

TEACHINGS ON CHILD JUSTICE MATTERS

Definitions In terms of the child justice act, no 75 of 2008.

Correctional supervision – This is a form of sentence whereby a child is monitored by correctional officers.

Court order - It is a court decision that can be taken at any stage of the case e.g. child is ordered by the court to go for mental observation.

Criminal capacity – The minor must be in a position to appreciate the consequences of his or her own actions. For example, do you understand that stealing is wrong? If the answer is yes, you might have criminal capacity. If the answer is no, then maybe, you may not have criminal capacity as a child.

Non-custodial sanctions program – Where sentences that do not call for the child being placed in detention or ordered, and the child is not sent to prison.

Preliminary inquiry - Hearing in a room which is in the court building where the circumstances which led the child to commit the offense are discussed. The magistrate, child, parent, prosecutor, victims, and any other person whom the court may require to be present.

Probation Officer – A social worker dealing with the assessment of children who are accused of committing an offense.

Child Justice Court

Prior to 1 April 2010, children who committed crimes were dealt with, in terms of the Criminal Procedure Act, 1977 which also deals with adults who commit a crime.

The aim of the CJA is to set up a child justice system for children in conflict with the law. This means that children under the age of 18, who are suspected to have committed crimes, will not be dealt with in terms of the normal criminal procedure, which is used for adults, but the child justice process will be followed.

The CJA seeks to ensure that child justice matters are managed in a rights-based manner and to assist children suspected of committing crimes to turn their lives around and become productive members of society by engaging with the child in restorative justice measures, diversions, and other alternative sentencing options.

BENEFITS OF THE ACT

The CJA will have long-term benefits for children and the country. It allows for a justice system that heals children and those who were affected by a child's action, encourages forgiveness and rehabilitation, and looks after the needs and rights of children and victims.

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

The CJA balances the rights and responsibilities of the child, the victim, and the community. When considering diversion options before a trial, the victims or their family's views are also to be taken into consideration by the prosecutor and the court.

The CJA also says that the damage caused by the child on the victim should be considered.

The victim or someone standing for the victim may submit a statement that reflects the physical, psychological, social, financial, or any other impact that may have been caused as a result of the crime.

on the victim. This helps make a healing and peace-making process happen and further expands and entrenches the notion of restorative justice.

The CJA makes it easier to help the rehabilitation and integration of the child who is in conflict with the law, into society so that they can grow up and make a useful contribution to society.

Courts continue to prioritize and fast-track children's matters in the child justice system, and this leads to the reduction of children awaiting trial.

This also leads to an increase in the number of children in home-based supervision and in secure care facilities.

AGE GROUPS COVERED BY THE ACT

According to the CJA, a child is under the age of 18. The CJA is specifically intended for children between the ages of 10 and 18. The CJA states that:

- A child **under the age of 10 years** cannot be arrested! This means that a child under 10 years does not have criminal capacity and cannot be charged or arrested for an offense. In such a case, the child will be referred to the Children's Court.
- A child **older than 10 years but below the age of 14 years** is presumed to lack criminal capacity unless the state proves that they have criminal capacity. Such a child can be arrested.
- A child **above 14, but under 18 years** of age, is said to have criminal capacity and can be arrested.

TYPES OF OFFENCES

The CJA provides for three different categories of offenses:

1. **Schedule 1** - Minor offenses include theft of property worth not more than R2500, malicious damage to property that is not more than R1500, and common assault.
2. **Schedule 2** - More serious offenses include theft of property worth more than R2500; robbery, but not robbery with aggravating circumstances; assault that includes causing grievous bodily harm; public violence; culpable homicide; and arson.
3. **Schedule 3** - The most serious offenses include robbery, rape, murder, and kidnapping amongst others.

STEP-BY-STEP GUIDE ON THE CHILD JUSTICE PROCESS

1. A child is suspected to have committed an offense. If an offense that is not serious, the child will not be arrested but be warned to appear in court.
2. If the offense is serious, the child is informed, arrested, and charged by the police. If the offense is less serious, the child and their parents or caregivers, are warned or summonsed to appear in court by the police.
3. There are two possibilities at this stage:
 - a. A child under 10 may be referred to a children's court.
 - b. The child above 10 years must be assessed by a probation officer as a Social Worker.

4. The parents or other caregivers or police bring the child to court.
5. A preliminary inquiry will be set up to inquire into the matter and how the child may be aided if he or she accepts responsibility.
6. At the preliminary inquiry there are four possible steps that may be taken:
 - a. If the child is in need of care and protection in terms of Section 50 of the Children Act 38 of 2008, the matter will be referred to the children's court which will determine the best possible environment for the child.
 - b. At the preliminary inquiry, the probation officer's assessment report will be considered to decide if the child has criminal capacity. The child could then be referred to the Children's Court or be diverted.
 - c. If the child accepts responsibility, it may recommend at the preliminary inquiry that the child be diverted. If the child does not complete or follow the diversion order, he or she will be brought back to court.
 - d. If the child does NOT accept responsibility no diversion order is made by the court or the child does not follow the diversion, the case is referred to the Child Justice Court for trial.
7. At the trial the child could be convicted and sentenced or acquitted.