

ANNEXURE 2

INFORMATION NOTE

1. The Child Justice Act, 2008 (Act 75 of 2008) (hereafter called the Act) provides a statutory framework within which children who are in conflict with the law and are accused of committing offences must be dealt with. In terms of section 97 of the Act, the Act must be supplemented by, among others –
 - (a) regulations to be made by the Minister of Justice and Constitutional Development (the Minister) regarding various aspects;
 - (b) a notice to be issued by the Minister in the *Gazette* determining the persons or the category or class of persons who are competent to conduct the evaluation of the criminal capacity of a child in terms of section 11(3) of the Act as well as the allowances and remuneration of those persons;
 - (c) directives to be issued by the National Director of Public Prosecutions relating to a number of aspects; and
 - (d) national instructions to be issued by the National Commissioner of the South African Police Service regarding a number of aspects which have a bearing on the regulations to be made by the Minister.
2. In considering the draft regulations the following is important:
 - (a) The regulations must be in line with the framework of the Act.
 - (b) The powers of the functionaries indicated in paragraph 1 must be taken into account.
 - (c) In respect of certain aspects the Minister must make regulations whereas in respect of others, the Minister has a discretion.
 - (d) Cognizance must also be taken of the regulations to be made under the Children's Act, 2005, as amended.
 - (e) The objects of the Act (section 2) and the guiding principles (section 3) must be noted.
3. In formulating the draft regulations a minimalistic approach was mainly followed in that provision was only made for issues required to be prescribed in terms of the Act and keeping in mind the purpose of regulations. Sufficient flexibility should be allowed to cater for different scenario's, to be able to adjust procedures quickly to fit changed circumstances. This will allow the functionaries mentioned in section 97 to act in accordance with their powers and to, where necessary, issue administrative measures such as circulars, etc.

4. There are some provisions in the Act requiring regulations, which may be open to more than one interpretation as to what exactly needs to be prescribed. The word “prescribe” is defined in section 1 of the Act and “means as prescribed by regulation made under section 97 of the Act. In respect of some provisions it has been argued that when reading the Act as a whole and in view of other provisions of the Act relating to the same matter, the word “prescribed’ should not be understood to mean that regulations are required. In commenting on the draft regulations please take into consideration the aforementioned.
5. There are a number of provisions in the Act requiring regulations which were specifically included to address problems that are presently being experienced in practice. In this regard, mention can be made of the delays in finalising cases involving children due to the unavailability of reports by probation officers. This may have been caused by inadequate communication between the relevant functionaries. The draft regulations should also be viewed against this background.
6. The South African Law Reform Commission (the SALRC) published a report in July 2000. Certain aspects of the Act may be better understood when reading this report although it should be remembered that the Bill proposed by the SALRC differs from the legislation eventually approved by Parliament. This report can be accessed at the following website address: <http://salawreform.justice.gov.za>
7. In order to minimise the number of forms to be printed and used, and where appropriate, one form has been prescribed to be used for purposes of more than one section of the Act.
8. The following sections of the Act contain references to regulations:

Section of Act	Subject-matter	Remarks
1	A prescribed list of independent observers	See also section 65(6)
9(1)	A police official must in the prescribed manner hand the child over	*This is a child under the age of 10 * See section 97(5) which empowers the National Commissioner of the SAPS to issue national instructions

9(3)	<p>Prescribed manner of –</p> <ul style="list-style-type: none"> (i) referral of child by probation officer; (ii) arranging support services for a child or arranging a meeting; (iii) deciding to take no action 	See section 9(4) for the purpose of the meeting
9(5)	<p>The written plan must –</p> <ul style="list-style-type: none"> (i) contain details of the services and assistance to be provided for the child, as prescribed; and (ii) specify the persons or organisations to provide the services and assistance, as prescribed 	See the definition of “prescribed”
9(6)	The probation officer must record, with reasons, the outcome of the assessment and the decision made in terms of section 9(3) in the prescribed manner	See Chapter 5 which deals with the assessment of a child
11(3)	An inquiry magistrate or child justice court may order an evaluation of the criminal capacity of the child in the prescribed manner	<p>*This is in respect of a child who is 10 years or older but under the age of 14 years</p> <p>*How to hand in the evaluation report to the inquiry magistrate or at the child justice court: Will section 212 of the Criminal Procedure Act, 1977 (CPA) suffice and what if the person who evaluated</p>

		the child is in private practice?
13(1)	If the age of the child at the time of the commission of the alleged offence is uncertain, the probation officer must make an estimation of the child's age and must complete the prescribed form	*See section 13(3) *This is during an assessment of the child to Chapter 5
14(2)(d)	In order to determine the age of a child, the presiding officer may refer the child to a medical practitioner, in the prescribed manner, for an estimation of age	This is during a preliminary inquiry or during proceedings before a child justice court
18(4)	A police official must, in the prescribed manner, when handing a written notice to the child, parent, appropriate adult or guardian inform them, warn them and explain to them certain aspects	*The written notice is to secure the appearance of a child, over the age of ten years, at the preliminary enquiry *See sections 19 and 20 which contain similar provisions but in respect of a child who has been summonsed or arrested *See section 97(5) which empowers the National Commissioner of the SAPS to issue national instructions *A form has been designed to be used as a written notice as the written notice provided for

		in section 56 of the CPA appears to be inadequate - see section 18(1) of the Act. A new form to be used as a summons has for the same reasons been designed - see section 19(1) which refers to the section 54 of the CPA.
20(3)(d)	A police official arresting a child must, in the prescribed manner, notify the parent of the arrest	*See section 43(3)(b) which requires that a preliminary inquiry must be held within 48 hours of arrest of the child *See also section 97(5)(ii)
20(3)(d)	A police official arresting a child must, in the prescribed manner, submit a written report to the presiding officer if the police official is unable to notify the parents of the child	
20(4)(a)	A police official must inform the probation officer of the arrest of a child in the prescribed manner	*Take note of the time period in this section within which the probation officer must be notified *See section 43(3)(b) which requires that a preliminary inquiry must be held within 48 hours of arrest of the child and that assessment of the child must be completed by then
20(4)(b)	A police official who is	See section 43(3)(b)

	unable to inform a probation officer of a child's arrest must submit a written report to the inquiry magistrate, as prescribed	
22(2)	If a child has not been released, the investigating police official must provide the inquiry magistrate with a written report in the prescribed manner	*This is before the child's first appearance at a preliminary inquiry *See section 97(5)(a)(viii)
24(7)(a)	If a child fails to – (a) appear on the date and at the time and place indicated by the inquiry magistrate at the preliminary inquiry; or (b) comply with any condition of his or her release at the preliminary inquiry, the presiding officer may, on being notified of the failure, in the prescribed manner, issue, inter alia, a warrant for the arrest of the child	Keep in mind the relationship with the CPA and section 4(3)
28(2)(a)	A complaint relating to an injury sustained or severe psychological trauma suffered by a child or an observation of an injury or trauma must, in the prescribed manner, be	The child is still under arrest or in detention

	recorded and reported to the station commissioner	
28(2)(b)	A report regarding a complaint of an injury sustained by a child must, in the prescribed manner, be submitted to the National Commissioner of Police	*See section 28(2)(a) and the obligations on the station commissioner regarding medical treatment of the child *It is important that any complaint made must reach the station commissioner and eventually the National Commissioner
28(3)	The station commissioner must keep a register in which prescribed details regarding the detention of children must be recorded	This is a child in detention in police cells
28(4)	The register may be examined by any person, as may be prescribed	*This is the section 28(3) contemplated register *The provisions of the Promotion of Access to Information Act, 2000 may apply *It may be advisable to regulate both aspects: who may examine the register and what procedure must be followed *See section 97(5)(a)(vi)
29(4)	If information relating to the availability of accommodation in a child and youth care centre and	*This is relevant where a presiding officer wishes to order the detention of a child in a specified child

	the level of security, amenities and features of a centre are not available, questioned or no longer current, the presiding officer may request the functionary responsible for the management of a child and youth care centre to furnish a prescribed sworn statement in respect of these matters	and youth care centre *See section 40(2)
31	If a person who admits a child in a child and youth care centre becomes aware that an error has been made regarding the placement of the child, that person must, in the prescribed manner, refer the child back to the presiding officer for the error to be corrected	The child must not later than the next court day be referred back to the presiding officer in question
33(2)(c)	Where it is not possible to transport a child to and from a preliminary inquiry or child justice court separately from adults, the police official must, within 48 hours, submit a prescribed written report to the presiding officer, furnishing reasons for non-compliance	
39(1)	The probation officer must inform the child of his or	*This is at the beginning of the assessment of the

	her rights in the prescribed manner	child *This section also requires the probation officer to explain the purposes of the assessment to the child and the immediate procedures to be followed in terms of the Act but does not require regulations to be made in this regard *See also sections 9, 18, 19 and 20 for a similar wording
40(1)	The probation officer must complete an assessment report in the prescribed manner	See also section 9(6)
40(2)	A recommendation relating to the placement of a child in a child and youth care centre must be supported by current and reliable information in a prescribed form	See also section 29(4)
47(2)	The inquiry magistrate must, in the prescribed manner, inform and explain to the child certain issues	See also sections 9, 18, 19, 20 and 39(1)
53	Different diversion orders are defined as to, inter alia, mean orders “issued in the prescribed manner”	*This section deals with diversion orders *The view is held that more than one diversion order can be issued at the same time in respect of

		<p>the same child, hence the prescribing of one form for all the orders</p> <p>*See section 60 – Register for diversion orders</p>
56(2)(a)(ii)	<p>The Cabinet member responsible for social development must establish and maintain a system for accreditation, as prescribed, of programmes for diversion and diversion service providers</p>	<p>*See section 56(2)(b) and (c)</p> <p>*No regulation has been formulated in terms of this section and inputs will be appreciated. If it appears that there is no need for a regulation, please indicate so.</p>
56(2)(a)(iii)	<p>The Cabinet member responsible for social development must ensure the availability of resources to implement diversion programmes, as prescribed</p>	<p>The provisions of the Public Finance Management Act, 1999, which regulates all aspects pertaining to budgets and strategic plans must be kept in mind</p>
56(2)(e)	<p>The Cabinet member responsible for social development must issue a prescribed certificate of accreditation to each accredited diversion programme and diversion service provider accredited</p>	
56(2)(g)	<p>A quality assurance process must be conducted in the prescribed manner in respect of each accredited</p>	

	diversion programme and diversion service provider	
57(2)	If a child fails to comply with the diversion order, the probation officer or another person identified to monitor the child's compliance with the order must, in the prescribed manner, notify the magistrate, inquiry magistrate or child justice court	*A diversion order may be issued by a magistrate (see section 41), inquiry magistrate or child justice court *See section 60
57(5)	The probation officer or another person identified to monitor the child's compliance with the order must, when a child has successfully complied with a diversion order, submit a prescribed report to the relevant prosecutor	See section 60
58(1)	If a child fails to comply with a diversion order, the magistrate, inquiry magistrate or the child justice court may, on being notified of the failure, in the prescribed manner, issue, inter alia, a warrant for the arrest of the child	See also section 24(7) and the relationship with the CPA
60(1)	The Director-General: Social Development must establish and maintain a register, as prescribed, of children in respect of	See section 60(1)(a)-(d) which indicate the particulars to be included in the register

	whom a diversion order has been made	
60(3)	Access to the register must be limited, as prescribed, to persons or organisations requiring the information for the purposes set out in subsection (2)	Section 60(2) mentions certain persons and organisations
63(3)	Before a plea in the child justice court, the presiding officer must, in the prescribed manner, inform and explain certain matters to the child	See sections 9, 18, 19, 20, 39(1) and 47(2)
65(6)	Where a child is not assisted by a parent, an appropriate adult or a guardian and the child requests assistance, an independent observer may be appointed by the presiding officer, in the prescribed manner	<p>*See definition of independent observer in section 1</p> <p>*The Act does not expressly empower the Minister to make regulations relating to criteria for appointing independent observers. Various persons have, however, suggested that this should be done. See the suggested Form prescribed for the nomination of persons to serve as independent observers</p> <p>*The process proposed in the draft regulations to compile the list of independent observers</p>

		may be too elaborate, if it can be assumed that not too many independent observers will be appointed
72(2)	A child justice court who has imposed a community based sentence must request the probation officer concerned to monitor the child's compliance with the order and to provide the court with progress reports, in the prescribed manner, indicating compliance	See sections 73(4) and 74(3) which provide for similar aspects but in respect of different sentencing options
76(3)(b)	The head of the child and youth care centre must, on the child's compliance of that sentence, submit to the child justice court, a prescribed report containing his or her views on the extent to which the relevant objectives of sentencing referred to in section 69 have been achieved and the possibility of the child's integration into society without serving the additional term of imprisonment	
76(4)(a)	A child who is sentenced to compulsory residence in a child and youth care	The period within which the child is to be taken to the centre as well the

	centre must be taken in the prescribed manner to the centre specific in the order	rights of the child and the safety of child and that of the public must be considered
76(4)(b)	When making an order of compulsory residence in a child and youth care centre, the child justice court must cause the order to be brought to the attention of relevant functionaries in the prescribed manner	The period within which the child is to be taken to the centre must be taken into account and it is important that the centre receives the notification
79(1)	When a probation officer reports to a child justice court that a child has failed to comply with a sentence imposed ito section 72, 73 or 74, the child may, in the prescribed manner, be brought before the child justice court for the holding of an inquiry into such failure of the child	
83(2)	If a child before a child justice court does not wish to have a legal representative or declines to give instructions to an appointed legal representative, a legal representative must be appointed by the Legal Aid Board to assist the court in the prescribed manner	As the legal representative will have to act without instructions, professional conduct and ethical behaviour must be ensured
87(1)	Where a child has been	The regulations and forms

	convicted of an offence referred to in Schedule 1 or 2, that conviction and sentence fall away after the period contemplated in the Act as a previous conviction and the criminal record of the child must, on written application in the prescribed form be expunged	developed for purposes of expungement into the CPA have been considered
87(2)	The Director-General: Justice and Constitutional Development must issue a prescribed certificate of expungement	
87(3)	The Cabinet member responsible for the administration of justice may on the receipt of an applicant's written application, in the prescribed form, issue a prescribed certificate of expungement	Two aspects need to be prescribed: an application form and a certificate of expungement
87(4)	An applicant to whom a certificate of expungement has been issued, must, in the prescribed manner, submit the certificate to the head of the Criminal Record Centre	
87(6)	The Director-General: Social Development must, in the prescribed manner, expunge the record of any	

	diversion order made in respect of a child under certain conditions	
90(2)	The Department of Home Affairs must report back to the inquiry magistrate or child justice court, the probation officer, the child and his or her parent, appropriate adult or guardian in the manner prescribed, that the age of the child has been registered	See section 90(1)
97(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 in section 9(6)	<p>*There are various sections dealing with the keeping of registers and access thereto or the examination thereof</p> <p>*The wording of the sections are different and in some instances, the Act contains a list of persons who, or organisations which, may access the register</p> <p>*The provisions of the Access to Information Act, 2000, must be kept in mind</p>
97(6)(b)	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	
--	-------------------------------------	--