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THE PRESIDENCY

No. 549

11 May 2009

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

No. 75 of 2008: Child Justice Act, 2008



AIDS HELPLINE: 0800-123-22 Prevention is the cure

*(English text signed by the President.)
(Assented to 7 May 2009.)*

ACT

To establish a criminal justice system for children, who are in conflict with the law and are accused of committing offences, in accordance with the values underpinning the Constitution and the international obligations of the Republic; to provide for the minimum age of criminal capacity of children; to provide a mechanism for dealing with children who lack criminal capacity outside the criminal justice system; to make special provision for securing attendance at court and the release or detention and placement of children; to make provision for the assessment of children; to provide for the holding of a preliminary inquiry and to incorporate, as a central feature, the possibility of diverting matters away from the formal criminal justice system, in appropriate circumstances; to make provision for child justice courts to hear all trials of children whose matters are not diverted; to extend the sentencing options available in respect of children who have been convicted; to entrench the notion of restorative justice in the criminal justice system in respect of children who are in conflict with the law; and to provide for matters incidental thereto.

PREAMBLE

RECOGNISING—

- that before 1994, South Africa, as a country, had not given many of its children, particularly black children, the opportunity to live and act like children, and also that some children, as a result of circumstances in which they find themselves, have come into conflict with the law;

AND MINDFUL that—

- the Constitution of the Republic of South Africa, 1996, as the supreme law of the Republic, was adopted to establish a society based on democratic values, social and economic justice, equality and fundamental human rights and to improve the quality of life of all its people and to free the potential of every person by all means possible;
- the Constitution, while envisaging the limitation of fundamental rights in certain circumstances, emphasises the best interests of children, and singles them out for special protection, affording children in conflict with the law specific safeguards, among others, the right—
 - * not to be detained, except as a measure of last resort, and if detained, only for the shortest appropriate period of time;
 - * to be treated in a manner and kept in conditions that take account of the child's age;
 - * to be kept separately from adults, and to separate boys from girls, while in detention;

- * to family, parental or appropriate alternative care;
- * to be protected from maltreatment, neglect, abuse or degradation; and
- * not to be subjected to practices that could endanger the child's well-being, education, physical or mental health or spiritual, moral or social development; and
- the current statutory law does not effectively approach the plight of children in conflict with the law in a comprehensive and integrated manner that takes into account their vulnerability and special needs;

AND ACKNOWLEDGING THAT—

- there are capacity, resource and other constraints on the State which may require a pragmatic and incremental strategy to implement the new criminal justice system for children;

THIS ACT THEREFORE AIMS TO—

- establish a criminal justice system for children, who are in conflict with the law, in accordance with the values underpinning our Constitution and our international obligations, by, among others, creating, as a central feature of this new criminal justice system for children, the possibility of diverting matters involving children who have committed offences away from the criminal justice system, in appropriate circumstances, while children whose matters are not diverted, are to be dealt with in the criminal justice system in child justice courts;
- expand and entrench the principles of restorative justice in the criminal justice system for children who are in conflict with the law, while ensuring their responsibility and accountability for crimes committed;
- recognise the present realities of crime in the country and the need to be proactive in crime prevention by placing increased emphasis on the effective rehabilitation and reintegration of children in order to minimise the potential for re-offending;
- balance the interests of children and those of society, with due regard to the rights of victims;
- create incrementally, where appropriate, special mechanisms, processes or procedures for children in conflict with the law—
 - that in broad terms take into account—
 - ◆ the past and sometimes unduly harsh measures taken against some of these children;
 - ◆ the long-term benefits of a less rigid criminal justice process that suits the needs of children in conflict with the law in appropriate cases; and
 - ◆ South Africa's obligations as party to international and regional instruments relating to children, with particular reference to the United Nations Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child;
 - in specific terms, by—
 - ◆ raising the minimum age of criminal capacity for children;
 - ◆ ensuring that the individual needs and circumstances of children in conflict with the law are assessed;
 - ◆ providing for special processes or procedures for securing attendance at court of, the release or detention and placement of, children;
 - ◆ creating an informal, inquisitorial, pre-trial procedure, designed to facilitate the disposal of cases in the best interests of children by allowing for the diversion of matters involving children away from formal criminal proceedings in appropriate cases;

- ♦ providing for the adjudication of matters involving children which are not diverted in child justice courts; and
- ♦ providing for a wide range of appropriate sentencing options specifically suited to the needs of children,

PARLIAMENT of the Republic of South Africa therefore enacts as follows:—

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