health and the Commissioner of Correctional Services must each develop training courses which must -

- (i) include training on issues relevant to the respective [D]departments as provided for in this Act;
- (ii) include social context training in respect of child justice; and
- (iii) provide for and promote the use of uniform norms, standards and procedures, to ensure that all officials in their Departments are able to deal with child justice matters in an appropriate, efficient and sensitive manner.

(9) The directives or national instructions provided for in this section must ensure that adequate steps are taken against any functionary who fails to comply with any duty imposed on him or her in terms of this Act.

(10) If Parliament is required in terms of any provision of this Act to approve any regulations, rules, directives or national instructions, Parliament must do so within six months of those being tabled in Parliament, failing which they will be deemed to have been approved by Parliament. *Take out rules*

Transitional arrangements

98. (1) All criminal proceedings in which children are accused of having committed an offence, which were instituted prior to the commencement of this Act and which are not concluded before the commencement of this Act, must be continued and concluded in all respects as if this Act had not been passed.

(2) Every diversion programme and diversion service provider which existed at the time of the commencement of this Act may continue to operate until it has been informed of the decision in respect of its application, as provided for in section 56(2)(c)(iii). *initial*

(3) The regulations referred to in section 97(1) must be tabled in Parliament for approval by no later than 1 December 2009, and must be approved before the commencement of this Act, failing which they will be deemed to have been approved by Parliament.

Repeal or amendment of laws [and Schedules to this Act]

99. (1) The laws specified in Schedule 4 are hereby repealed or amended to the extent set out in the third column of that Schedule.

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

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

Short title and commencement

100. This Act is called the Child Justice Act, 2008, and takes effect on 1 April 2010, or any earlier date fixed by the President by proclamation in the *Gazette*.