

No. R. 251

31 March 2010

**CHILD JUSTICE ACT, 2008
REGULATIONS RELATING TO CHILD JUSTICE**

The Minister of Justice and Constitutional Development has, under section 97 of the Child Justice Act, 2008 (Act No. 75 of 2008), and—

- (a) after consultation, where appropriate, with the Cabinet members responsible for social development, safety and security, education, correctional services and health; and
 - (b) in consultation with the Cabinet member responsible for home affairs for purposes of section 90(2) of the said Act,
- made the Regulations in this Schedule.

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CHAPTER 1 GENERAL PROVISIONS

Definitions

1. In these regulations, any word or expression to which a meaning has been assigned in the Act shall bear the meaning so assigned and, unless the context indicates otherwise—

“clerk of the child justice court” means—

- (a) a clerk and assistant clerk of the court appointed under section 13 of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944);

- (b) a registrar and assistant registrar appointed under section 34 of the Supreme Court Act, 1959 (Act No. 59 of 1959); or
 - (c) a registrar appointed under any other law not yet repealed by a competent authority and, immediately before the commencement of the Constitution, in force in any area which forms part of the national territory; and
- “the Act”** means the Child Justice Act, 2008 (Act No. 75 of 2008).

Designation of probation officers

2. (1) (a) The Director-General: Social Development must, within three months of the commencement of the Act, designate a probation officer for every police station for the purposes of receiving notices in terms of sections 9, 18, 19 and 20 of the Act, and compliance with any obligation conferred upon a designated probation officer in terms of these Regulations.

(b) Until such time as the Director-General has appointed a designated probation officer, any probation officer in the province where the police station is situated, may receive the notices referred to in paragraph (a) and carry out the obligations conferred upon a designated probation officer in terms of these Regulations.

(c) The Director-General: Social Development must, if a designated probation officer can no longer carry out the obligations of a designated probation officer, designate another probation officer for the purposes referred to in paragraph (a).

(2) The Director-General: Social Development must —

- (a) provide the National Commissioner of Police with the contact particulars of the designated probation officers and the police stations in respect of which they have been designated; and
- (b) in writing inform the National Commissioner of Police of any changes to the particulars.

CHAPTER 2

CRIMINAL CAPACITY OF CHILDREN UNDER THE AGE OF 14 YEARS AND MATTERS RELATED TO AGE

Handing over of child under the age of 10 years

3. (1) A police official must, for the purposes of handing a child over in terms of section (9)(1) of the Act—

- (a) introduce himself or herself to the child and person who is to receive the child;
- (b) establish the identity of the person who is to receive the child;
- (c) introduce the child, if the child is handed to a child and youth care centre, to the person who is to receive the child;
- (d) establish, if the child is handed to a parent, appropriate adult or guardian, the relationship, if any, between the person who is to receive the child and the child;
- (e) inform the child and the person who is to receive the child of—
 - (i) the nature of the alleged offence;
 - (ii) the reasons why the child cannot be prosecuted; and
 - (iii) the procedures to be followed in terms of the Act; and
- (f) explain to the person who is to receive the child—
 - (i) what is expected from the child and the person in relation to the procedures to be followed in terms of the Act;
 - (ii) the implications of receiving the child; and

- (iii) the implications if the child fails to comply with an obligation imposed in terms of section 9 of the Act.
- (2) A police official must inform the person who is to receive the child of any injuries the child may have sustained.
- (3) A police official must ensure that the information and explanations given are understood by the child and the person who is to receive the child by—
 - (a) using a language that is understood by them;
 - (b) using simple vocabulary;
 - (c) encouraging or allowing them to ask questions and responding to the questions asked; and
 - (d) verifying or confirming their understanding of the information and explanations given.
- (4) A police official must address the child and the person who is to receive the child in a manner that is conducive to their participation and without intimidating them or publicly humiliating the child.
- (5) A police official must, after having complied with subregulations (1) and (2), ascertain whether the parent, appropriate adult or guardian is prepared to—
 - (a) accept responsibility for the child; and
 - (b) co-operate in ensuring compliance with section 9 of the Act.
- (6) A police official must —
 - (a) obtain the physical address and, if applicable, the work address of the parent, appropriate adult or guardian; and
 - (b) obtain the contact particulars of the parent, appropriate adult or guardian or any other person who is to receive the child or that of any other person through whom the person who is to receive the child can be contacted.
- (7) A police official must inform the person who is to receive the child at the child and youth care centre of the reasons why the child was not handed over to his or her parents, appropriate adult or guardian.
- (8) (a) The person in charge of the child and youth care centre must receive the child at any time of the day or any day of the week, and if the child requires medical treatment take the necessary steps to ensure that the child receives treatment.
(b) The person in charge of the child and youth care centre may only refuse to receive the child if it is impossible to accommodate the child as a result of the unavailability of accommodation at the centre.
- (9) A police official must complete and sign any documents relating to the admission of the child at the child and youth care centre, if required to do so.
- (10) A police official must hand to the person who is to receive the child an information note containing—
 - (a) the information and explanations referred to in subregulation (1)(e) and (f);
 - (b) the name and contact particulars of the police official who handed over the child;
 - (c) the name of the police station where the police official is stationed;
 - (d) the name and contact particulars of the designated probation officer;
 - (e) the name and age of the child; and
 - (f) the name and contact particulars of the person or the child and youth care centre to whom or which the child was handed over.

Notice to designated probation officer regarding handing over of child under the age of 10 years

4. (1) A police official must notify the designated probation officer of the handing over of a child in terms of section 9(1) of the Act by handing or faxing a copy of the information note referred to in regulation 3(10) to the designated probation officer.

(2) A police official who notifies the designated probation officer by facsimile must ensure that the designated probation officer has received the notice.

Referral of child under the age of 10 years to children's court

5. (1) (a) The probation officer must refer a child to the children's court in terms of section 9(3)(a)(i) of the Act in writing on a form which corresponds substantially with Form 1 of the Annexure.

(b) The probation officer must attach to Form 1 all relevant documents used in the assessment of the child, including the assessment report referred to in section 40 of the Act.

(c) The probation officer must ensure that Form 1 and all the attachments are received by the children's court.

(2) The probation officer must —

(a) inform —

- (i) the parents of the child of the referral, if the parents' whereabouts are known and they are not aware of the referral;
- (ii) the appropriate adult or guardian of the referral, if the child was handed to an appropriate adult or a guardian and if the person in question is not aware of the referral; and
- (iii) the parents, appropriate adult or guardian that they must ensure that the child appears at the children's court; or

(b) submit a copy of Form 1 and the documents referred to in subregulation (1)(b) to the child and youth care centre if the child was handed to the centre.

Referral of child under the age of 10 years for counselling or therapy

6. (1) (a) The probation officer must refer a child for counselling or therapy in terms of section 9(3)(a)(ii) of the Act in writing on a form which corresponds substantially with Form 1 of the Annexure.

(b) The probation officer must attach to Form 1 copies of all relevant documents used in the assessment of the child, including the assessment report referred to in section 40 of the Act.

(c) The probation officer must ensure that Form 1 and all the attachments are received by the person who or institution which will provide the counselling or therapy.

(2) The probation officer must —

(a) inform —

- (i) the parents of the child of the referral, if the parents' whereabouts are known and they are not aware of the referral;
- (ii) the appropriate adult or guardian of the referral, if the child was handed to an appropriate adult or guardian and if the person in question is not aware of the referral; and
- (iii) the parents, appropriate adult or guardian that they must ensure that the child attends the counselling or therapy; or

(b) submit a copy of Form 1 and the documents referred to in subregulation (1)(b) to the child and youth care centre if the child was handed to the centre.

(3) The probation officer who referred a child for counselling or therapy must request the person or institution providing counselling or therapy to submit to the probation officer reports on the child's progress and compliance with the decision on the dates specified by the probation officer.

(4) The person or institution providing counselling or therapy must record the progress made by the child for purposes of compiling the reports in terms of subregulation (3).

(5) The probation officer must maintain contact with the child in order to be able to assess and evaluate the outcome of the counselling or therapy and the child's compliance with the decision.

(6) The probation officer must, after the conclusion of the counselling or therapy, if he or she is of the opinion that the child may be in need of care and protection, make the necessary arrangements for the child to be dealt with in terms of the Children's Act.

Referral of child under the age of 10 years to accredited programme

7. (1) (a) The probation officer must refer a child to an accredited programme in terms of section 9(3)(a)(iii) of the Act in writing on a form which corresponds substantially with Form 1 of the Annexure.

(b) The probation officer must attach to Form 1 all relevant documents used in the assessment of the child, including the assessment report referred to in section 40 of the Act.

(c) The probation officer must ensure that Form 1 and all the attachments thereto are received by the person who or the institution which will provide the programme.

(2) The probation officer must —

(a) inform —

- (i) the parents of the child of the referral, if the parents' whereabouts are known and they are not aware of the referral;
- (ii) the appropriate adult or guardian of the referral, if the child was handed to an appropriate adult or guardian and if the person in question is not aware of the referral; and
- (iii) the parents, appropriate adult or guardian that they must ensure that the child attends the accredited programme; or

(b) submit a copy of Form 1 and the documents referred to in subregulation (1)(b) to the child and youth care centre if the child was handed to the centre.

(3) The probation officer who referred a child for an accredited programme must request the person or institution providing the programme to submit to the probation officer reports on the child's progress and compliance with the decision on the dates specified by the probation officer.

(4) The person or institution providing the programme must record the progress made by the child for the purposes of compiling reports in terms of subregulation (3).

(5) The probation officer must maintain contact with the child in order to be able to assess and evaluate the outcome of the programme and the child's compliance with the decision.

(6) The probation officer must, after the conclusion of the programme, if he or she is of the opinion that the child may be in need of care and protection, make the necessary arrangements for the child to be dealt with in terms of the Children's Act.

Arranging support services for child under the age of 10 years

8. (1) The designated probation officer must, for the purposes of arranging support services for a child under the age of 10 years in terms of section 9(3)(a)(iv) of the Act—

- (a) enquire from relevant service providers, including religious and community-based organisations, sport and recreational clubs and schools in the area, which support services are available and suitable for children under the age of 10 years;
- (b) obtain particulars relating to the available services; and
- (c) enquire about conditions, if any, for the rendering of the services.

(2) (a) The designated probation officer must, from the information obtained in terms of subregulation (1), compile a database of the support services available in the area.

(b) The database must reflect—

- (i) the services available;
- (ii) the name of the service provider;
- (iii) the location where the service will be rendered;
- (iv) the name of the person who can be contacted; and
- (v) the contact particulars of the person who is to be contacted.

(c) The database must be updated regularly.

(3) The probation officer, when arranging support services in terms of section 9(3)(a)(iv) of the Act for a child, must—

- (a) select from the database possible service providers which may render the required support services;
- (b) contact the service provider selected from the database to enquire about the availability of the services;
- (c) inform and explain to the child and the parent, appropriate adult or guardian, the services that are available to support the child; and
- (d) finalise the arrangements with the service provider and confirm the dates and time when and the place where the services will be rendered and the period for which the services will be rendered.

(4) The probation officer must, after the arrangements have been made in terms of subregulation (3)—

- (a) inform the parents, the appropriate adult or guardian in writing and, if their contact particulars are available, orally, of the arrangements made;
- (b) inform the parents, appropriate adult or guardian that they must ensure that the child attends the support services arranged; and
- (c) confirm the arrangements made in writing with the service provider who is to render the support services.

(5) The probation officer must ensure that the support services commence at the earliest possible date.

(6) The probation officer who arranged the support services for the child may request the person or institution rendering the support services to submit to the probation officer reports on the child's progress and compliance with the decision on the dates specified by the probation officer.

(7) The person or institution rendering the support services must record the progress made by the child for purposes of compiling reports in terms of subregulation (6).

(8) The probation officer must, for the duration of the support services, maintain regular contact with the child and the service provider in order to be able to assess the child's progress and compliance with the decision.

Arranging a meeting relating to circumstances surrounding allegations and formulation of written plan

9. (1) The probation officer, when arranging a meeting in terms of section 9(3)(a)(v) of the Act, must—

- (a) contact the persons who must attend the meeting in any manner—
 - (i) taking into account the contact particulars that are available;
 - (ii) having regard to their place of residence;
 - (iii) having regard to the time period within which the assessment must be done; and
 - (iv) ensuring their attendance;
- (b) give sufficient notice of the meeting;
- (c) inform the persons who must attend the meeting of the particulars of the child and the nature of the allegation, if these particulars are not known to the persons;
- (d) indicate to the persons who must attend the meeting—
 - (i) the date, time and place of the meeting;
 - (ii) the purpose of the meeting;
 - (iii) what information, if any, will be required at the meeting;
 - (iv) who will attend the meeting; and
 - (v) where he or she can be contacted; and
- (e) inform the parent, appropriate adult or guardian that attendance of the meeting by the child and the parent, appropriate adult or guardian is compulsory.

(2) The probation officer must request a person who is required to attend a meeting to inform the probation officer immediately if, due to circumstances beyond his or her control, that person can no longer attend the meeting or wishes to arrange an alternative date.

(3) The meeting must be conducted in an atmosphere conducive to the full participation by the child and the other participants and must allow sufficient opportunity for the child to express his or her views.

Written plan for child under the age of 10 years

10. (1) A written plan referred to in section 9(4)(b) of the Act must contain the following details of the services and assistance to be provided for the child:

- (a) The name under which the services or assistance to be provided is generally known;
- (b) an indication as to what the services or assistance entail;
- (c) behavioural changes that may be caused by the services or assistance, if any; and
- (d) the expected outcome or result of the services and assistance.

(2) A written plan must specify the following details of the person or organisation to provide the services or assistance:

- (a) The name, main business and profile;
- (b) the physical address;
- (c) the contact particulars, including the telephone numbers and e-mail address; and
- (d) the office hours.

Probation officer taking no action in respect of child under the age of 10 years

11. (1) The probation officer must, in deciding to take no action in terms of section 9(3)(a)(vi) of the Act—

- (a) ensure that all the relevant information has been obtained;
- (b) ensure that the relevant information has been considered properly;
- (c) ensure that contradictory information, if any, has been clarified;
- (d) ensure that the personal circumstances of the child have been considered properly;
- (e) ensure that the circumstances surrounding the commission of the alleged offence have been considered properly;

- (f) have regard to the reasons why the other measures referred to in section 9(3) of the Act are not suitable;
- (g) have considered the implications of not taking any action; and
- (h) have engaged the parent, appropriate adult or guardian or a representative of the child and youth care centre or any other person qualified to express an opinion regarding his or her proposed decision.

(2) The probation officer who decides to take no action, must immediately, after having taken the decision, inform—

- (a) the child and his or her parents, an appropriate adult or guardian of the decision in writing and orally, if their contact particulars are available; or
- (b) the child and youth care centre to which the child was handed over, in writing, of the decision.

(3) The child and youth care centre must, upon receipt of the information, release the child in the care of the parent, appropriate adult or guardian, if available, or take appropriate steps in terms of the Children's Act.

Recording the outcome of the assessment and decision taken

12. (1) The probation officer must, for the purposes of section 9(6) of the Act, record the outcome of the assessment and the decision made—

- (a) in writing;
- (b) immediately after concluding the assessment and making the decision;
- (c) with sufficient detail;
- (d) in a manner that reveals the information that was considered; and
- (e) in a manner that explains how he or she arrived at the outcome of the assessment and at the decision.

(2) The record of the outcome of the assessment and the decision made must be filed in the personal file of the child.

Proof of criminal capacity

13. (1) An order by an inquiry magistrate or a child justice court in terms of section 11(3) of the Act for an evaluation of the criminal capacity of a child must correspond substantially with Form 2 of the Annexure.

(2) Form 2 must be submitted to the person who must conduct the evaluation, together with any documents handed in at the preliminary inquiry or the child justice court.

(3) The clerk of the child justice court must notify—

- (a) the parent of the child of the order, if the parent was not present when the order was made;
- (b) the appropriate adult or guardian of the order, if the child was handed to an appropriate adult or guardian and if that person was not present when the order was made; or
- (c) the child and youth care centre, if the child was handed to a centre, in writing and orally, if the contact particulars are available.

(4) The notification by the clerk of the child justice court must be done immediately after the order has been made in any manner but the clerk must ensure that the persons receive the notice.

Age estimation by probation officer

14. The probation officer must make an estimation of the age of the child in terms of section 13(1) of the Act on a form which corresponds substantially with Form 3 of the Annexure.

Age determination by inquiry magistrate or child justice court

15. (1) The presiding officer at a preliminary inquiry or of a child justice court who refers a child for age estimation in terms of section 14(2)(d) of the Act, must do so in writing on a form which corresponds substantially with Form 4 of the Annexure.

- (2) The clerk of the child justice court must, in writing and orally, notify —
- (a) (i) the parent of the child of the referral, if the parent was not present when the child was referred; and
 - (ii) the appropriate adult or guardian of the referral, if the child was handed to an appropriate adult or guardian and if that person was not present when the child was referred; or
 - (b) the child and youth care centre of the referral, if the child was handed to a centre, if the contact particulars of the person in question are available.

(3) The notification by the clerk of the child justice court must be done immediately after the referral in any manner and the clerk must ensure that any of the persons referred to in subregulation (2) receives the notice.

(4) The medical practitioner who estimated the age of the child must complete Part C of Form 4 of the Annexure.

CHAPTER 3**SECURING ATTENDANCE OF CHILD AT PRELIMINARY INQUIRY****Written notice to appear at preliminary inquiry**

16. (1) A police official, in determining a date on which a child must appear at a preliminary inquiry, must allow a reasonable period for the probation officer to assess the child before the child appears at the inquiry.

(2) (a) A police official must in terms of section 18(4)(a)(i) and (ii) of the Act inform the child and the parent, appropriate adult or guardian of the nature of the allegations against the child and of the rights of the child—

- (i) in a language that they understand and preferably in a language of their choice;
- (ii) in plain language by using simple vocabulary; and
- (iii) in a manner appropriate to the age, maturity and stage of development of the child and the intellectual capacity of the parent, appropriate adult or guardian.

(b) A police official must, when informing the child and the parent, appropriate adult or guardian of the nature of the allegations against the child and of the rights of the child—

- (i) treat the child with care and understanding;
- (ii) ensure that other persons, whose presence is not required, are not in close proximity;
- (iii) give enough detail about the matters;
- (iv) allow sufficient time so that the child and the other persons can absorb the information;
- (v) encourage and allow the child and the other persons to ask questions; and

- (vi) elicit responses from the child and the other persons by asking questions in order to ensure that they understand the information.

(3) The police official must in terms of section 18(4)(a)(iii) of the Act explain to the child and the parent, appropriate adult or guardian the immediate procedures to be followed—

- (a) in accordance with subregulations (2) and (3);
- (b) in a step-by-step manner; and
- (c) taking into account the level of knowledge of the persons in respect of the functioning of the courts and the court procedures.

(4) The police official must in terms of section 18(4)(a)(iv) and (v) of the Act warn—

- (a) the child about the importance of his or her appearance at the preliminary inquiry; and
- (b) the parent, appropriate adult or guardian to bring or cause the child to be brought to the preliminary inquiry,

in accordance with subregulation (2) and by indicating the seriousness of the matter and the implications of failure to appear at or to bring the child to the preliminary inquiry.

(5) A police official must obtain the physical address and, if applicable, the work address and contact particulars of the parent, appropriate adult or guardian.

(6) A police official must hand to the parent of the child, appropriate adult or guardian an information note containing—

- (a) the information, explanations and warnings referred to in section 18(4) of the Act;
- (b) the name and contact particulars of the police official who handed the written notice;
- (c) the name of the police station where the police official is stationed;
- (d) the name and contact particulars of the designated probation officer;
- (e) the name and age of the child; and
- (f) the name and contact particulars of the parent, appropriate adult or guardian who was present when the written notice was handed to the child, or who was handed a copy of the written notice.

(7) (a) A police official must notify the designated probation officer in terms of section 18(4)(b) of the Act by handing or faxing a copy of the information note referred to in subregulation (6) to the designated probation officer.

(b) A police official who notifies the designated probation officer by facsimile must ensure that the designated probation officer has received the notice.

Summons to appear at preliminary inquiry

17. A police official must, when serving a summons on a child in terms of section 19(2) of the Act, comply with regulation 16 with the changes required by the context.

Arrest to secure attendance at preliminary inquiry

18. (1) A police official who has arrested a child to secure his or her attendance at a preliminary inquiry must, when acting in terms of section 20(3)(a) to (c) of the Act, comply with regulation 16(2) to (5), with the necessary changes required by the context.

(2) (a) A police official who has arrested a child must notify the child's parent, appropriate adult or guardian of the arrest and give enough information relating to

- (i) the alleged offence for which the child was arrested;

- (ii) the date and time of arrest of the child;
- (iii) the circumstances surrounding the arrest;
- (iv) the place where the child is detained;
- (v) the procedures regarding the release of a child;
- (vi) the date on which the child will appear at the preliminary enquiry; and
- (vii) the place where the child will appear,

to ensure that the persons are fully informed of the circumstances.

(b) A police official must, after notifying the child's parent, appropriate adult or guardian in terms of paragraph (a) hand to the parent, appropriate adult or guardian an information note containing—

- (i) the information, explanations and warnings referred to in section 20(3) of the Act;
- (ii) the information referred to in subregulation (2)(a)(iv) to (vii);
- (iii) the name and contact particulars of the police official who arrested the child;
- (iv) the name of the police station where the police official is stationed;
- (v) the name and contact particulars of the designated probation officer; and
- (vi) the name and age of the child.

(3) (a) A written report to a presiding officer referred to in section 20(3)(d) of the Act by a police official who was unable to inform the child's parent, appropriate adult or guardian of the arrest, must contain the following information:

- (i) The particulars of the child;
- (ii) the date and time of arrest;
- (iii) the alleged offence;
- (iv) the place of detention;
- (v) particulars of the parent, appropriate adult or guardian, if known;
- (vi) full details of the attempts made to notify the parent, appropriate adult or guardian, including the manner and the time each attempt was made; and
- (vii) reasons as to why the police official was unable to notify the parent, appropriate adult or guardian.

(b) The police official must sign the written report.

(4) (a) A police official must, after a child has been arrested, in terms of section 20(4)(a) of the Act, inform the designated probation officer of the arrest in writing.

(b) The notice to the designated probation officer in terms of paragraph (a) must contain the following information:

- (i) The particulars of the police official;
- (ii) the particulars of the child;
- (iii) the date and time of the arrest;
- (iv) the alleged offence;
- (v) the police station or place where the child is detained; and
- (vi) the name, address and contact particulars of the parent, appropriate adult or guardian.

(c) The police official must sign the notice to the designated probation officer.

(d) The notice must be—

- (i) handed;
 - (ii) submitted electronically; or
 - (iii) submitted by facsimile,
- to the designated probation officer.

(e) A police official who notifies the designated probation officer electronically or by facsimile must ensure that the designated probation officer has received the notice.

(5) The written report to the inquiry magistrate referred to in section 20(4)(b) of the Act must contain—

- (a) the particulars of the designated probation officer;
- (b) particulars of the child;
- (c) the date and time of arrest;
- (d) the alleged offence;
- (e) the police station or place where the child is detained;
- (f) full details of the attempts made to notify the designated probation officer, including the manner and time each attempt was made; and
- (g) reasons as to why the police official was unable to notify the designated probation officer.

CHAPTER 4

RELEASE, DETENTION AND PLACEMENT OF CHILD PRIOR TO SENTENCE

Detention of child before preliminary inquiry

19. The written report referred to in section 22(2) of the Act, relating to the non-release of a child detained for a Schedule 1 offence, must contain -

- (a) the particulars of the child;
- (b) the date and time of arrest of the child;
- (c) the police station or place where the child is detained;
- (d) the reasons why the child was not released;
- (e) full details of the attempts made to locate the parent, appropriate adult or guardian, if he or she could not be located;
- (f) the reasons why the parent, appropriate adult or guardian was not available to receive the child into his or her care, if applicable; and
- (g) full details of the risk, if there was a substantial risk that the child may be a danger to any other person or himself or herself.

Failure of child to appear at preliminary inquiry or to comply with conditions of release

20. (1) (a) The presiding officer must, if a child fails to appear on the date and at the time and place referred to in section 24(4) or (6) of the Act or to comply with any condition imposed in terms of section 24(4) of the Act, be notified of the failure by way of an affidavit which must be accompanied, where appropriate, by supporting documents.

(2) The affidavit and supporting documents, if any, must be submitted—

- (a) by hand;
- (b) electronically; or
- (c) by facsimile,

to the investigating police official or the clerk of the child justice court to be handed to the presiding officer, together with the court documents.

(3) A person who submitted the affidavit electronically or by facsimile must—

- (a) ensure that the investigating police official or the clerk of the child justice court has received the document; and
- (b) forward the original document by registered post or hand it to the clerk of the child justice court to be attached to the court documents.

Complaint about injury or trauma of child in detention

21. (1) (a) A complaint or observation about an injury sustained or severe psychological trauma suffered by a child referred to in section 28(2) of the Act must be recorded in writing in the form of a report.

(b) The report referred to in paragraph (a) must contain the following particulars:

- (i) Full particulars of the police official receiving the complaint or making the observation;
- (ii) full particulars of the child;
- (iii) date and time of the arrest of the child;
- (iv) particulars of the person who made the complaint, if not the child; and
- (v) full details of the complaint or observation.

(c) Upon recording the complaint or observation, the police official must number the complaint or observation with a consecutive number for the year.

(d) The police official who received the complaint or made the observation must, upon completion of the actions required in terms of this regulation, ensure that the following details are entered in the register referred to in section 28(3) of the Act:

- (i) The number allocated to the complaint;
- (ii) the date on which the complaint was lodged;
- (iii) the nature of the injury sustained or severe psychological trauma suffered;
- (iv) the circumstances surrounding the injury or trauma;
- (v) the signature and particulars of the complainant,
- (vi) the date on which the report was handed to the station commissioner;
- (vii) the particulars of the medical treatment which the child received, if any;
- (viii) the date on which the report referred to in subregulation (1)(a) was submitted to the National Commissioner of Police;
- (ix) the nature of the instructions, if any, given by the National Commissioner of Police; and
- (x) the steps taken to comply with the instructions of the National Commissioner of Police.

(e) The person who lodged the complaint must, for the purposes of future enquiries, be informed of the number allocated to the complaint.

(f) The person who lodged the complaint or the police official who made the observation must affix his or her signature next to the particulars, referred to in paragraph (d), which have been recorded in the register.

(2) The police official who recorded the complaint or observation in the register must hand the report to the station commissioner and record the date on which it was done in the register.

(3) (a) The station commissioner must, on receipt of the report, investigate the complaint or observation and make the necessary arrangements for appropriate medical treatment, if satisfied that the circumstances referred to in section 28(2)(a) of the Act exist.

(b) The station commissioner must, after the investigation of the complaint or observation and for the purposes of the report referred to in section 28(2)(b) of the Act, record his or her findings.

(c) When recording his or her findings the station commissioner must indicate the following:

- (i) The details and the extent of the injuries or conduct indicative of severe trauma;

- (ii) full details of a sexual offence as defined in section 1 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007), if such an allegation is made;
- (iii) the circumstances surrounding the injury;
- (iv) full details of the medical treatment received by the child, if any;
- (v) if the child did not receive medical treatment, the reasons why; and
- (vi) any action taken or recommendation made regarding the circumstances surrounding the injury or severe trauma.

(4) The station commissioner must—

- (a) after having investigated the matter and, if necessary, after ensuring that the child received medical treatment, submit the report together with the medical report, if any, to the National Commissioner of Police in an appropriate manner;
- (b) ensure that the National Commissioner of Police has received the report; and
- (c) file a copy of the report and its attachments in the docket.

(5) The National Commissioner of Police may, after considering the report and recommendations made by the station commissioner, issue any instruction he or she deems fit.

(6) (a) The station commissioner must, upon submission to the National Commissioner of Police of the documents referred to in subregulation (4), submit a copy thereof to the Independent Complaints Directorate, established by section 50(1) of the South African Police Service Act, 1995 (Act No. 68 of 1995).

(b) The station commissioner may submit the documents in any manner he or she deems fit but must keep proof of the manner of submission.

Register regarding detention of children

22. (1) A register regarding the detention of children in police cells or lock-ups referred to in section 28(3) of the Act must, in addition to the particulars required in terms of regulation 21(1)(d), contain the following information:

- (a) The full names of the child and any alias or nickname;
- (b) the nature of the offence alleged to have been committed;
- (c) the age of the child;
- (d) the date and time of arrest;
- (e) the reasons why the child cannot be released;
- (f) the physical and psychological condition of the child, as observed by a police official, at the time of arrest; and
- (g) the names, addresses and telephone numbers of the parents or next of kin, if known.

(2) The register may be examined in terms of section 28(4) of the Act by—

- (a) a member of the South African Police Service in the performance of his or her functions;
- (b) a social worker, health care practitioner or probation officer in the performance of his or her functions;
- (c) the prosecutor involved in the case;
- (d) a member of the Intersectoral Committee for Child Justice established in terms of section 94 of the Act;
- (e) an independent observer appointed in terms of section 65(6) of the Act;
- (f) a person who is by law empowered or mandated to take care of the interests of a child;
- (g) a parent of the child or the appropriate adult or guardian;
- (h) a staff member of the child and youth care centre where the child is placed;

- (i) the presiding officer involved in the case; and
- (j) the legal representative of the child.

(3) A person, other than the persons referred to in subregulation (2), who wishes to examine the register must—

- (a) make a request in writing stating the reason for his or her access to the register;
- (b) hand the request to the station commissioner or the person designated in writing by the station commissioner; and
- (c) identify himself or herself, if requested to do so by the station commissioner or designated police official.

(4) The station commissioner or the person designated in writing by the station commissioner must immediately after receiving the request, take a decision which must be communicated to the person making the request.

(5) The register must be examined in the presence of a police official.

(6) A person who has examined the register must treat the information obtained as confidential.

Placement in a child and youth care centre

23. The sworn statement of the functionary responsible for the management of a child and youth care centre referred to in section 29(4) of the Act must correspond substantially with Form 5 of the Annexure.

Error regarding placement

24. (1) (a) The person admitting a child at a child and youth care centre, police cell, lock-up or prison in terms of section 31 of the Act must, in writing, refer a child, in respect of whom an error has been made regarding placement, to the presiding officer for the error to be corrected.

(b) The written referral to the presiding officer must contain the following information:

- (i) Full particulars of the child;
- (ii) the case number and the alleged offence;
- (iii) the particulars of the person and the institution admitting the child;
- (iv) the date on which the child was admitted; and
- (v) reasons for referring the child back to the presiding officer.

(c) A person referring a child back to court must attach to the referral a copy of the court order relating to the placement of the child.

(2) (a) A child referred to in subregulation (1) must be taken back to the presiding officer by—

- (i) a police official, if the child is placed in a police cell or lock-up;
- (ii) a correctional official, if the child is placed in a prison; or
- (iii) a police official at the request of the head of the child and youth care centre, if the child is placed in a child and youth care centre.

(b) The person in charge of a child and youth care centre must—

- (i) immediately upon becoming aware of the error regarding placement, arrange with a police official to take the child to a presiding officer to correct the error; and
- (ii) hand to a police official the written referral, referred to in subregulation (1).

(3) The written referral must be handed to the presiding officer when the child appears before the presiding officer.

Written report relating to transport of child to or from preliminary inquiry or child justice court

25. (1) A written report, referred to in section 33(2)(c) of the Act, by a police official relating to the reasons for non-compliance with that section must contain the following information:

- (a) Full particulars of the child;
- (b) the date of arrest and the alleged offence;
- (c) the date and time on which the child was transported;
- (d) the place from which and to which the child was transported;
- (e) the particulars of other persons transported with the child;
- (f) attempts made to transport the child separately;
- (g) the reasons why the child was not transported separately; and
- (h) any measures taken to protect the child, where the child was transported with adults.

(2) A written report may be submitted in any manner to the presiding officer having regard to the period of 48 hours within which it must be submitted.

(3) The police official must keep record of the manner of submission and make sure that the clerk of the court has received the written report.

CHAPTER 5

ASSESSMENT OF CHILD

Powers and duties of probation officer at assessment

26. (1) (a) A probation officer must inform the child of his or her rights in terms of section 39(1) of the Act—

- (i) in a language that the child understands and preferably in a language of his or her choice, or through an interpreter, if necessary;
- (ii) in plain language and using simple vocabulary; and
- (iii) in a manner appropriate to the age, maturity and stage of development of the child.

(b) A probation officer must when informing the child about his or her rights—

- (i) give enough detail about the rights of the child;
- (ii) allow sufficient time so that the child can absorb the information;
- (iii) encourage and allow the child to ask questions and to respond to the questions asked; and
- (iv) elicit responses from the child by asking questions in order to ensure that he or she understands the information.

(c) The probation officer must conduct the assessment in an atmosphere conducive to participation of the child and his or her parent, the appropriate adult or guardian and elicit the views of the child.

(d) The probation officer must, in ensuring a conducive atmosphere for participation, consider all possible venues for the assessment as referred to in section 37 of the Act, including the place of residence of the child or the child and youth care centre where the child has been placed.

Assessment report of probation officer

27. (1) The probation officer, when completing an assessment report referred to in section 40(1) of the Act, must—

- (a) provide enough information so as to enable the recipient of the report to understand the conclusions reached and the recommendations made;
- (b) indicate the information that was considered;
- (c) explain how he or she arrived at the outcome of the assessment or his or her recommendations;
- (d) include the sources of the information;
- (e) in a logical manner reflect the recommendations made;
- (f) motivate any recommendation made in a manner that is appropriate pursuant to the information that was available and considered; and
- (g) indicate, in the case of conflicting information, which information he or she relied on and the reasons.

(2) The probation officer must, when completing the assessment report—

- (a) have regard to the purpose of the assessment referred to in section 35 of the Act;
- (b) ensure that the report contains information about the child's development and competencies, the child's history, the family circumstances, the circumstances surrounding the offence and the impact of the offence on the victim;
- (c) express an opinion as to the possible reasons for the child having committed the offence;
- (d) express an opinion as to the behaviour of the child and the extent to which the child has been influenced by adults or peers;
- (e) indicate the child's ability to be reintegrated into society; and
- (f) indicate whether the child acknowledges responsibility for the offence.

(3) The assessment report must, where a recommendation referred to in section 40(1)(d) relating to the placement of a child has been made, be accompanied by Form 5 in which the information referred to in section 40(2) of the Act relating to accommodation and features of the child and youth care centre must be set out.

(4) The probation officer must, after having completed the assessment report, file a copy of the report and any attachments in the personal file of the child in question.

CHAPTER 6

PRELIMINARY INQUIRY

Procedure relating to holding of preliminary inquiry

28. (1) (a) The presiding officer must, at the start of the preliminary inquiry, inform the child about and explain to the child, the matters referred to in section 47(2) of the Act—

- (i) in a language of his or her choice or through an interpreter;
- (ii) in plain language by using simple vocabulary and by avoiding technical terms; and
- (iii) in a manner appropriate to the age, maturity and stage of development of the child.

(b) The presiding officer must, when informing the child about or explaining to the child, the matters in question—

- (i) give enough detail so that the child understands the information;
- (ii) allow sufficient time so that the child can absorb the information;
- (iii) encourage and allow the child to ask questions and express his or her views;
- (iv) elicit responses from the child by asking questions in order to ensure that he or she understands the information;
- (v) ensure that the atmosphere is conducive to participation by the child and the parent, appropriate adult or guardian; and

- (vi) be sensitive to the needs of the child and the fact that the child may be confused and may be experiencing anxiety and may feel intimidated.
- (2) The proceedings at the preliminary inquiry must be conducted in a manner that sets the child at ease.
- (3) The child should be treated with care and understanding.

CHAPTER 7

DIVERSION

Diversion options

29. (1) A magistrate, inquiry magistrate or child justice court must, when issuing a diversion order, explain to the child and the parent, appropriate adult or guardian in full detail—

- (a) what the order entails;
 - (b) what the order seeks to achieve;
 - (c) what is expected of the child and the parent, appropriate adult or guardian; and
 - (d) the importance of compliance with the order,
- and confirm that they understand the explanation.

(2) A diversion order referred to in section 53(1) of the Act must contain enough information and be formulated in plain language by using simple vocabulary in order to ensure that the child and the parent, appropriate adult or guardian fully understand what is expected of them and in order to facilitate the monitoring of compliance with the order and to deal with non-compliance effectively.

(3) (a) A compulsory school attendance order referred to in section 53(1)(a) of the Act must correspond substantially with Part A of Form 6 of the Annexure.

(b) A family time order referred to in section 53(1)(b) of the Act must correspond substantially with Part B of Form 6 of the Annexure.

(c) A good behaviour order referred to in section 53(1)(c) of the Act must correspond substantially with Part C of Form 6 of the Annexure.

(d) A peer association order referred to in section 53(1)(d) of the Act must correspond substantially with Part D of Form 6 of the Annexure.

(e) A reporting order referred to in section 53(1)(e) of the Act must correspond substantially with Part E of Form 6 of the Annexure.

(f) A supervision and guidance order referred to in section 53(1)(f) of the Act must correspond substantially with Part F of Form 6 of the Annexure.

Provision of resources to implement diversion programmes

30. The Cabinet member responsible for social development must, in order to ensure that resources are available to implement diversion programmes as referred to in section 56(2) of the Act—

- (a) make sure that sufficient funds are allocated specifically for this purpose;
- (b) set up systems and procedures to obtain external funding for the implementation of diversion programmes, if necessary;
- (c) in compiling a budget for the implementation of the programmes, take into account
 - (i) possible increases in the number of diversion orders issued;
 - (ii) increases in the cost of implementing programmes;
 - (iii) possible extensions of the duration of diversion programmes; and

- (iv) any other expenditure relating to activities directly related to the implementation of diversion programmes;
- (d) monitor the expenditure on a regular basis, among others by—
 - (i) determining the patterns of expenditure; and
 - (ii) determining the amount available on the budget and any outstanding commitments;
- (e) take the necessary steps to reduce or eliminate unnecessary expenditure;
- (f) consider patterns relating to the increase in the number of diversion orders issued with a view to determining the amount required for future funding; and
- (g) ensure that funds allocated for the implementation of diversion programmes are not utilised for another purpose.

Certificate of accreditation

31. (1) A certificate of accreditation of a diversion service provider referred to in section 56(2)(e) of the Act must correspond substantially with Form 7 of the Annexure.

(2) A certificate of accreditation of a diversion programme referred to in section 56(2)(e) of the Act must correspond substantially with Form 8 of the Annexure.

Quality assurance in respect of diversion programmes and diversion service providers

32. (1) (a) A quality assurance process referred to in section 56(2)(g) of the Act must be conducted by a quality assurance panel appointed by the Cabinet member responsible for social development.

(b) The panel must consist of not less than three and not more than seven members but at least one member must be an independent person.

(c) The members of the panel must have knowledge and experience relating to diversion programmes and children's issues.

(d) An official employed in the State may be appointed as a member of the panel.

(e) The panel must determine its own procedures having regard to sound administrative practices and just administrative action.

(2) In conducting the quality assurance process the panel must—

- (a) give the diversion service provider reasonable notice of the intention to conduct the process;
- (b) hold a preliminary meeting with the management and relevant staff of the diversion service provider to discuss the objective of the quality assurance, the methods, mechanisms and criteria which will be used in the process;
- (c) invite the diversion service provider to submit any written evidence on self-review and recommendations;
- (d) receive oral evidence where necessary and consider and assess the evidence received;
- (e) begin fieldwork which must include site-visits and interviews with the children who are attending or who have attended diversion programmes;
- (f) prepare a preliminary report which must contain the proposed findings and recommendations supported by reasons for the findings;
- (g) give the diversion service provider an opportunity to respond to the preliminary report;
- (h) consider the response, if any, of the diversion service provider on the preliminary report; and

- (i) compile a final report.
- (3) The preliminary and final report must—
 - (a) provide enough information so as to enable the diversion service provider and the Cabinet member responsible for social development to understand its conclusions and findings;
 - (b) reveal the information that was considered;
 - (c) explain how the panel arrived at the conclusions and findings;
 - (d) include the sources of the information;
 - (e) in a logical manner reflect the recommendations made, if any;
 - (f) motivate any recommendation made in an appropriate manner, pursuant to the information that was available and considered; and
 - (g) indicate, in the case of conflicting information, which information was relied upon and the reasons.
- (4) (a) The panel must submit the final report to the Cabinet member responsible for social development to be dealt with in terms of the policy framework and system referred to in section 56(2)(c) of the Act.
- (b) A copy of the final report must be submitted to the diversion service provider in question.
- (5) A quality assurance process must be conducted in respect of each diversion service provider at least once a year or upon receipt of a complaint.

Failure of child to comply with diversion order

- 33.** (1) The probation officer or the person identified in terms of section 57(1) of the Act must, within seven days after becoming aware of the child's failure to comply with the diversion order, notify the magistrate, inquiry magistrate or child justice court of the child's failure in a form which corresponds substantially with Form 9 of the Annexure.
- (2) (a) The probation officer or the identified person must immediately, upon completion of Form 9, submit the form and the supporting documents, if any, to the clerk of the child justice court—
- (i) by hand;
 - (ii) electronically; or
 - (iii) by facsimile.
- (b) The probation officer or identified person must, if Form 9 and the attachments were submitted electronically or by facsimile—
- (i) keep proof of the manner in which the documents were submitted;
 - (ii) ensure that the clerk of the child justice court has received the documents; and
 - (iii) send the original documents by registered post to the clerk of the child justice court.
- (3) The clerk of the child justice court must, on receipt of Form 9, obtain the court documents and place the matter before the magistrate, inquiry magistrate or the child justice court, as the case may be.
- (4) (a) The clerk of the child justice court must, on receipt of Form 9, submit to the official designated in terms of regulation 35, a certified copy of the form.
- (b) The official designated in terms of regulation 35 must, on receipt of the copy of Form 9, make the necessary entries in the register referred to in section 60 of the Act.
- (5) (a) The clerk of the child justice court must inform the official designated in terms of regulation 35 in writing of the outcome of the proceedings before the magistrate, the inquiry magistrate or child justice court and attach any supporting documents.

(b) The designated official must make the necessary entries in the register referred to in section 60 of the Act.

Compliance by child with diversion order

34. (1) (a) The report referred to in section 57(5) of the Act by the probation officer or the person identified in terms of section 57(1) of the Act must correspond substantially with Form 9 of the Annexure.

(b) A prosecutor who receives a report in terms of paragraph (a) must, on receipt thereof, consider the report.

(c) The prosecutor may clarify any aspect of the report with or obtain further information from the probation officer or the identified person.

(d) The prosecutor must submit a certified copy of the report to the clerk of the child justice court in question and the official designated in terms of regulation 35.

(2) The clerk of the child justice court must, on receipt of the copy of the report, attach it to the court documents in respect of the child.

(3) The official designated in terms of regulation 35 must, on receipt of the copy of the report, make the necessary entries in the register referred to in section 60 of the Act.

Establishment and maintenance of register of children in respect of whom diversion order has been made

35. (1) (a) The Director-General: Social Development must designate an official to make entries in, update and maintain the register of children in respect of whom a diversion order has been made as referred to in section 60(1) of the Act.

(b) The Director-General: Social Development must, forward the particulars of the designated official to the Director-General: Justice and Constitutional Development, for distribution to the National Director of Public Prosecutions and the courts, and the National Commissioner of Police.

(2) (a) An entry in the register or any amendment to an entry in the register may only be made on receipt of documents which purport to be received from the persons referred to in these Regulations.

(b) Every entry recorded or any amendment of an entry must be verified by the supervisor of the designated official.

(3) The register must, in addition to the information referred to in section 60(1)(a) to (d) of the Act, contain the following particulars:

(a) The reference number allocated in terms of subregulation (4);

(b) a reference to the appropriate section in the Act;

(c) the date on which the diversion order was made; and

(d) the date on which the diversion order lapses.

(4) (a) The register must be maintained in the following manner:

(i) The clerk of the child justice court must, upon the receipt of a diversion order issued by a magistrate, inquiry magistrate or presiding officer of the child justice court, notify the designated official of the order;

(ii) the clerk of the child justice court must attach a certified copy of the order to the notice;

(iii) the designated official must, on receipt of the notification, number the notice with a consecutive number for the year and enter the required information in the register;

- (iv) the designated official must file the notice and attachments received from the clerk of the child justice court, which may only be disposed of in the case of expungement in terms of section 87(6) of the Act;
- (v) the clerk of the child justice court must notify the designated official of any order made in terms of section 58(3) or (4) of the Act and attach a certified copy thereof to the notice; and
- (vi) the designated official must deal with a notice received in terms of subparagraph (v) in accordance with subparagraph (iv).

(b) The clerk of the child justice court must submit the notice referred to in paragraph (a)—

- (i) by hand;
- (ii) electronically; or
- (iii) by facsimile.

(c) The clerk of the child justice court must, if the notice was submitted electronically or by facsimile—

- (i) keep proof of the manner in which the notice was submitted;
- (ii) ensure that the designated official has received the documents; and
- (iii) send the original documents by registered post to the designated official.

(5) The clerk of the child justice court, must, upon submission of a notice referred to in subregulation (4), indicate in the criminal record book opposite the name of the child that the notice was submitted, the date of submission and affix his or her signature to the entry.

(6) The Director-General: Social Development must, on a regular basis, inspect the register with a view to identifying possible interventions and the issuing of the necessary instructions.

Access to register of children in respect of whom diversion order has been made

36. (1) The register referred to in section 60 of the Act must be secured and only be accessible to authorised persons.

(2) A person who wishes to access the register must—

- (a) complete Part A of Form 10 of the Annexure;
- (b) hand Form 10 to the designated official referred to in regulation 35(1); and
- (c) identify himself or herself, if requested to do so by the designated official.

(3) The designated official must ensure that the person requesting access to the register is a person referred to in section 60(2) of the Act and must record his or her decision and the reasons for the decision in Part B of Form 10 of the Annexure.

(4) Form 10 must be filed in accordance with the general prescripts applicable to official documents.

(5) The register must be examined in the presence of the designated official.

(6) A person who has examined the register must treat the information obtained as confidential.

CHAPTER 8

TRIAL IN CHILD JUSTICE COURT

Duty of presiding officer before plea in child justice court

37. (1) (a) A presiding officer must inform the child of and explain to the child, the matters referred to in section 63(3) of the Act—

- (i) in the language of the child's choice or through an interpreter;

- (ii) in plain language, using simple vocabulary and avoiding technical words; and
- (iii) in a manner appropriate to the age, maturity, stage of development of the child and the special needs of the child.

(b) A presiding officer, when acting in terms of section 63(3) of the Act, must—

- (i) treat the child with care;
- (ii) set the child and the parent, appropriate adult or guardian at ease;
- (iii) give enough detail about the matters;
- (iv) allow sufficient time so that the child can absorb the information;
- (v) encourage and allow the child to ask questions; and
- (vi) elicit responses from the child by asking questions in order to ensure that the child understands the information.

Drawing up of list of independent observers

38. (1) (a) The magistrate of the district must, for the purposes of compiling a list of independent observers in terms of section 1 of the Act —

- (i) invite the community, an organisation or the community police forum to nominate persons to serve as independent observers in terms of section 65 of the Act; and
- (ii) allow a person from the community, an organisation or the community police forum to nominate himself or herself to serve as an independent observer.

(b) An invitation for a nomination as independent observer must be posted on the notice board at the magistrate's office, published in a local newspaper, broadcast over a local radio station or be extended in any other manner the magistrate deems appropriate.

(2) A nomination for appointment as independent observer must be done on Part A of Form 11 of the Annexure.

(3) (a) A person nominated to serve as an independent observer, must complete Part B of Form 11 of the Annexure.

(b) A person who has been nominated as an independent observer in terms of subregulation (1)(a) and who is willing to accept the nomination and a person who has nominated himself or herself, must indicate on Part B of Form 11 any information which reflects his or her background and profile which may be relevant for the purposes of deciding whether the nominee is suitable to assist a particular child.

(4) (a) The magistrate of the district may obtain further information from any person nominated to serve as an independent observer and the community, organisation or community police forum which nominated the person in order to clarify any uncertainty.

(b) The magistrate must, subject to paragraph (c), enrol on the list of independent observers —

- (i) the name of the person who nominated himself or herself to serve as independent observer; and
- (ii) the name of the person who was nominated in terms of subregulation (1)(a) if he or she has accepted the nomination,

if Form 11 has been completed to the satisfaction of the magistrate.

(c) The magistrate, if he or she has reason to believe that a person whose name is to be enrolled on the list of independent observers in terms of paragraph (b), is not a suitable person, must inform the person in question and obtain further information from him or her.

(d) The magistrate may, if he or she still believes that the nominated person is not a suitable person after having complied with paragraph (c), refuse to enrol the name of the person on the list of independent observers.

(e) A magistrate who has refused to enrol the name of a person on the list of independent observers, must record the reasons for the refusal and give reasons for the refusal when requested by the person involved.

(5) The list of independent observers may be kept manually or electronically.

(6) The magistrate of the district must update the list on a regular basis to ensure that the contact details of persons whose names appear on the list are correct.

(7) (a) The magistrate of the district must ensure that there are sufficient persons listed for appointment as independent observers.

(b) In the event of a shortage of persons to be appointed as independent observers, the magistrate of the district must invite further nominations in the manner referred to in this regulation.

Particulars of list of independent observers

39. The list of independent observers referred to in section 1 of the Act must contain the following particulars:

- (a) The surname and full names of the person;
- (b) the residential address of the person;
- (c) his or her identity number;
- (d) the language proficiency of the person;
- (e) the occupation of the person;
- (f) the social interests of the person; and
- (g) the cultural background of the person.

Appointment of independent observer

40 (1) The presiding officer must, for the purposes of appointing an independent observer in terms of section 65(6) of the Act, consider the names of the persons whose particulars appear on the list and select from that list the person best suited to assist the child.

(2) The clerk of the child justice court must, on the instruction of the presiding officer, notify, as directed by the presiding officer, the person selected of his or her proposed appointment to assist the child.

(3) The presiding officer must ascertain from the child whether he or she is willing to be assisted by the person selected.

(4) (a) The presiding officer may obtain from the person selected any further information he or she deems fit for purposes of determining whether the person selected is suitable to assist the child.

(b) The presiding officer must inform the person selected of his or her responsibilities in assisting the child and ascertain whether the person is willing to assist the child.

(5) The presiding officer must, if he or she is satisfied that—

- (a) the child is willing to be assisted by the person selected;
 - (b) the person selected is willing to assist the child; and
 - (c) the person selected is suitable to assist the child,
- appoint the person selected by recording his or her personal particulars on the court record.

CHAPTER 9

SENTENCING

Progress report regarding community-based sentences

41. (1) (a) The child justice court must give directions to the probation officer regarding —

- (i) the frequency of submitting progress reports referred to in section 72(2)(a) of the Act, to the court; and
- (ii) the dates on which the first and subsequent progress reports must be provided to the court.

(b) The last progress report must be provided to the child justice court within seven days after the date on which the child has complied with the order.

(2) The probation officer must, if the child justice court fails to give the directions referred to in subregulation (1)(a), provide to the child justice court a progress report—

- (a) within seven days after the date on which the conditions of the sentence have been complied with; and
- (b) whenever the probation officer deems it necessary, taking into account the period of the sentence imposed, the nature of the offence, the extent to which monitoring of the child's compliance is required and the date on which the last progress report must be provided in terms of subregulation (1)(b).

(3) The progress report must—

- (a) be in writing;
- (b) indicate the—
 - (i) case number;
 - (ii) name, age and the date of birth of the child;
 - (iii) particulars of the offence convicted of;
 - (iv) particulars of the sentence imposed; and
 - (v) sources of information;
- (c) set out the information obtained regarding compliance with the order;
- (d) clearly indicate the progress made in complying with the order, with specific reference to the objectives of the sentencing option in question;
- (e) reflect the views of the child regarding his or her progress;
- (f) indicate the conclusions reached and the basis thereof or reasons;
- (g) contain recommendations, if applicable, supported by motivation; and
- (h) be accompanied by supporting documents, if applicable.

(4) (a) The probation officer must closely monitor the child's compliance with the order to ensure that he or she is in a position to compile a progress report.

(b) The probation officer must, to the extent necessary, obtain feedback in writing from any person who may have information on the child's compliance.

(c) The probation officer must keep record —

- (i) of any oral or written information received in respect of the child's compliance with the order; and
- (ii) of any observation made by the probation officer in respect of the child's compliance with the order.

(d) In compiling a progress report, the probation officer must have regard to the information referred to in paragraphs (b) and (c).

(5) The progress report must be submitted to the clerk of the child justice court in question in the manner provided for in regulation 35(4)(b) and (c).

(6) The clerk of the child justice court must, on receipt of the progress report, attach the report to the case record and place it before the presiding officer who imposed the sentence.

(7) The presiding officer must direct the clerk of the court how to deal with the matter and, in the case of a child who has failed to comply with a sentence referred to in section 79 of the Act, indicate the date on which the child must appear before the child justice court for an inquiry.

Progress report regarding restorative justice sentences

42. (1) Regulation 41 applies with the changes required by the context to a progress report referred to in section 73(4) of the Act.

(2) The progress report must also indicate—

- (a) the manner in, and the extent to which, the child complied with the sentence imposed;
- (b) whether there were any impediments in complying with the sentence and how these were overcome;
- (c) the patterns of behaviour of the child when carrying out the sentence; and
- (d) any positive outcome for the child or the victim.

Progress report regarding fines or alternative to fine

43. (1) Regulation 41 applies with the changes required by the context to a progress report referred to in section 74(3) of the Act,

(2) The probation officer must also include in the report information about—

- (a) the amount of compensation paid, the date on which and person to whom the payment was made;
- (b) the person or group to whom, or organisation, or institution to which, the service or benefit was provided and the dates on which it was done;
- (c) views of the child relating to his or her sentence and responsibilities; and
- (d) any positive outcome for the child or the victim.

(3) The probation officer must, where applicable, attach supporting documents.

Report on completion of sentence of compulsory residence in child and youth care centre

44. (1) A report referred to in section 76(3) of the Act by the head of the child and youth care centre to which a child has been sentenced must correspond substantially with Form 12 of the Annexure.

(2) The report must clearly indicate—

- (a) which of the objectives referred to in section 69 of the Act have been achieved and the basis for the view which must be substantiated by supporting information;
- (b) which of the objectives have not been achieved and the possible reasons for that which must be substantiated by supporting information; and
- (c) the possibility of the child's re-integration into society without serving the additional term of imprisonment with reference to—
 - (i) the pattern of behaviour of the child during his or her term in the child and youth care centre;

- (ii) any positive or negative incidents in which the child was involved and, in the event of a negative incident, the circumstances surrounding the incident which may have had an impact on the child;
- (iii) interventions of the centre in instances where the child behaved in an unacceptable manner and the child's response to that;
- (iv) the extent to which the child has adjusted to the new environment;
- (v) the child's relationship with his or her peers, including new entrants;
- (vi) the child's relationship with the staff of the centre when the child was disciplined;
- (vii) the extent to which the child has carried out his or her duties or assigned tasks;
- (viii) the extent to which the child has acknowledged responsibility for any wrongdoing in which he or she was involved;
- (ix) his or her scholastic progress; and
- (x) any other relevant information.

(3) The head of the child and youth care centre must ensure that the views expressed on the issues referred to in section 76(3)(b) of the Act provide the presiding officer with sufficient detail.

(4) The head of the child and youth care centre must submit Form 12, together with supporting documents, if any, to the clerk of the child justice court in question not later than six weeks before the child completes his or her sentence.

(5) Form 12 must be submitted in a manner referred to in regulation 35(4)(b) and (c).

(6) The clerk of the child justice court must, on receipt of the progress report, attach the progress report to the case record and place it before the presiding officer who imposed the sentence for direction.

(7) If the presiding officer directs the clerk of the child justice court to enrol the matter, he or she must do so and inform all the relevant parties.

Manner of taking child to child and youth care centre for sentence of compulsory residence

45. (1) (a) The investigating police official must, if a child has been sentenced to compulsory residence in terms of section 76 of the Act—

- (i) make the necessary arrangements to ensure that the child is taken to the child and youth care centre; and
- (ii) ensure, if necessary, that the child is accompanied by a social worker, social service professional or child and youth care worker as defined in the Children's Act or an escort.

(b) The persons who take or accompany the child to the centre must, if reasonably possible, include somebody of the same sex as the child.

(2) A child must be transported—

- (a) in a manner that ensures proper control over the child;
- (b) using the least invasive means to control the child and with due regard to the child's right to bodily integrity;
- (c) in a manner that takes into account the safety and security of the child and members of society;
- (d) in a manner that takes into account the age, dignity and level of maturity of the child;
- (e) in a manner that is appropriate to the nature of the offence of which the child has been convicted;
- (f) in any vehicle other than a marked police vehicle; and

(g) in the cabin of a vehicle and not in the back.

(3) (a) The person responsible for transporting the child must, when a long distance has to be travelled to the centre, ensure that the child is allowed reasonable breaks and has access to water, food and, if necessary, overnight accommodation.

(b) The person responsible for the transporting of the child must at all times ensure that he or she has proper control over the child without humiliating the child in public.

(4) The person transporting the child must hand the child to the person in charge of the centre specified in the order and provide the person with the court order.

Manner of bringing court order to attention of functionaries in case of sentence of compulsory residence in child and youth care centre

46. (1) A copy of the court order made in terms of section 76(1) of the Act must accompany the child to the centre or institution where the child is to be detained until he or she is admitted in the centre specified in the order.

(2) (a) The clerk of the child justice court must, on receipt of the court order-

- (i) record the date on which the child will complete the sentence at the child and youth care centre;
- (ii) inform, by telephone, the person in charge of the child and youth care centre specified in the order of the order and fax a copy of the order to that person; and
- (iii) advise the head of the child and youth care centre to submit the report referred to in regulation 44 within six weeks before the date on which the child completes the sentence.

(b) The clerk of the child justice court must ensure that the report referred to in regulation 44 is received within the period referred to in paragraph (a).

Failure of child to comply with certain sentences

47. (1) The probation officer must provide the child justice court with a report on the failure of a child to comply with a sentence referred to in section 79(1) of the Act within seven days after becoming aware of the child's failure.

(2) The presiding officer to whom a report was made regarding the failure of a child to comply with a sentence, must indicate to the clerk of the child justice court a date on which the child must be brought before the child justice court.

(3) (a) The clerk of the child justice court must inform the person or the institution in whose care the child is of the date and time on which the child must be brought before a child justice court for an inquiry referred to in section 79 of the Act.

(b) The clerk of the child justice court must provide to the person or institution particulars of the court and its location.

(c) The clerk of the child justice court must notify the person or institution of the particulars referred to in paragraph (a) in the manner referred to in regulation 35(4)(b) and proof of the manner in which the notice was submitted must be attached to the court record.

(4) The person or institution in whose care the child is, must, subject to subregulation (5), take the child to the child justice court in question.

(5) A police official, must, if the person or institution referred to in subregulation (4) is not in a position to bring the child to the child justice court, take the child to the child justice court.

CHAPTER 10

LEGAL REPRESENTATION

Legal representative appointed to assist court

48. (1) A legal representative appointed in terms of section 83 of the Act to assist the court must —

- (a) attend all the court proceedings in respect of the case unless, excused by the court;
- (b) address the court on any matter requested by the court;
- (c) have access to the documents and statements in the docket to the extent permissible in criminal proceedings; and
- (d) ensure that the best interests of the child are upheld at all times.

(2) A legal representative appointed to assist the court may—

- (a) address the court on the merits and procedural aspects of the case;
- (b) address the court on the sentence to be imposed;
- (c) cross-examine a witness in relation to the evidence adduced by the witness;
- (d) discredit the evidence of a witness;
- (e) raise an objection to a question posed to the child or state witness;
- (f) question the admissibility of evidence led by the state;
- (g) present evidence that will be in the best interests of a child; or
- (h) assist in any other manner as the court may request.

(3) A legal representative may attend the proceedings of a preliminary inquiry if so requested by the inquiry magistrate.

CHAPTER 11

EXPUNGEMENT OF RECORDS

Application for expungement of conviction and sentence

49. (1) An application in terms of —

- (a) section 87(1)(a) of the Act to the Director-General: Justice and Constitutional Development; or
- (b) section 87(3) of the Act to the Cabinet member responsible for the administration of justice,

for the expungement of a conviction and sentence must correspond substantially with Form 13 of the Annexure.

(2) (a) Form 13 must be available at every magistrate's office and on the website of the Department of Justice and Constitutional Development.

(b) Copies of section 87 and Schedules 1, 2 and 3 of the Act must be made available to every applicant who requests an application form.

(3) The applicant must attach to Form 13 a certified copy of his or her criminal record obtained from the Criminal Record Centre of the South African Police Service, indicating the date of the conviction and the sentence, and the type of offence convicted of.

(4) The applicant must submit a completed Form 13 to the Department of Justice and Constitutional Development—

- (a) by post to Private Bag X 81, Pretoria, 0001; or

- (b) by handing it in at the National Office of the Department of Justice and Constitutional Development.

Consideration of application for expungement by Director-General

50. (1) An official of the Department of Justice and Constitutional Development who has been designated to deal with applications relating to the expungement of convictions and sentences in terms of the Act may, if the information in Form 13 is inadequate or not clear, request further information from the applicant or any organ of state.

(2) The Cabinet member responsible for the administration of justice must express his or her opinion in terms of section 87(1)(b) of the Act in writing and record his or her reasons for the opinion.

(3) The Director-General: Justice and Constitutional Development must, if he or she intends to refuse the application on the basis that the application does not meet the requirements of section 87(2) of the Act, notify the applicant in writing of—

- (a) his or her intention; and
 - (b) the requirements which have not been met and why not,
- and specify a date on or before which the applicant may respond to the Director-General on the information submitted.

(4) The Director-General must, after expiry of the date specified in the notice, consider the response by the applicant, if any, and make a decision regarding the application for expungement.

(5) The Director-General must, if an application has been refused, within 15 working days thereafter inform the applicant in writing—

- (a) of the decision;
- (b) of the reasons for the refusal of the application;
- (c) of the remedies available to the applicant in terms of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000).

(6) The Director-General must, if he or she is satisfied that the child complies with the criteria set out in section 87(1) of the Act, issue a certificate of expungement which corresponds substantially with Form 14 of the Annexure.

(7) An applicant to whom a certificate of expungement has been issued in terms of section 87(2) of the Act must hand, or submit by registered post, the certificate to the Head of the Criminal Record Centre of the South African Police Service.

Consideration of application for expungement by Cabinet member

51. (1) Regulation 50(1), (4), (5) and (7) applies in respect of the consideration of an application by the Cabinet member responsible for the administration of justice in terms of this regulation, with the necessary changes required by the context.

(2) The Cabinet member responsible for the administration of justice must, if he or she intends to refuse the application on the basis that there are no exceptional circumstances justifying the expungement of the conviction and sentence as referred to in section 87(3) of the Act or that the child does not otherwise comply with the criteria in section 87(1) of the Act, notify the applicant in writing of—

- (a) his or her intention; and
 - (b) the requirements which have not been met and why not,
- and specify a date on or before which the applicant may respond to the Cabinet member on the information submitted.

(3) The Cabinet member responsible for the administration of justice must, if he or she is satisfied that the child complies with the criteria set out in section

87(1) and (3) of the Act, issue a certificate of expungement which corresponds substantially with Form 15 of the Annexure.

Expungement of record of diversion order

52. (1) The Director-General: Social Development may, for the purposes of determining whether the criteria referred to in section 87(6) of the Act have been complied with, obtain information relating thereto from any person, organ of state or private body.

(2) (a) The Director-General must, if information has been received to the effect that the criteria have not been met, inform the child in writing about the information and the implications thereof.

(b) The Director-General must indicate in the notice a date on or before which the child may submit a response to the information received from the Director-General.

(3) The Director-General must, after having considered any response from the child, make a decision on the expungement of the record of a diversion order.

(4) The Director-General must record in writing his or her decision relating to the expungement of the diversion order.

(5) The designated official referred to in regulation 35(1) must, if the Director-General has decided to expunge the record, remove the child's particulars from the diversion register and archive all documents relating to that child.

(6) The designated official must, within 15 working days after having removed the child's particulars from the diversion register, inform the child of the expungement.

(7) The Director-General must, within 15 working days after having refused to expunge the record of a diversion order, inform the child in writing—

- (a) of the decision;
- (b) of the reasons for refusal; and
- (c) of the remedies available to the child in terms of the Promotion of Administrative Justice Act, 2000 (Act No 3 of 2000).

CHAPTER 12

MISCELLANEOUS

Registration of age of child

53. (1) The Department of Home Affairs must, upon receipt of a copy of the age determination referred to in section 90(1) of the Act, contact the child, the parents, appropriate adult or guardian, or the probation officer involved in the matter to obtain further information, and for purposes of completing an application form for an identification document as referred to in the Identification Act, 1997 (Act No. 68 of 1997).

(2) The Department of Home Affairs must, for the purposes of section 90(2) of the Act, report back to the inquiry magistrate, child justice court or probation officer in question about the registration of the age of the child—

- (a) in writing;
- (b) within 30 days after receipt of a copy of the record of the age determination referred to in section 90(1) of the Act;
- (c) by indicating what steps have been taken regarding the registration of the age of the child;
- (d) by giving reasons why the age has not been registered, if that is the case;

- (e) by advising what can be done further to have the age registered; and
- (f) by attaching a copy of any document confirming the registration of the age of the child, if applicable.

Register of children lacking criminal capacity

54. (1) The probation officer must, after having recorded the outcome of the assessment and the decision in terms of section 9(6) of the Act, submit for inclusion in the register referred to in section 97(6) of the Act to the Director-General: Social Development or a person designated by him or her, the particulars required in that section.

(2) The probation officer must inform the Director-General or a person designated by him or her of any failure by a child to comply with any obligation imposed in terms of section 9 of the Act and the manner in which the matter was dealt with.

(3) The probation officer must, upon compliance by the child with the obligations imposed on the child in terms of section 9, inform the Director-General or a person designated by him or her of the particulars of the child's compliance.

(4) The Director-General or a person designated by him or her must, on receipt of the information from the probation officer in terms of subregulations (1), (2) and (3), record the information in the register referred to in section 97(6)(a) of the Act, and file any document so received in the personal file of the child.

Access to register of children lacking criminal capacity

55. (1) The register referred to in section 97(6) of the Act may be accessed by—

- (a) a person or an official involved in the administration of justice;
- (b) a probation officer or a social worker in the exercise of his or her official duties;
- (c) a prosecutor in the exercise of his or her official duties;
- (d) a presiding officer in the exercise of his or her official duties;
- (e) a person who is by law empowered or mandated to take care of the interests of a child, including a legal representative;
- (f) a parent of the child or the appropriate adult or guardian;
- (g) officials of the child and youth care centre involved in the matter;
- (h) members of non-governmental organisations or community-based organisations whose core business is the interest and welfare of the child;
- (i) any researcher conducting research relating to the criminal justice system for children or the interests of a child; and
- (j) a member of the Intersectoral Committee established in terms of section 94 of the Act.

(2) A person referred to in subregulation (1)(h) or (i) who wishes to access the register must—

- (a) complete Part A of Form 10 of the Annexure;
- (b) hand Form 10 to the Director-General: Social Development or the person designated by him or her; and
- (c) identify himself or herself, if requested to do so by the Director-General or designated official.

(3) The Director-General or the designated official must—

- (a) ensure that the person requesting access to the register is a person referred to in subregulation (1);

- (b) immediately after receiving the request to examine the register take a decision and record his or her decision and the reasons for the decision in Part B of Form 10; and
 - (c) ensure that the decision is communicated immediately to the person making the request.
- (4) Form 10 must be filed in accordance with the general prescripts applicable to official documents.
- (5) The register must be examined in the presence of the Director-General or designated official.
- (6) A person who has examined the register must treat the information obtained as confidential.

Manner of notification

56. (1) Any notice required to be submitted in terms of these Regulations may be submitted—

- (a) by hand;
- (b) by registered post;
- (c) by facsimile; or
- (d) electronically,

unless these Regulations provide otherwise.

(2) The person who is to submit the notice must, in determining the manner in which the notice must be submitted, have due regard to the importance of the notice and any actions required in terms of the Act or these Regulations which must be concluded within a specified time period.

(3) The person who submitted the notice must ensure that the person who is to receive the notice has indeed received it, if the notice is submitted in terms of subregulation (1)(c) or (d) and must submit the original notice thereafter by registered post.

(4) The person who submitted the notice must keep proof of the manner in which the notice was submitted.

Short title and commencement

57. These Regulations are called the Regulations relating to Child Justice and come into operation on 1 April 2010.

ANNEXURE

Form 1

REFERRAL OF CHILD UNDER THE AGE OF 10 YEARS SECTION 9(3)(a)(i), (ii) AND (iii) OF THE CHILD JUSTICE ACT, 2008 (ACT NO. 75 OF 2008) REGULATIONS RELATING TO CHILD JUSTICE [Regulations 5, 6 and 7]

Ref/File no.

To: The Clerk of the Children's Court, _____

and

To: _____

(Particulars of the person/Centre where child is)

Particulars of designated Probation Officer

Full names and Surname	
Stationed at	
Contact details	

Particulars of child and person or Centre where child is

Full names and surname of child	
Full names and surname of person and the name of the Centre	
Physical address of person or Centre	

REFERRAL

Please mark appropriate referral with X and complete

☐ **(i) Referral to children's court in terms of section 9(3)(a)(i) of the Act**

After having assessed the above-mentioned child, I am of the view that he/she

* Select the appropriate ground with an X

- ☐ may be a child in need of care and protection as referred to in section 150 (1) and (2) of the Children's Act, 2005;
- ☐ does not live at his or her parents' home or in appropriate alternative care;
- ☐ is alleged to have committed a minor offence/offences aimed at meeting his/her basic needs for food or warmth.

1. I accordingly refer the matter to the children's court to be dealt with in terms of sections 155 and 156 of that Act.
2. I attach a copy of the assessment report referred to in section 40 of the Act and other relevant documents.

Signature: Probation officer

Date:

*For the purposes of the section 97(6) register, the probation officer is required to report to the Director-General: Social Development on the child's compliance with the decision.

OR

☐ **(ii) Referral of child to counselling or therapy in terms of section 9(3)(a)(ii) of the Act**

After having assessed the above-mentioned child, I have decided to refer him or her for counselling/therapy for the reasons set out in the attached assessment report referred to in section 40 of the Act.

1. The child must receive counselling/therapy for the period of -----, or until-----.
2. You are requested to furnish me with reports on the child's progress and compliance with the

decision* ----- (Specify how often).

Signature: Probation officer

Date:

*For the purposes of the section 97(6) register, the probation officer is required to report to the Director-General: Social Development on the child's compliance with the decision.

OR

☐ **(iii) Referral of child to an accredited programme in terms of section 9(3)(a)(iii) of the Act**

After having assessed the above-mentioned child, I have decided to refer him or her to an accredited programme for the reasons set out in the attached assessment report referred to in section 40 of the Act.

2. The child must attend the programme for a period of -----, or until -----.
3. You are requested to furnish me with reports on the child's progress and compliance with the decision* ----- (Specify how often) .

Signature: Probation officer

Date:

*For the purposes of the section 97(6) register, the probation officer is required to report to the Director-General: Social Development on the child's compliance with the decision.

Copy to: -----

(Appropriate persons such as parent)

Official Stamp

Form 2
ORDER FOR THE EVALUATION OF CRIMINAL CAPACITY OF CHILD
SECTION 11 OF THE CHILD JUSTICE ACT, 2008 (ACT NO. 75 OF 2008)
REGULATIONS RELATING TO CHILD JUSTICE
 [Regulation 13]

At the Preliminary Inquiry / In the Child Justice Court	
Held at	
Case no/File no.	

1. Particulars of the child

Full names and surname:

Date of birth/ID.No:..... Age:..... Sex :.....

2. Particulars of parent, appropriate adult or guardian/ Child and Youth Care Centre

(State particulars of person or centre where the child is placed)

Full names and surname of parent, appropriate adult or guardian /Name of Child and Youth Care Centre:.....

Physical address of parent, appropriate adult or guardian / Child and Youth Care Centre:.....

Contact details of parent, appropriate adult or guardian / Child and Youth Care Centre:.....

3. Order by presiding officer

To:.....
.....
.....
.....

(Particulars of person / institution to conduct evaluation)

In view of the fact that there is doubt about the criminal capacity of the above-mentioned child,
I hereby make the following order:-

- (a) You are ordered to evaluate the criminal capacity of
.....; and
- (b) to provide the court with a written report on the evaluation within 30 days of this order.

.....
Signature: Presiding officer

.....
Date

Full names of Presiding officer:.....
Official Stamp

Note: 1. In terms of section 11(4) of the Act, you are required to furnish the inquiry magistrate or child justice court with a written report of the evaluation within 30 days of this order.
2. The written report referred to in (b) above must contain a brief description of how the evaluation of the cognitive, moral, emotional, psychological and social development of the child was done, and include findings and supporting reasons.

Form 3
AGE ESTIMATION OF CHILD BY PROBATION OFFICER
SECTION 13 OF THE CHILD JUSTICE ACT, 2008 (ACT NO. 75 OF 2008)
REGULATIONS RELATING TO CHILD JUSTICE
[Regulation 14]

1. Particulars of the child:

Full names and surname:.....
Sex:.....

2. Age estimation

Indicate with an X which of the following information has been considered and give particulars-

☐ Previous age determination	
Statement by -	
☐ parent	
☐ appropriate adult	
☐ guardian	
☐ community or religious leader	
☐ child	
☐ School registration form	
☐ School report	
☐ Baptismal or religious certificate	
☐ Age estimation by a medical practitioner	

Attach copies of relevant documents, where necessary

Other relevant information (provide details)

.....

.....

.....

.....

OPINION:

Based on the information set out above and the child's general appearance, the age of
is estimated at:

Signature: Probation Officer

Date

Full names and Surname:.....

Official Stamp

Stationed at:.....

Contact details

Form 4

AGE ESTIMATION OF CHILD BY MEDICAL PRACTITIONER
SECTION 14 OF THE CHILD JUSTICE ACT, 2008 (ACT NO. 75 OF 2008)
REGULATIONS RELATING TO CHILD JUSTICE
 [Regulation 15]

At the Preliminary Inquiry / In the Child Justice Court held at	
Case no/File no.	

PART A**Personal particulars of child**

Full names and surname	
Sex	

Particulars of parent, appropriate adult or guardian or Child and Youth Care Centre

Full names and surname / Name of Centre	
Contact details of person/ Centre	
Physical address of person/Centre	

PART B
REFERRAL OF CHILD TO MEDICAL PRACTITIONER

TO: Particulars of medical practitioner

Full names and Surname	
Particulars of hospital, clinic or practice	
Contact details	

Since there is uncertainty as to the age of the child mentioned above, the child is referred to you in terms of section 14(2)(d) of the Child Justice Act, 2008 for an estimation of age.

 Signature: Presiding Officer
 Date:

PART C**MEDICAL ASSESSMENT OF CHILD**

Height		
Weight		
Condition of :	Face	
	Lungs	
	Heart	
	Teeth	
	Sight	
	Hearing	
	Speech	
	Bone structure	
	Neurological state	
	Intellect	
Any diseases, infection, injuries or impairment. (Indicate degree)		
Nutrition	Adequate/deficient. If deficient, provide details.	
Vaccinations	Yes/ No.	

	If yes, provide details.	
Physical development	Normal/abnormal. If abnormal, provide details.	
Sexual organs	Breasts	
	Pubic hair	
	Genitals	
	Auxiliary	
Substance abuse	Yes/ No. If yes, provide details.	
Other Observations	Provide details	
Medical or other treatment required/ recommended		

Remarks

.....

.....

.....

.....

Opinion/conclusion

Based on the above-examination and the child's general appearance –

- (a) The age of the child is assessed at being between and, the most probable age is
- (b) The possible date of birth could be

Signature: Medical Practitioner

Date

Official Stamp

Form 5
SWORN STATEMENT IN RESPECT OF PLACEMENT OF CHILD
SECTIONS 29(4) AND 40(2) OF THE CHILD JUSTICE ACT, 2008 (ACT NO. 75 OF 2008)
REGULATIONS RELATING TO CHILD JUSTICE
 [Regulations 23 and 27]

Particulars of child (furnish particulars to the extent known)

Full names and surname		
Age	Date of birth:	Sex:

I, state under oath that:

1. I am responsible for the management ofChild and Youth Care Centre.
2. I confirm that this Centre has capacity to accommodate ----- children and at present the Centre is accommodatingchildren. The Centre is accordingly

(Tick the appropriate box)

- ☐ in a position to accommodate the above-mentioned child.
- ☐ not in a position to accommodate the above-mentioned child.

3. The Centre is equipped with:

.....

.....

.....

(State features and amenities)

4. The Centre is safe and secure as :

.....

.....

.....

(Describe security measures installed at the Centre)

.....

Signature: Manager

.....

Date

OATH/DECLARATION

I certify that prior to administering the oath/affirmation I asked the deponent the following questions and recorded his/her answers in his/her presence:

Do you know and understand the contents of the above statement?

Do you have any objection to taking the prescribed oath?

Do you consider the oath to be binding on your conscience?

I certify that the deponent has acknowledged that he/she understands the contents of this declaration. The deponent uttered the following words- "I swear that the contents of this declaration are true, so help me God"/ "I truly affirm that the contents of the declaration are true". The signature/thumb print/mark of the deponent was placed thereon in my presence.

Signed at **on this** **day of** **20**.....

.....

Commissioner of Oaths

Full names:.....

Designation:.....

Area:.....

Business Address:

Form 6
DIVERSION ORDER
SECTION 53 (1) OF THE CHILD JUSTICE ACT, 2008 (ACT NO. 75 OF 2008)
REGULATIONS RELATING TO CHILD JUSTICE
 [Regulation 29]

At the preliminary inquiry /

In the Child Justice Court held at :

Case no (if applicable):

TO:

Particulars of the child

Full names and Surname:

Age :..... Date of birth: Sex:.....

Physical Address:

.....

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Particulars of the Order

PART A

Compulsory School Attendance Order in terms section 53(1)(a) of the Act

- (i) You are ordered to attend school, in
(place) every school day, from the date of this order until
, unless excused by the school principal/headmaster or the educator
 appointed by the headmaster for this purpose, for reasons acceptable to the school and the
 Department of Education.
- (ii) Under this order you are required to -
- remain at the school during school hours;
 - report to the responsible educator;
 - perform school work, including homework, diligently;
 - co-operate with the educators;
 - abide by the school rules; and
 - participate in the following extra curriculum activities (specify):
- (iii) Mr/Ms, in his/her capacity as will monitor
 your compliance with the order and report back.
- (iv) Your failure to comply with this order may result in a warrant being issued for your arrest.

.....
Signature: Presiding officer

.....
Date

Name of the Presiding officer:

PART B

Family Time Order in terms of section 53(1)(b) of the Act

- (i) You are ordered to spend at least hours per week /month with your family.
- (ii) Under this order you are required to-
- interact with members of your family;
 - help with, or perform, household duties;
 - do your homework;
 - listen to and co-operate with other family members;
 - behave in the following manner
 -
 -
 -
 -
- (iii) This order will apply from the date of this order until
- (iv) Mr/Ms, in his/her capacity as, will monitor your compliance with this order and report back.
- (v) Your failure to comply with this order may result in a warrant being issued for your arrest.

.....
Signature: Presiding officer

.....
Date

Name of the Presiding officer:

PART C

Good Behaviour Order in terms of section 53(1)(c) of the Act

- (i) From the date of this order until ----- you are ordered to abide by the following standard of behaviour:-----

- (ii) Stop the following behaviour:

- (iii) Under this order you are required to-
- interact with members of your family;
 - help with, or perform, household duties;
 - do your homework;
 - listen to and co-operate with other family members;
 - attend community activities approved by your parents, appropriate adult or guardian;
- -----

- (iv) Mr/Ms will monitor your compliance with this order and report back .
- (v) Your failure to comply with this order may result in a warrant being issued for your arrest.

.....
Signature: Presiding officer

.....
Date

Name of the Presiding officer:.....

PART D

Peer Association Order in terms of section 53(1)(d) of the Act

(i) You are ordered to associate with the following person/s:

.....

(Identify the persons with sufficient detail to avoid any confusion on the part of the child)

(ii) You are further ordered to refrain from associating with the following persons:

.....

(Identify the persons with sufficient detail to avoid any confusion on the part of the child)

(iii) The order will apply from the date of this order until

(iv) Mr/Ms will monitor your compliance with this order and report back.

(v) Your failure to comply with the order may result in a warrant being issued for your arrest.

.....
Signature: Presiding officer

.....
Date

Name of the Presiding officer:.....

PART E

Reporting Order in terms of section 53(1)(e)

(i) You are ordered to report -

- to Mr/Ms.....;
- at
- (Indicate how often or

when)

from the date of this order until

(ii) You must report to Mr/Ms, on the following:

.....

(iii) Mr/Ms may require you to:

.....

(iv) Mr /Ms will monitor your compliance with this order and report back.

(v) Your failure to comply with the order may result in a warrant being issued for your arrest.

.....
Signature: Presiding officer

.....
Date

Name of the Presiding officer:.....

PART F

Supervision and Guidance Order in terms of section 53(1)(f)

- (i) You are placed under the supervision and guidance of,
abased
at, from the date of this order until
.....
- (ii) You will be supervised and guided in respect of the following:
.....
.....
.....
- (iii) You are required to immediately contact and meet with Mr/Ms, at
....., to develop a supervision and guidance plan. The supervision and guidance plan must include the following:
▪ details of the sessions; (number, times and place)
▪ objectives to be achieved; and
▪ responsibilities.
- (iv) Mr/Mswill act as your mentor and assist you to achieve the objectives of the plan. Mr/Ms will monitor your compliance with the order and report back.
- (iv) Your failure to comply with the order may result in a warrant being issued for your arrest.

.....
Signature: Presiding officer.....
Date

Name of the Presiding officer:.....

Form 7

**CERTIFICATE OF ACCREDITATION OF DIVERSION SERVICE PROVIDER
SECTION 56 OF THE CHILD JUSTICE ACT, 2008 (ACT NO. 75 OF 2008)
REGULATIONS RELATING TO CHILD JUSTICE
[Regulation 31]**

This is to certify that:

(Name and physical address)

Reg No:-----

Accreditation Certificate No: -----

is an accredited diversion service provider to provide diversion programmes, provided that the service provider continues to comply with the minimum standards referred to in section 55 of the Act.

This certificate of accreditation is valid for a period of four years, commencing on and expiring on

Minister: Social Development

Date:

Official Stamp

Form 8

**CERTIFICATE OF ACCREDITATION OF DIVERSION PROGRAMME
SECTION 56 OF THE CHILD JUSTICE ACT, 2008 (ACT NO. 75 OF 2008)
REGULATIONS RELATING TO CHILD JUSTICE
[Regulation 31]**

This is to certify that :

-----,

an accredited service provider,

Accreditation Certificate No.-----

is accredited to provide the following diversion programme-

-----,

provided that the diversion programme/s continue to comply with the minimum standards referred to in section 55 of the Act.

This certificate of accreditation is valid for a period of four years, commencing onand
expiring on

Minister: Social Development

Date:

Official Stamp

Form 9

**REPORT ON COMPLIANCE OR NON-COMPLIANCE WITH DIVERSION ORDER
SECTIONS 57 AND 58 OF THE CHILD JUSTICE ACT, 2008 (ACT NO. 75 OF 2008)
REGULATIONS RELATING TO CHILD JUSTICE
[Regulations 33 and 34]**

To: The Clerk of the Child Justice Court:-----

Case No:----- (if available)

AND

To: The Prosecutor:-----

1. Particulars of child

Full names and surname:-----
Physical Address:-----

2. Particulars of the order

Alleged offences:-----
Diversion order:-----
Order issued by:-----
Date:-----

(attach copy of order if available)

3. Particulars of the probation officer/person identified to monitor compliance

Full names and surname:-----
Stationed at:-----
Contact details:-----

4. Notification on non-compliance in terms of section 57(2)

Provide full details of the nature and the extent of the failure to comply, including dates and times, and the implications thereof:

Indicate whether any corrective measures were taken, if yes, indicate the results thereof-----

Recommendations: -----

(Provide facts and if an opinion is expressed, it must be motivated)
 (Attach supporting documents, if any)

5. Report on successful compliance in terms of section 57(5)

Provide full details of compliance: -----

Indicate to what extent the objectives of diversion referred to in section 51 of the Act have been met:-----

Signature: Probation Officer /Person identified to monitor compliance

Date

Official Stamp

Form 10

**APPLICATION TO ACCESS THE REGISTER OF DIVERSION ORDERS OR REGISTER OF CHILDREN
 LACKING CRIMINAL CAPACITY
 SECTION 60 OR SECTION 97(6) OF THE CHILD JUSTICE ACT, 2008 (ACT NO. 75 OF 2008)
 REGULATIONS RELATING TO CHILD JUSTICE
 [Regulations 36 and 55]**

CAS/CR NO:.....

To: Director-General/Designated official

Part A

(To be completed by applicant)

1. Particulars of applicant

Full names and surname	
Identity Number	
Capacity/occupation	
Name of employer/ business	
Physical address	
Contact details	

2. Reasons for examination of register

Reasons for examination (The reasons must be for purposes set out in section 60(2)(a) and (b) or section 97(6)(c) of the Act)	

Signature: Applicant

Date

Part B

(To be completed by the Director- General or designated official)

3. Decision on application for examination

Request granted/ refused	
Reasons for decision	

Signature: Director- General /
Designated official

Date

Official Stamp

Form 11

NOMINATION OF INDEPENDENT OBSERVER
SECTION 1 READ WITH SECTION 65 OF THE CHILD JUSTICE ACT, 2008 (ACT NO. 75 OF 2008)
REGULATIONS RELATING TO CHILD JUSTICE
 (Regulation 38)

PART A: NOMINATION

Personal Particulars of the Nominator

Full names and surname:	
ID No.	
Physical Address:	
Contact details : (Home, work and cellphone number or email address)	
Name and contact details of institution represented, if applicable	

Particulars of the nominee

Full names and surname :	
ID No :	
Physical address:	
Contact details: (Home, work and cellphone number or email address)	
Reason for nomination :	

.....
Signature: Nominator

.....
Date:

.....
Place

PART B: ACCEPTANCE OF NOMINATION

Full names and surname :	
ID No.	
Physical Address:	
Contact Details: (Home, work and cellphone number or	

email address)	
Language Proficiency:	
Occupation:	
Have you ever been convicted of an offence?	
Background Information: (Include cultural background and social interest, in particular the welfare and interests of children)	
Membership details: (other membership or positions held)	
Other information relevant for purposes of nomination as an independent observer:	

I declare that the information provided above is to the best of my knowledge and belief true and correct.

I accept the nomination to serve as an independent observer and declare myself a fit and proper person for nomination.

I accept that serving as an independent observer is a social responsibility and that I do not expect any payment for services rendered.

Signature: Nominee

Date: -----

Place:-----

Form 12

**REPORT BY THE HEAD OF CHILD AND YOUTH CARE CENTRE REGARDING THE POSSIBILITY OF
CHILD'S REINTEGRATION INTO SOCIETY WITHOUT SERVING TERM OF IMPRISONMENT
SECTION 76 OF THE CHILD JUSTICE ACT, 2008 (ACT NO. 75 OF 2008)
REGULATIONS RELATING TO CHILD JUSTICE
[Regulation 44]**

TO: The Clerk of the Child Justice Court

3.5 Indicate the possibility of the child's re-integration into society without having served the additional term of imprisonment: -----

Recommendations:

(Provide facts, and if an opinion is expressed it must be motivated)
(Attach supporting documents, if any)

Signature: Head: Child and Youth Care Centre

Date: -----

Official Stamp

Form 13

APPLICATION FOR EXPUNGEMENT OF RECORDS OF CONVICTION AND SENTENCE BY THE DIRECTOR-GENERAL OR CABINET MEMBER SECTIONS 87(1) AND 87(3) OF THE CHILD JUSTICE ACT, 2008 (ACT NO. 75 OF 2008) REGULATIONS RELATING TO CHILD JUSTICE

[Regulation 49]

Note Copies of section 87 and Schedules 1, 2 and 3 of the Act are available at every magistrate's office and on the Department's website at: <http://www.doj.gov.za>.

Before submitting this application form you must obtain a copy of your criminal record from the Criminal Record Centre of the South African Police Service. Any police station may assist you in this regard. Attach the copy of the criminal record to this application form.

Full names and surname: _____
Age: _____ ID No/Date of birth: _____
Physical address: _____

Postal address: _____

Full names and surname: _____
ID No.: _____
Relationship to the child: _____
Physical address (if different from the child's): _____

Office:----- Schedule (1 or 2):-----
Case No, if known:-----
Child Justice Court :-----
Date of conviction:-----
Sentence:-----

(a) in respect of offences referred to in Schedules 1 and 2 of the Child Justice Act, 2008;
(b) if a period of 5 years has elapsed after a conviction of a Schedule 1 Offence;
(c) if a period of 10 years has elapsed after a conviction of a Schedule 2 Offence; and
(d) if the child has not been convicted of a similar or more serious offence during the period of 5 or 10 years.

☐ A period of 5 years has elapsed after the date of conviction of a Schedule 1 offence.

☐ A period of 10 years has elapsed after the date of conviction of a Schedule 2 offence.

☐ Yes ☐ No

I request that a certificate of expungement be issued directing the Criminal Record Centre to expunge the records of my conviction and sentence in terms of section 87(1) of the Child Justice Act, 2008.

5. Expungement by Cabinet member in terms of section 87(3)

This application can only be made-

- (a) *for offences referred to in Schedules 1 and 2 of the Child Justice Act, 2008;*
- (b) *in the case where the period of 5 years in respect of a Schedule 1 offence or the period of 19 years in respect of a Schedule 2 offence has not elapsed but where exceptional circumstances exist justifying expungement; and*
- (c) *if the child has not been convicted of a similar or more serious offence during the period of 5 or 10 years.*

Mark appropriate box with X

☐ A period of 5 years has not elapsed after the date of conviction of a Schedule 1 offence.

☐ A period of 10 years has not elapsed after the date of conviction of a Schedule 2 offence.

Notwithstanding the fact that the period of 5 years for a Schedule 1 offence or a period of 10 years for a Schedule 2 has not elapsed, the following exceptional circumstances justify expungement: -----

(Attach supporting documents, if any)

Have you been convicted of an offence during the period mentioned above?

☐ Yes ☐ No

If yes, provide details of all the offences which you were convicted of during the 5 or 10 year period and also indicate why the offence is not similar or more serious than the offence indicated in paragraph 3 above:-----

I request that a certificate of expungement be issued directing the Criminal Record Centre to expunge the records of my conviction and sentence in terms of section 87(3) of the Child Justice Act, 2008.

I certify that the information provided in this form is to the best of my knowledge true and correct.

Signature: Applicant

Date

Form 14

**CERTIFICATE OF EXPUNGEMENT OF CONVICTION AND SENTENCE BY DIRECTOR-GENERAL:
JUSTICE AND CONSTITUTIONAL DEVELOPMENT
SECTION 87(2) OF THE CHILD JUSTICE ACT, 2008 (ACT NO. 75 OF 2008)
REGULATIONS RELATING TO THE CHILD JUSTICE
(Regulation 50)**

Acting in terms of section 87(2) of the Child Justice Act, 2008 (Act No. 75 of 2008), I, -----
-----, issue this certificate of expungement in respect of the following
applicant:

Surname:-----
Full names:-----
ID No/Date of birth :-----

in respect of the following:

OFFENCE	DATE OF CONVICTION	SENTENCE

Signature: Director-General: Department of Justice and Constitutional Development

Date:

Official Stamp

Form 15

CERTIFICATE OF EXPUNGEMENT OF CONVICTION AND SENTENCE BY CABINET MEMBER
SECTION 87 (3) OF THE CHILD JUSTICE ACT, 2008 (ACT NO. 75 OF 2008)
REGULATIONS RELATING TO THE CHILD JUSTICE
(Regulation 51)

Acting in terms of section 87(3) of the Child Justice Act, 2008 (Act No. 75 of 2008), I, _____
_____, issue this certificate of expungement in respect of the
following applicant:

Surname:_____

Full names:_____

ID No/Date of birth :_____

in respect of the following:

OFFENCE	DATE OF CONVICTION	SENTENCE

Signature :Cabinet member responsible for the administration of justice

DATE:

Official Stamp