

Legal guide to age thresholds for children

September 2008 (Edition 4)

At what age can children make decisions and act on their own without assistance from their parents?

What are the age thresholds for children to access social grants or housing subsidies?

At what age can a child sign a legal contract, be prosecuted for a crime, smoke or be detained in prison?

There are various laws that provide the answers to these questions, and others like them. Some of these laws are currently being re-written and will change the various age thresholds. This legal guide provides information on the current laws, and proposed reforms.

A joint product of the Children's Institute, University of Cape Town, and the Centre for Child Law, University of Pretoria.

Produced by Prinslean Mahery (Centre for Child Law) and Paula Proudlock (Children's Institute). For more information, please contact prinslean.mahery@up.ac.za or paula.proudlock@uct.ac.za



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| Area | Detail | Age | Source of law |
|-------------------------|---|---|---|
| Age of majority | The age of majority sets the age at which a child becomes an adult. A child who reaches the age of majority is able to conclude valid contracts without parental assistance (e.g. marriage contract, employment contracts). | 18 Majority status can also be acquired by concluding a valid marriage (see the 'marriages' section on pp. 14 - 15). | Children's Act 38 of 2005. Section 17. |
| Legal contracts | Age at which a child can sign and enter into a legal contract. | A child's capacity to contract is determined either by statute or by common law. General: 18 is now the age at which contractual capacity is acquired (unless another age is specifically set out in a particular law). A child under 18 can enter into a contract (without parental consent) if the contract is about the child acquiring rights but no obligations. If parental consent is granted , then a child under 18 can enter into a contract where he/she acquires both rights and obligations. However, there are certain agreements into which a child under 18 cannot enter even with parental consent (such as employment contracts where the child is under 15). | Children's Act 38 of 2005. Section 17 read with the Common law. |
| Insurance policy | Age at which a child can take out an insurance policy in his/her own name. | 18 | Long-term Insurance Act 52 of 1998. Section 58. |

| Area | Detail | Age | Source of law |
|---------------------|--|--|---|
| Bank account | Age at which a child can open and operate a bank account. | <p>16</p> <p>A 16-year-old child can be a depositor at a bank where the deed of establishment or statutes of the bank makes provision for it. He/she can execute the necessary documents, cede, pledge, borrow against and generally deal with his/her deposit and can enjoy all the privileges and be liable for all the obligations and conditions applicable to depositors as if he/she was a major.</p> | <p>The Banks Act 94 of 1990. Section 87(1)(a).</p> <p>and</p> <p>Mutual Banks Act 124 of 1993. Section 88(1).</p> |
| Litigation | Age at which a child can sue or be sued in his/her own name. | <p>18</p> <p>At this age the child is a major and can therefore litigate in his/her own name.</p> <p>Under 18: In general, a minor is thought to have limited capacity to litigate and would need parental assistance to institute legal actions in his/her own name. The High Court is the upper guardian of minors and will appoint a curator to assist a minor where the parents refuse or are not available.</p> <p>However a child has full capacity to litigate in certain instances, e.g. where a child is sued for maintenance of his/her child or where a child applies to the court for a protection order in terms of the Domestic Violence Act.</p> <p>The Children's Act now gives every child a right to bring and to be assisted in bringing a matter to a court. This could imply that a child has full capacity to litigate in all matters that affect him/her. Despite this, children are in practice generally required to be assisted in bringing a matter to court. If legal clarity is needed on this matter the courts will need to clarify the interpretation of the Children's Act.</p> | <p>Children's Act 38 of 2005. Sections 17 and 14.</p> |

| Area | Detail | Age | Source of law |
|--------------------------------------|---|---|--|
| Service of court papers | Age at which court papers can be served on a child. | 16 | Rules regulating the conduct of the proceedings of the several Provincial and Local Divisions of the Supreme Court of South Africa (i.e. the Uniform rules of Court). Rule 4. |
| Own will | Age at which a child can make his/her own valid will. | 16 | The Wills Act 7 of 1953. Section 4. |
| Witness to a will | Age at which a child can be a witness to someone else's will. | 14 | The Wills Act 7 of 1953. Section 1. |
| Employment | Age at which a child may perform labour. | 15 Children below the minimum school- leaving age may not be employed. In terms of the Schools Act, the minimum school-leaving age is 15 or the age at the end of the ninth grade; whichever comes first. Subject to the Basic Conditions of Employment Act 75 of 1997 and with certain provisions, a child (under 15) can perform labour for advertisements, sport or in an artistic or cultural event. | Basic Conditions of Employment Act 75 of 1997. Sections 43 and 55(6)(b) read with Sectoral Determination 10: Children in the Performance of Advertising, Artistic and Cultural Activities, South Africa. GNR. 882 of 29 July 2004. |
| Working underground at a mine | Age at which a child can work underground in a mine. | 18 Under 18 but over 16: May work underground as part of vocational education or training. | Mine Health and Safety Act 29 of 1996. Section 85. |

| Area | Detail | Age | Source of law |
|---------------------------|--|--|--|
| Defence Force | Age at which a child may serve in the National Defence Force. | 18 | Defence Act 42 of 2002. Section 52. |
| Domicile of choice | Age at which a child can acquire a domicile of choice. Definition: 'Domicile' is the residence where you have your permanent home or principal establishment and to where, whenever you are absent, you intend to return. Every person is compelled to have one – and only one – domicile at a time. Children will be required to state their domicile when filling in contracts or when instituting legal proceedings. | 18 Under 18 with majority status: On condition that he/she has the mental capacity to make that choice. Note: Children under 18 (who do not have majority status) in foster care, in a child and youth care centre, or in other forms of custody are domiciled at the place with which he/she is most closely connected. That would be for example the child and youth care centre. | The Domicile Act 3 of 1992. Section 1. |
| Leaving home | Age at which a child can leave home | 18 This relates to the age at which a child can establish a domicile of choice. See the section on 'domicile' above. | The Domicile Act 3 of 1992. Section 1. |
| Alcohol | Age at which a child may be sold/served alcohol. | 18 | The Liquor Act 59 of 2003. Section 10(1) read with section 1. |
| Gambling | Age at which a child may gamble. | 18 | National Gambling Act 7 of 2004. Section 12 read with section 1. |

| Area | Detail | Age | | Source of law | |
|--|---|-------------|---|---|---|
| | | Current Law | Proposed law | Current law | Proposed law |
| Smoking by a child | Age at which a child may access or be sold cigarettes or any other tobacco product. | 16 | 18 | Tobacco Products Control Act 83 of 1993. Section 4. | Tobacco Products Control Amendment Bill [B 7B 2008]. Section 4(1). |
| Smoking in the presence of young children | Adults will soon be prohibited from smoking in a car where a child under 12 is present. | | It is an offence to smoke in a car where a child under the age of 12 is present. The offence carries a fine of R500. | | Tobacco Products Control Amendment Act 23 of 2007. Section 2. Note: This section is not yet in effect. |

| Area | Detail | Age | Source of law |
|-----------------------------|--|--|--|
| Firearms | Age at which a person can legally apply for and possess a firearm. | 21 Under 21 if compelling reasons exist. | The Firearms Control Act 60 of 2000. Sections 9(2)(a) and 9(5)(a). |
| Driving a car | Age at which a child can legally drive a car. | 18 (17 with learner's license provided a licensed driver is in the passenger seat at the time of driving.) | National Road Traffic Act 93 of 1996. Section 15. |
| Driving a motorcycle | Age at which a child can legally drive a motorcycle (with an engine of 125 cubic centimetres). | 16 | National Road Traffic Act 93 of 1996. Section 15. |

| Area | Detail | Age | Source of law |
|-------------------------------|---|--|--|
| Registering as a voter | The age at which a child can apply to be registered as a voter. | 16 Note: The name of the successful applicant will only appear on the voters' roll once he/she turns 18. | Electoral Act 73 of 1998. Section 6. |
| Voting | The age at which a child can vote. | 18 | Electoral Act 73 of 1998. Section 1. |
| Identity document | Age at which a child can apply for an identity document. | 16 | Identification Act 68 of 1997. Section 15. |
| Passport | Age at which a child can apply for a passport. | 18 without parental consent Child aged 16 to 17 years: Can apply for a passport or travel document but will need consent to be issued with the required documents. Both parents, or all guardians (if they are more than one), must consent to the child's application for a passport. Parents or guardians need not sign the application form. Under 16: Can apply for a passport but not only does he/ she require parental or guardian consent to be issued with the document, but both parents and all guardians (if more than one) also have to sign the application form. | Children's Act 38 of 2005. Section 18(5) read with 18(3)(c). Regulations to the South African Passport and Travel Documents Act 4 of 1994. Regulations 3(2) and 3(3). |

| Area | Detail | Age | Source of law |
|--------------------------------------|--|--|---|
| Change of forename or surname | Age at which a child can change his/her forename or surname without parental consent. | 18 A child under 18 who has not been declared a major cannot apply to change his/her forename or surname at all. | Births and Deaths Registration Act 51 of 1992. Section 24 read with the definition of 'major' or 'person of age' in section 1. See also section 25 of this Act in relation to change of surname. |
| Alteration of sex description | Age at which a child can apply to Home Affairs to have his/her sex description changed on the birth register. Note: Once a change is made to the birth register, the birth certificate (and consequently identity document) can be changed as well. | Any person who has altered his/her sexual characteristics or has undergone gender reassignment (i.e. sex change) can apply to have the birth register changed. Thus if a child's sex description has been altered either through medical treatment or surgical operation, that child can apply to have the birth register changed no matter what age he/she is. Note: A child can only undergo treatment or surgery to affect a sex change in accordance with the provisions for giving consent. See the section on 'medical procedures' on pp. 16 - 19) | Combination of legislation: Child Care Act 74 of 1983. Section 39(4). Alteration of Sex Description and Sex Status Act 49 of 2003. Section 2. Births and Deaths Registration Act 51 of 1992. Section 27A. |

| Area | Detail | Age | Source of law |
|--|--|--|---|
| Admission to school: Grade R (reception year) | Age at which a child may be admitted to grade R in primary school. | Age 4, turning 5 by June in year of admission. | South African Schools Act 84 of 1996. Section 5 (4)(a)(i). |
| Admission to school: Grade 1 | Age at which a child may be admitted to grade 1 in primary school. | Age 5, turning 6 by June in year of admission. | South African Schools Act 84 of 1996. Section 5(4)(a)(ii). |
| Compulsory school starting age | Age at which compulsory school attendance starts. | 7 A child must attend school at this age or else the parents will be guilty of an offence if they fail to ensure, without any good reason, that the child attends school. However parents can apply to have their children educated at home. | South African Schools Act 84 of 1996. Sections 3(1) and 3(6)(a) read with section 51. |
| Leaving school | The age at which compulsory school attendance, as required by law, ends. | 15 or end of ninth grade , whichever comes first. A child must attend school until this age/grade or else the parents will be guilty of an offence if they fail to ensure without any good reason, that the child attends school. | South African Schools Act 84 of 1996. Section 3(1) read with sub-section 6. |

| Area | Detail | Age | Source of law |
|---|--|---|--|
| Children incapable of consenting to sex | Age at which a child is considered by the law to be incapable of consenting to sex. | <p>Below 12: Any adult or another child having sex (penetrative or non-penetrative) with a child under this age is committing the crime of rape or sexual violation.</p> <p>Note: The defences which can be raised in the case of ‘statutory rape’ (see below) cannot be used in the case of rape or sexual assault. However, if the accused is a child below the age of 10 years (the age of criminal capacity – see page 21), then the child cannot be prosecuted. If the accused is a child between the ages of 10 and 14, the child can be prosecuted but the prosecution bears an onus to prove that they do have criminal capacity.</p> | <p>Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007.</p> <p>Section 57 read with sections 1(2) and 1(3)(d)(iv).</p> |
| Children capable but not mature enough to consent to sex | Age at which a child is considered capable but not mature enough to consent to sex. | <p>12 to 16</p> <p>According to the Criminal Law Amendment Act it is an offence for an adult or another child to have sex with or to sexually violate (non-penetrative acts) a child who is between 12 and 16 years, even with that child’s consent.</p> <p>It is however a defence to such a charge if the accused was deceived by the child into believing that the child was above 16.</p> <p>If two children between 12 and 16 years engage in penetrative sex with each other, they must both be charged under the Act with ‘statutory rape’. However, to prevent unnecessary and frivolous prosecutions of children, the decision to prosecute the children must be authorised by the National Director of Public Prosecutions.</p> <p>If two children between 12 and 16 years engage in non-penetrative sexual acts with each other, they must both be charged under the Act with ‘statutory sexual violation’. To prevent unnecessary and frivolous prosecutions of children, the decision to prosecute the children must be authorised by the relevant provincial Director of Public Prosecutions. In addition, it is a defence to argue that both the accused were children with an age difference of not more than two years between them at the time of the offence.</p> | <p>Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007.</p> <p>Sections 15 and 16 read with section 1(1)(b) and section 56(2).</p> |

| Area | Detail | Age | Source of law |
|--|---|-----------|---|
| Children capable of consenting to sex | Age at which a child is considered by the law to be capable and mature enough to consent to sex. | 16 | Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007. Section 1(1)(b). |

| Area | Detail | Age | | Source of law | |
|---------------------------|---|---|---|---|---|
| | | <i>Current Law</i> | <i>Proposed law</i> | <i>Current law</i> | <i>Proposed law</i> |
| Civil law marriage | Age at which a child may enter into marriage in terms of civil law. | <p>18 (without parental consent)</p> <p>Girls under 18 but older than 15 need their parents' consent to get married. If they are under the age of 15, they also need the consent of the Minister of Home Affairs.</p> <p>Boys under 18 need their parents' consent as well as the consent of the Minister of Home Affairs to get married.</p> <p>Note: The minimum age set for a valid marriage is set out in terms of common law. Common law dictates that a child cannot get married below the age of puberty, i.e. below 12 years for girls and below 14 years for boys.</p> | <p>The Children's Act now prohibits the arrangement of marriages or engagements for children below the minimum age for a valid marriage (i.e. the ages set at common law).</p> <p>Furthermore, the Children's Act clarifies that a parent cannot arrange a marriage or engagement of a child without the child's consent.</p> | The Marriage Act 25 of 1961. Section 26(1) read with sections 17 and 18(3)(i) of the Children's Act 38 of 2005. | <p>See section 12 (2) of the Children's Act.</p> <p>Note: This section is not yet in operation.</p> |

| Area | Detail | Age | | Source of law | |
|-------------------------------|---|--|---|--|--|
| | | <i>Current Law</i> | <i>Proposed law</i> | <i>Current law</i> | <i>Proposed law</i> |
| Customary law marriage | Age at which a child may enter into a marriage in terms of customary law. | <p>18 (without parental consent)</p> <p>Children under 18 need their parents' consent to get married. If they are under the age of 18 the Minister of Home Affairs or an officer in the public service authorised by the Minister may also give permission for the marriage.</p> <p>Note: Unlike the Marriage Act, no distinction is made between boys and girls.</p> <p>Note: In terms of common law, a child cannot get married below the age of puberty: below 12 years for girls and 14 years for boys.</p> | <p>The Children's Act now prohibits the arrangement of marriages or engagements for children below the minimum age for a valid marriage (i.e. the ages set at common law).</p> <p>Furthermore, the Act requires the child's consent to the arrangement of his/her marriage or engagement.</p> | Recognition of Customary Marriages Act 120 of 1998. Section 3. | <p>See section 12(2) of the Children's Act.</p> <p>Note: This section is not yet in operation.</p> |
| Civil Union | Age at which children can enter into a civil union. | <p>18</p> <p>No express provision is made for persons below 18 to enter into a civil union either with or without parental consent. However on the grounds of equality, it is likely that the same provisions that apply to civil and customary marriages also apply to civil unions.</p> | | Civil Union Act 17 of 2006. Section 1. | |

| Area | Detail | Age | | Source of law | |
|----------------------------|---|-------------|--|---|---|
| | | Current Law | Proposed law | Current law | Proposed law |
| Surgical operations | Age at which a child may consent to surgical operations on him/herself and consent to such operations on his/her own child. | 18 | <p>18 with no assistance or involvement of a parent.</p> <p>12 and of sufficient maturity and mental capacity to understand the benefits, risks and social implications of the operation: A child can consent but must be assisted by his/her parent or guardian.</p> <p>If the child is under 12 or over 12 but insufficiently mature to consent, then the parent or guardian must consent on the child's behalf.</p> | <p>Child Care Act of 74 of 1983. Section 39(4).</p> <p>Note: this Act is soon to be repealed by the Children's Act.</p> | <p>Children's Act 38 of 2005. Section 129.</p> <p>Note: This section is not yet in operation.</p> |
| Medical treatment | Age at which a child may consent to his/her own medical treatment as well as medical treatment for his/her own child. | 14 | <p>12 and of sufficient maturity and mental capacity to understand the benefits, risks and social implications of the treatment.</p> <p>For children under 12 or children over 12 but insufficiently mature: Parent or guardian or caregiver must consent on the child's behalf.</p> | <p>Child Care Act 74 of 1983. Section 39(4).</p> <p>Note: this Act is soon to be repealed by the Children's Act.</p> | <p>Children's Act 38 of 2005. Section 129.</p> <p>Note: This section is not yet in operation.</p> |

| Area | Detail | Age | | Source of law | |
|--------------------------------|---|--|---|--|--|
| | | <i>Current Law</i> | <i>Proposed law</i> | <i>Current law</i> | <i>Proposed law</i> |
| Terminating a pregnancy | Age at which a child may terminate her pregnancy. | <p>Any age</p> <p>The Choice On Termination of Pregnancy (TOP) Act defines a woman as: ‘any female of any age’. It further states that only the woman’s consent is needed for the TOP, and in the case of a minor, only the minor’s consent is needed subject to advising such a minor to consult with the parents.</p> <p>The TOP Act makes it clear that :</p> <p>‘Notwithstanding any other law or the common law... no consent other than that of the pregnant woman (i.e female of any age) shall be required for the termination of a pregnancy.’</p> <p>This means that the age limits for medical treatment or surgery without parental assistance (as set out in the Child Care Act) do not apply to a girl requiring a TOP by either means (i.e. medically or surgically). In other words, ages set by the Child Care Act are overruled by the TOP Act.</p> <p>Thus, even if the child is 10, she would not need parental consent in order to terminate her pregnancy.</p> | <p>Note: Section 129 of the Children’s Act, which sets the age of consent to medical treatment and surgery for children, specifically states that the age limit of 12 that is set in the Children’s Act does not apply to terminations of pregnancies. Thus the Children’s Act does not change current law.</p> | Choice On Termination of Pregnancy Act (TOP Act) 92 of 1996. Sections 5(3) and 5(2). | Read with section 129 of the Children’s Act 38 of 2005. Note: This section is not yet in effect. |

| Area | Detail | Age | Source of law |
|---------------------------------|---|--|--|
| Sterilisation | Age at which a child can consent to being sterilised. | <p>18</p> <p>Note: Sterilisation may be performed on a child who is under the age of 18 years only if failure to do so would jeopardise the child's life or seriously impair his or her health.</p> <p>The Sterilisation Amendment Act states further that a child under 18 who falls in the above category (i.e. non-sterilisation will be detrimental to his/her health) may be sterilised if consent is given by parents/guardian and an independent medical practitioner has consulted with the child to be sterilised and has provided a written opinion to the effect that the sterilisation is in the best interest of that child.</p> | The Sterilisation Act 44 of 1998 read with the Sterilisation Amendment Act 3 of 2005. Section 2. |
| Access to contraceptives | Age at which a child may access or buy condoms or other contraceptives. | <p>12 for condoms</p> <p>12 for other contraceptives with the addition that proper medical advice must be given to the child and a medical examination must be performed.</p> <p>Under 12: Parental or caregiver consent is needed.</p> | Children's Act 38 of 2005. Section 134 read with the Proclamation on the Commencement of Certain Sections of the Children's Act. Proclamation No. R 13 of 2007, <i>Government Gazette</i> 30030 3, 29 June 2007. |
| HIV testing | Age at which a child can consent to an HIV test | <p>12</p> <p>Under 12: If the child is mature enough to understand the benefits, risks and social implications of the test.</p> <p>For children under 12 who are not mature enough: Parental or caregiver consent is needed.</p> | Children's Act 38 of 2005. Section 130 read with the Proclamation on the Commencement of Certain Sections of the Children's Act. Proclamation No. R 13 of 2007, <i>Government Gazette</i> 30030 3, 29 June 2007. |

| Area | Detail | Age | Source of law |
|--|---|--|---|
| Disclosing HIV status | Age at which a child can consent to disclosure of his/her HIV status | <p>12</p> <p>Under 12 if child is mature enough to understand the benefits, risks and social implications of such disclosure.</p> <p>Under 12 and not mature enough: Parent or caregiver consent is needed.</p> <p>Note: Testing can only be done after the child has received counselling.</p> | <p>Children's Act 38 of 2005.</p> <p>Section 133 read with the Proclamation on the Commencement of Certain Sections of the Children's Act. Proclamation No. R. 13 of 2007, <i>Government Gazette</i> 30030 3, 29 June 2007.</p> |
| Donation of bodily organs (after death) | Age at which a child can agree to donate his/her body or any specific tissue in the event of his/her death. | 16 | <p>The National Health Act 61 of 2003.</p> <p>Section 62.</p> |
| Use of organs from a living person | Age at which a child can consent to the use of his/her organs (e.g. kidneys) while alive. | <p>18</p> <p>The Act states that a person cannot remove tissue (which includes organs) without the written consent of the person from whom the tissue is taken. It further states that tissue which is not replaceable by natural process cannot be withdrawn for medical or dental purposes from a person younger than 18.</p> | <p>The National Health Act 61 of 2003.</p> <p>Section 56(2).</p> |
| Donating blood | Age at which a child can consent to donating blood | 14 | <p>Human Tissue Act 65 of 1983 section 18(aa) read with definition of a 'competent witness'.</p> |

| Area | Detail | Age | | Source of law | |
|--------------------------|---|-------------|--------------|---------------|---|
| | | Current Law | Proposed law | Current law | Proposed law |
| Circumcision | Age at which a male child can consent to being circumcised. | | 16 | | Children's Act 38 of 2005. Section 12. Note: This section is not yet in operation. |
| Virginity testing | Age at which a child can consent to a virginity test. | | 16 | | Children's Act 38 of 2005. Section 12. Note: This section is not yet in operation. |

| Area | Detail | Age | Source of law |
|--------------------------|---|---|--|
| Housing subsidies | Age at which a child can apply for a housing subsidy. | 18 Note: Policy is currently being developed to address the issue of making child-headed households eligible for housing subsidies. | The National Housing Code. Part 3 Chapter 2 read with the Children's Act 38 of 2005. Section 17. |

| Area | Detail | Age | | Source of law | |
|--------------------------|---|---|--|--------------------|---|
| | | <i>Current Law</i> | <i>Proposed law</i> | <i>Current law</i> | <i>Proposed law</i> |
| Criminal capacity | Age at which a child can be tried and convicted for a criminal act. | <p>Under 7: The child cannot be tried and convicted of a crime because he/she is irrebuttably presumed to lack criminal capacity.</p> <p>Between the ages of 7 and 14: The child can be tried and convicted but there is a rebuttable presumption that they lack criminal capacity. Thus the prosecution must prove that an accused between 7 and 14 years knew or appreciated the difference between right and wrong and that he/she acted in accordance with that appreciation at the time and in the circumstances of the offence.</p> <p>Aged 14 years and older: The child is considered to have criminal capacity.</p> | <p>Under 10: The child lacks criminal capacity and cannot be prosecuted. Instead of a criminal prosecution, the child must be referred to a probation officer and a decision must be made on what action to take (including a decision not to take any action at all). Support services could be arranged for the child or the matter could be transferred to the Children’s Court for a Children’s Court inquiry.</p> <p>Between the ages of 10 and 14: The child can be tried and convicted but there is a rebuttable presumption that he/she did not appreciate the difference between right and wrong and did not act in accordance with that appreciation. The prosecution bears an onus of rebutting these presumptions.</p> <p>Aged 14 years and older: The child is considered to have criminal capacity and he/she can be tried and prosecuted.</p> <p>Note: The age of criminal capacity could be raised after five years following the commencement of provisions relating to the ages of criminal capacity.</p> | Common law | <p>Child Justice Bill [B 49B]-2002.</p> <p>Sections 6(1) and (2), 7, 8, 9(1) (a) and 10(1).</p> |

| Area | Detail | Age | | Source of law | |
|--|---|--|--|--|--|
| | | <i>Current Law</i> | <i>Proposed law</i> | <i>Current law</i> | <i>Proposed law</i> |
| Detaining unconvicted child offenders | Different detention procedures apply to young offenders of different ages | <p>Generally, children below 18 may not be detained in a police cell, lock-up or prison.</p> <p>Children below 14 can be detained for up to 24 hours (before the first court appearance) in a police cell or lock-up (but not a prison) if the detention is necessary, in the interest of justice and if the child cannot be suitably placed otherwise.</p> <p>Aged 14 to 17: Can be detained for up to 48 hours (before the first court appearance) in a police cell, lock-up (not prison) if the detention is necessary, in the interest of justice and if the child cannot be suitably placed otherwise.</p> <p>A child of 14 or older can be further detained (after the first court appearance) in a prison</p> | <p>Children below 14 cannot be detained in prison.</p> <p>A child aged 10 to 14 years charged with any offence or a child aged 14 or older charged with certain offences (set out in Schedule 1 or 2 of the Child Justice Bill) may be detained before the first court appearance in a child and youth care centre or police cell or lock-up.</p> <p>If a child aged 14 or older is charged with a serious offence like murder or rape (as set out in Schedule 3 of the Child Justice Bill) the child must be detained in a police cell or lock-up.</p> <p>A child above 14 can only be detained in a prison if charged with a Schedule 3</p> | Correctional Services Act 8 of 1959. Section 29. | Child Justice Bill [B 49B]-2002. Sections 27 and 30. |

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| | | (but not in a police cell or lock-up) if he/she committed a serious offence. | <p>offence and in the case of a child between 14 and 16, he/she can only be detained if the Director of Public Prosecutions or an authorised proxy confirmed the availability of sufficient evidence to institute a prosecution of a Schedule 3 offence against the child.</p> <p>Furthermore, a child above 14 charged with Schedule 1 or 2 offences can only be detained in a prison if <i>inter alia</i> substantial and compelling reasons exist to order the child's detention in a prison.</p> | | |
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| Area | Detail | Age | | Source of law | |
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| | | <i>Current Law</i> | <i>Proposed law</i> | <i>Current law</i> | <i>Proposed law</i> |
| Sentencing children | The law prescribes and is in the process of prescribing particular rules regarding sentencing children of certain ages. | Children aged 16 or 17: May be given prescribed minimum sentences (like life imprisonment). | 1. An obligation to provide some service or benefit to a specified person; community or organisation (as a form of punishment) may only be imposed on a child who is 15 years or older . 2. A child who was under 14 at the time of sentencing may not be sentenced to imprisonment. 3. A child who: <ul style="list-style-type: none"> • was 14 or 15 at the time of sentence; • and who committed certain Schedule 3 offences like murder or Schedule 2 or 3 offences like assault or theft; • and where it was found (in the case of a Schedule 2 or 3 offence) that substantial and compelling reasons exist to impose a sentence of imprisonment. Such a child may not be sentenced for more than 25 years in prison. | Criminal Law (Sentencing) Amendment Act 105 of 1997. Section 51. | Child Justice Bill [B 49B]-2002. 1. Section 74(1)(c) 2. Section 77(1)(a). 3. Section 77(3). |

| Area | Detail | Age | Source of law |
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| Accommodation of child prisoners | Ages at which prisoners should be detained separately. | <p>Child prisoners (under 18) must be detained separately from adult prisoners (above 18 years).</p> <p>Prisoners aged 18 to 21 years should be detained separately from prisoners over 21.</p> | <p>Correctional Services Act 111 of 1998. Section 7(1)(c) read with the Correctional Services Regulations: GNR. 914 of 30 July 2004: Section 3(2)(h).</p> <p>See also: The Constitution of the Republic of South Africa Act 108 of 1996. Section 28(g)(i).</p> |

| Area | Detail | Age | Source of law |
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| Appeals against lower court orders | Different appeal procedures apply to children of different ages. | <p>Where a child appellant was below 16 years at the time of the offence there is no need to first apply for leave to appeal. The appeal can be automatically noted against a lower court order.</p> <p>An automatic appeal against a lower court order can also be noted if the young appellant:</p> <ul style="list-style-type: none"> • was aged 16 to 17 at the time of the offence; and • was unrepresented at the time of conviction; and • was given an unsuspended sentence to a form of imprisonment as set out by the Criminal Procedure Act. <p>If a child aged 16 to 17 has been given a sentence of life imprisonment, an automatic appeal can also be noted against such an order.</p> | Criminal Procedure Act 51 of 1977. Section 309(1)(a). |
| Appeals against High Court orders | Different appeal procedures apply to children of different ages | <p>Where an appellant was below 14 years at the time of the offence, an appeal can be noted against a High Court order without the need to apply for leave to appeal first.</p> <p>An automatic appeal against a High Court order can also be noted where:</p> <ul style="list-style-type: none"> • the appellant was aged 14 or 15 at the time of the offence; <i>and</i> • was unrepresented at time of conviction; <i>and</i> • was given an unsuspended sentence to a form of imprisonment as set out by the Criminal Procedure Act. | Criminal Procedure Act 51 of 1977. Section 316. |

| Area | Detail | Age | | Source of law | |
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| | | <i>Current Law</i> | <i>Proposed law</i> | <i>Current law</i> | <i>Proposed law</i> |
| Child support grant (CSG): child age limits | Age limits for children to be eligible for the CSG. | 14 A caregiver may only access a CSG for children aged 0 – 13 years. The grant lapses when the child turns 14 years. | 15 As of 1 January 2009, children will be eligible up to their fifteenth birthday. | Regulations to the Social Assistance Act 13 of 2004, <i>Government Gazette</i> 27316 (GNR 162 of 22 February 2005). Regulations 4(4) and 32(2)(b). And <i>Government Gazette</i> 31356 GNR 898 of 22 August 2008. Regulation 38(2). | Regulations to the Social Assistance Act 13 of 2004, <i>Government Gazette</i> 31356, GNR 898 of 22 August 2008. Regulations 6(4) and 38(2). |

| Area | Detail | Age | Source of law |
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| Child support grant: caregiver age limits | Age at which a child can access a CSG in his/her own name for his/her own child or younger siblings. | 16 The Social Assistance Act 13 of 2004 defines a 'primary caregiver' as a person 16 years or older. | Social Assistance Act 13 of 2004. Section 6 read with section 1 (definition of 'primary caregiver'). |

| Area | Detail | Age | Source of law |
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| Care dependency grant (CDG): child age limits | Age of a child with a disability for which a caregiver can access a CDG. | 0 to 18 years | Social Assistance Act 13 of 2004. Section 1 (definition of a 'child') and Regulations to the Act: <i>Government Gazette</i> 31356 GNR 898 of 22 August 2008. Regulation 8. |
| Care dependency grant: caregiver age limits | Age at which a child can access a CDG in his/her own name for his/her own child or younger siblings. | 16 if the child is the primary caregiver (or the parent of a care-dependent child). While the Social Assistance Act 13 of 2004 stipulates an age limit of 16 for 'primary caregivers', it does not give age limits for 'parents' who are also listed in regulation 6 as eligible for applying for the grant. A 15-year-old mother (parent) of a disabled child therefore theoretically could apply for a CDG for her child. | Social Assistance Act 13 of 2004. Section 7 read with section 1 (definition of 'primary caregiver'). |
| Adult disability grant | Age at which a child can access a disability grant for him/herself. | 18 | Social Assistance Act 13 of 2004. Section 9 read with the Regulations to the Act: <i>Government Gazette</i> 31356 GNR 898 of 22 August 2008. Regulation 3. |

| Area | Detail | Age | | Source of law | |
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| | | <i>Current Law</i> | <i>Proposed law</i> | <i>Current law</i> | <i>Proposed law</i> |
| Foster child grant (FCG): child age limit | Ages of children for which a foster parent can access an FCG | <p>0 to 18 years</p> <p>18 to 21 years: If an extension is needed in order to enable the child to complete his/her education or training and the Minister of Social Development gives approval.</p> | <p>0 to the end of the year in which the child turns 18 years.</p> <p>18 to the end of the year in which the child turns 21 years: If the foster parent is willing to continue and the extension is necessary to enable the child to complete his/her education or training. The application will need to be made by the young person in foster care, to the provincial head of social development.</p> | <p>Child Care Act 74 of 1983. Section 33(3)(a).</p> <p>Social Assistance Act 13 of 2004. Section 8 read with the Regulations to the Act: <i>Government Gazette</i> 31356 GNR 898 of 22 August 2008. Regulation 7.</p> | <p>Children's Amendment Act 41 of 2007.</p> <p>Section 176.</p> |

| Area | Detail | Age | Source of law |
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| Foster child grant: foster parents age limit | Age at which a child can access an FCG in his/her own name for siblings or other children in his/her care. | <p>18</p> <p>A foster parent is any person (except a parent/guardian) in whose custody a child has been placed in terms of the Child Care Act.</p> <p>The Children’s Court decides when a person can be a foster parent and there is no specific age (in terms of the Child Care Act) attached to the criteria used to determine who can become a foster parent.</p> <p>However, it is generally accepted in practice that a person should be at least 18 years or older (in line with the age of majority) to be given the responsibility of becoming a foster parent.</p> <p>Once an order is made to that effect, the foster parent can apply for a foster child grant.</p> <p>If an 18-year-old is taking care of for example a 9-year-old sibling and they don’t have parents, the 18-year-old can with the assistance of a social worker get the court to declare the 9-year-old child a ‘child in need of care’ in terms of the Children’s Act. After the court enquiry as to whether the child is a child in need of care the court can make a finding that the child remains in the custody of the person in whose custody he/she was before the commencement of the proceedings (e.g. the 18-year-old), under the supervision of the social worker.</p> | <p>Social Assistance Act 13 of 2004. Section 8. Read with the Child Care Act 74 of 1983. Section 15(1)(b).</p> <p>Other sources: Personal communication with the national Department of Social Development and the Commissioner of the Children’s Court in Pretoria (2008).</p> |

| Area | Detail | Age | | Source of law | |
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| | | <i>Current Law</i> | <i>Proposed law</i> | <i>Current law</i> | <i>Proposed law</i> |
| Children in alternative care | The duration of an alternative care order made by the children's court | <p>An alternative care placement order lapses after two years, or a shorter period as ordered by the court.</p> <p>The Minister of Social Development may extend the order for two years at a time until the child has turned 18.</p> <p>A child in alternative care can also apply for an extension after the age of 18 or after the order lapsed and no extension has been granted, if the extension is needed to enable the child to complete his/her education or training.</p> <p>The Minister may further extend a placement order of a pupil in a school of industries up until the age of 21.</p> <p>The Minister may furthermore discharge a child from alternative care at any time.</p> <p>Note: If an alternative care order lapses and no extension has been acquired, the child is not compelled</p> | <p>An alternative care order lapses after two years or such shorter period as ordered by the court.</p> <p>The Children's Court may extend the order for two years at a time until the child has turned 18.</p> <p>A child is entitled to remain in alternative care until the end of the year of which the child turns 18.</p> <p>An application can be made to extend the person's stay in alternative care until the end of the year when he/she reached the age of 21 if the extension is needed to enable him/her to complete education or training and if the alternative caregiver is able to care for him/her and has agreed to the extension.</p> <p>The provincial head of social development may discharge a</p> | <p>Child Care Act 74 of 1983.</p> <p>Sections 16, 33(3) and 37.</p> | <p>Children's Act 38 of 2005 (as amended by the Children's Amendment Act 41 of 2007).</p> <p>Sections 159(1)(3), 175, 176 and 186.</p> |

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| | | to stay in alternative care after the order expired. Thus, even if the order expired before the child turned 18 and no extension has been issued, the child does not have to remain in alternative care. | <p>child from alternative care after the best interest of the child has been assessed and to enable family reunification.</p> <p>A court can also make an order to the effect that a child placed in foster care can remain there until the age of 18 without the need for continuous court extensions.</p> <p>After an alternative care order has lapsed, a child is not compelled to remain in alternative care unless the court extends the order again.</p> | | |
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| | | <i>Current Law</i> | <i>Proposed law</i> | <i>Current law</i> | <i>Proposed law</i> |
| Child-headed household | Age at which a child can be considered head of a household and bear rights and responsibilities as a caregiver. | | 16 | | Children's Act 38 of 2005 (as amended by the Children's Amendment Act 41 of 2007). Section 137(1)(c) read with the definition of 'caregiver' in section 1. |

| Area | Detail | Age | | Source of law | |
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| | | <i>Current Law</i> | <i>Proposed law</i> | <i>Current law</i> | <i>Proposed law</i> |
| Own adoption | Age at which a child can consent to his/her own adoption. | At 10 a child can consent to his/her own adoption. | At 10 a child can consent to his/her own adoption. Under 10: A child can consent to his/her own adoption, if the child is mature and developed enough to understand the implication of such consent. | Child Care Act 74 of 1983. Section 18(4). | Children's Act 38 of 2005. Section 233. Note: This section is not yet in operation. |
| Adoption of a child's own child | Age at which a child can consent to the adoption of his/her child. | At any age , a child can consent to the adoption of his/her own child without assistance from his/her guardian. | Under 18: A child can consent to the adoption of his/her own child provided that the child is assisted by his/her guardian. 18 years and older: A child can consent to the adoption of his/her own child without assistance of his/her parent or guardian. | Child Care Act 74 of 1983. Section 18(4). | Children's Act 38 of 2005. Section 233. Note: This section is not yet in operation. |

Acknowledgements: Thank you to Ronel van Zyl, Ann Skelton, Trynie Davel and Joan van Niekerk for reviewing the Guide for accuracy, and to Charmaine Smith of the Children's Institute for editing the Guide.

Citation suggestion: Mahery P & Proudlock P (2008) *Legal guide to age thresholds for children*. Edition 4. September 2008. Children's Institute, University of Cape Town, & Centre for Child Law, University of Pretoria.

ISBN: 978-0-7992-2346-0

Children's Institute, University of Cape Town
46 Sawkins Road, Rondebosch
Cape Town, 7700, South Africa
Phone: + 27 21 689 5404
Fax: +27 21 689 8330
E-mail: info@ci.org.za
Website: www.ci.org.za

Centre for Child Law, University of Pretoria
Law Building (Room 4-31), University of Pretoria
Pretoria, 0002, South Africa
Phone: +27 12 420 4502
Fax +27 12 420 4499
E-mail: desiree.willemse@up.ac.za
Website: www.childlawsa.com