

(4) Whilst in detention in police custody, a child shall -

- (a) be held in conditions and treated in a manner that takes account of his age;
- (b) be held separately from adults and boys shall be held separately from girls;
- (c) be held, as far as possible, in conditions which will minimise the risk of harm to that child, including the risk of harm from other children;
- (d) have the right-
  - (i) to adequate food;
  - (ii) to medical treatment when required;
  - (iii) of access to reasonable visits by parents, guardians, legal representatives, social workers, health workers and religious counsellors;
  - (iv) of access to reading material;
  - (v) to adequate exercise; and
  - (vi) of access to adequate clothing, including sufficient blankets and bedding.

(5) No child may be held in detention in police custody for longer than 48 hours prior to appearing before an inquiry magistrate.

(6) A child may only be remanded to detention in police custody for a period of 48 hours and for one further period of a maximum of 48 hours where no alternative action can be taken.

(7) No police officer may admit, or allow a child to remain, in detention in police custody after the expiry of the periods of time set in subsections (5) and (6), and any police officer admitting or allowing such child to remain in police custody longer than the said periods of time, commits an offence and on conviction, personally liable for damages incurred.

(8) Where a child in police custody makes a complaint regarding injury sustained by that child during arrest or whilst in detention, the police officer to whom such complaint is made, shall report the complaint to the station commander who shall, within a reasonable time cause the child to be taken to a medical officer for examination and treatment and attach the report of the medical officer to the police docket relating to the child concerned.

(9) A police officer or station commander who fails to comply with the provisions of subsection (8) commits an offence and is on conviction civilly liable for the injuries incurred after being made aware of the complaint.

(10) A police officer of a sex different from that of the detained child shall not have any physical contact with such child while in detention except in the presence of a police officer of the same sex as that of the child or where a police officer of the same sex is not available.

(11) A police officer who contravenes the provisions of subsection (10) commits an offence and is liable on conviction to a fine of not less than two thousand emalangi or to 6 months imprisonment or both.

***Powers of police to release a child from detention before preliminary inquiry.***

104. (1) In respect of a child accused of any offence, consideration should be given to the release of such child from detention in police custody pending a preliminary inquiry.

(2) A child shall, unless there are substantial reasons not to do so, be released from detention in police custody by a police officer on own recognisances, or into the care of a parent or guardian on one or more conditions as set out under subsection (4).

(3) Where a child is alleged to have committed a serious offence, a child may be released from police custody by a police officer, in consultation with the Director of Public Prosecutions on one or more conditions as set out under subsection (4).

(4) Conditions of release of a child for the purposes of this section include the following -

- (a) the obligation to appear at a specified time and place for assessment not later than 48 hours after the arrest;
- (b) the obligation to report periodically to a specified person or place;
- (c) the prohibition not to interfere with witnesses, to tamper with evidence or to associate with a person, persons or group of specified people; and
- (d) the obligation that the child has to return to his home or to a specified address.

(5) Where a child has not been released from detention in police custody prior to the holding of a preliminary inquiry, the arresting officer shall provide the relevant inquiry magistrate with a written report giving reasons why such child could not be released from detention in police custody.

(6) The Commissioner of Police shall provide -

- (a) transport costs or transport assistance in respect of a child who is released from police custody on own recognisances; and
- (b) recovery of transport costs from a child to whom such costs had been provided if it appears that such child or his family is able to pay for such costs.

***Child not charged until matter entered on roll of Children's Court.***

105. For the purposes of proceedings under this Act, a child is deemed not to be charged until, after the finalisation of the preliminary inquiry, the prosecutor enters the matter on the roll of the Children's Court under the provisions of this Act and formally puts the charges to the child.

**PART XIII  
PRELIMINARY INQUIRY**

***Nature and purposes of preliminary inquiry.***

106. (1) For the purposes of this Act and any other Act, the proceedings of a preliminary inquiry shall be regarded as the proceedings of the Children's Court.

(2) The place where a child will appear for purposes of the holding of the preliminary inquiry, shall be determined and be presided over by the inquiry magistrate.

- (3) The purposes of a preliminary inquiry are to enable the inquiry magistrate to -
- (a) ascertain whether an assessment of a child has been effected by a social worker, and if not, whether compelling reasons exist as to why an assessment can be dispensed with;
  - (b) order that an assessment be effected, if it has not yet been done;
  - (c) establish whether the matter can be diverted before charges are instituted in the Children's Court or any other court under the provisions of this Act;
  - (d) refer the matter to a prosecutor for charges to be instituted in the Children's Court where the child does not admit responsibility for the alleged offence or where diversion of the matter is not possible;
  - (e) transfer the matter to the Children's Court;
  - (f) determine release or placement of the child pending -
    - (i) the finalisation of the preliminary inquiry; or
    - (ii) referral to the Children's Court.
  - (g) to determine whether or not the child possesses criminal capacity under section 79(2).

***Procedure in preliminary inquiry.***

107. (1) A preliminary inquiry shall be held-

- (a) if a child has been arrested as referred to under section 96, within 48 hours of such arrest; and
- (b) if an alternative to arrest as referred to under section 98 has been effected, within 72 hours of such alternative having been employed.

(2) At the commencement of the preliminary inquiry the prosecutor shall ensure that the inquiry magistrate is in possession of -

- (a) the age assessment report, save where assessment has not been effected; and
- (b) any further supporting documentation that the prosecutor deems relevant to the preliminary inquiry or that is required under this Act.

(3) At the commencement of the preliminary inquiry, the inquiry magistrate shall inform the child in the language that the child understands of the following rights-

- (a) the right to challenge evidence and the right to adduce evidence;
- (b) the right to remain silent;
- (c) the right to have the child's parents or guardian present at the preliminary inquiry;

- (d) the right to choose and to be represented by a legal practitioner at his own cost; and
- (e) the right to legal assistance by a lawyer appointed by the State or the Children's Court.

(4) No persons other than the following are entitled to attend the preliminary inquiry-

- (a) the child and the parents or guardian;
- (b) a prosecutor;
- (c) a social worker;
- (d) the arresting officer or other police officer;
- (e) the child's legal representative; and
- (f) any other person served with a subpoena, requested or permitted to attend the preliminary inquiry as referred to under section 109 (1) (a) or (b).

(5) The preliminary inquiry may not be held in the absence of the child concerned.

(6) The preliminary inquiry may be held in a room, office, chamber or closed court but may not be held in an open court.

(7) The proceedings shall be conducted in an informal manner, and the inquiry magistrate is responsible for conducting the proceedings, asking the necessary questions, interviewing any person or persons attending the inquiry and eliciting any information that is required.

(8) Evidence of a previous diversion or previous charge proved may be elicited or adduced at the preliminary inquiry by any person.

(9) The inquiry magistrate shall keep a record of the proceedings of the preliminary inquiry or cause such a record to be kept.

***Separation and joinder of preliminary inquiry.***

108. (1) If the child in respect of whom the holding of a preliminary inquiry is contemplated, is co-accused of an alleged offence with an adult, the case of the adult concerned may on the directive of the Director of Public Prosecutions be separated from that of the child and will not be subject to the provisions of this Act.

(2) If the child in respect of whom the holding of a preliminary inquiry is contemplated, is co-accused with one or more other children, a joint preliminary inquiry as provided in Section 87 of this Act may be held in respect of all children concerned but, the inquiry proceedings may be separated at any time where this is in the best interests of any of the children.

***General powers and duties of the inquiry magistrate.***

109. (1) The inquiry magistrate may -

- (a) cause a subpoena to be served on any person whose presence is necessary for the finalisation of the preliminary inquiry;

- (b) request or permit the attendance of any person, who, in his opinion can contribute to the proceedings of the preliminary inquiry;
- (c) request the production of any further documentation or may elicit any further information to supplement that referred to under section 107 (2), which is relevant or necessary to the proceedings;
- (d) make a determination of age referred to under section 84;
- (e) after consideration of the information contained in the assessment report, elicit any information from the persons attending the inquiry to supplement or clarify the information contained in the assessment report, and which is necessary in order to enable him to make the decision referred to under section 110 (4); and
- (f) take such steps as he deems necessary to establish the truth of any statement or submission that may be in dispute.

(2) Where a social assessment has not been effected, the inquiry magistrate shall instruct the prosecutor to refer the child to a social worker in order for an assessment to be effected but, the inquiry magistrate may decide that assessment may be dispensed with if compelling reasons for doing so exist, and if it is in the best interests of the child.

(3) An inquiry magistrate shall apprise himself of diversion programmes available as well as their aims and content.

***Decisions to divert and factors to be considered.***

110. (1) In regard to all matters brought before the preliminary inquiry, the prosecutor shall decide whether to divert the matter or not and inform the inquiry Magistrate accordingly.

(2) In order to establish whether or not diversion is possible, the prosecutor shall have regard to-

- (a) the assessment report, unless the assessment of the child has been dispensed with under section 109 (2);
- (b) the views of any person present at the preliminary inquiry;
- (c) any further information provided by any person present at the preliminary inquiry; and
- (d) any further information requested by him in the course of conducting the preliminary inquiry.
- (e) the criteria specified in section 127(1).

(3) After consideration of the social assessment report, if the assessment has not been dispensed with under section 109 (2), and decision by the prosecutor, the inquiry magistrate may-

- (a) make an order to divert the matter in accordance with the standards and requirements set out under section 126 and section 127 and in terms of any of the options set out under section 128; or

(b) refer the matter to a prosecutor for charges to be instituted in the Children's Court or any other court acting under the provisions of this Act.

(4) After the prosecutor has made a decision to divert the matter in terms of subsection (2), and if formal programmes for diversion are not available, or are not appropriate to the circumstances of a child, his family or the alleged offence, the prosecutor shall, as far as is possible, develop a diversion strategy which meets the standards and requirements of diversion set out under sections 126 and 127 and which is appropriate to the circumstances of a particular child, his family, community or origin and the alleged offence.

(5) The inquiry magistrate shall-

(a) if a referral to the Children's Court has been made in terms of section 110 (3) (b), record written reasons for such referral; and

(b) receive and consider the reports regarding arrest of the child and detention in police custody provided by the arresting police officer under sections 97 (3) and 104 (5) respectively, and if, in the opinion of the inquiry magistrate, an arrest or detention in a police cell, as the case may be, was necessary, he shall forward a copy of the record referred to in those sections to the parent, guardian or legal representative of the child.

***Sufficiency of evidence in a preliminary inquiry.***

111. (1) An inquiry magistrate who intends to refer the matter to a prosecutor for charges to be instituted in the Children's Court or other court in terms of section 110 (3) (b), shall satisfy himself that there is sufficient evidence to sustain a prosecution, and for this purpose he may request the prosecutor, the investigating officer or any other relevant person to provide an oral report concerning the sufficiency of such evidence.

(2) If the inquiry magistrate has substantial and compelling reasons to believe that there is insufficient evidence to support the institution of charges against the child, he shall close the preliminary inquiry and-

(a) order that a child, if in detention, be released; or

(b) the child be released with an order for appropriate intervention by a social worker.

(3) If at any stage of the preliminary inquiry it appears that the child concerned does not intend to accept responsibility for the alleged offence as referred to under 127 (1) (a), the inquiry magistrate shall, subject to the provisions of subsection (1) regarding sufficiency of evidence, refer the matter to the prosecutor for charges to be instituted in the Children's Court or any other court acting in terms of the provisions of this Act.

***Inquiry magistrate's duty where child previously released or alternatives to arrest used.***

112. Where a child has been previously released from detention, or where an alternative to arrest under section 94 has been used, and the matter is to be transferred to a prosecutor for charges to be instituted in the Children's Court or any other court in terms of section 110 (4) (b), the inquiry magistrate-

(a) shall warn the child in language that the child understands to appear on a specified date at a specified place and at the specified time at such Children's Court inquiry; and

- (b) may extend or confirm any conditions of release that were in operation by virtue of the provisions of section 104 (3) prior to the child's appearance at the preliminary inquiry.

***Inquiry magistrate's duty to inquire into possible release of child from detention.***

113. (1) Where a child who appears at a preliminary inquiry has been arrested, and has not been released previously from detention under section 104, the inquiry magistrate, when remanding the matter under section 114 (1) or (2); or referring the matter to the Children's Court or other court for charges to be instituted in terms of section 110 (4) (b), shall establish whether the child can be released from detention pending-

- (a) finalisation of the preliminary inquiry; or
- (b) the institution of charges in the Children's Court or any other court.

(2) The inquiry magistrate shall, in making the determination referred to in subsection (1), have regard to the recommendation of a social worker in respect of release from detention contained in the social assessment report, as well as any further evidence which has been placed before him by the child or any other person .

(3) Release of a child into the care of a parent or guardian on one or more of the conditions set out in subsection (5) shall be considered as a measure of first resort.

(4) A child may be released on his own recognisance with or without conditions as set out in subsection (5).

(5) Conditions of release of a child for the purposes of this section include -

- (a) the obligation to appear before the Children's Court or any other court acting in terms of the provisions of this Act at a specified place on a specified date and at a specified time;
- (b) the obligation to report periodically to a specified person or place;
- (c) the prohibition not to interfere with witnesses, to tamper with evidence or to associate with a person, persons, or group of specified people; and
- (d) if the preliminary inquiry has been remanded under section 114, the obligation to appear at further proceedings of the preliminary inquiry at a specified place on a specified date and at a specified time.

(6) Where a decision is made at the preliminary inquiry to divert a child under the provisions of section 110 (4) (a), the child shall be released from custody.

***Remanding of preliminary inquiry.***

114. (1) The inquiry magistrate may remand a preliminary inquiry for a period of 48 hours, if it is necessary for the purposes of-

- (a) securing the attendance of a person necessary for the finalisation of the inquiry;
- (b) obtaining information necessary for the finalisation of the inquiry;

- (c) establishing the attitude of the victim to diversion;
- (d) furthering the development of a diversion option; or
- (e) finding alternatives to pre-trial residential detention.

(2) The preliminary inquiry may be remanded for a further period of 48 hours, after which the matter may be referred to a prosecutor for charges to be instituted in the Children's Court or any other court acting in terms of the provisions of this Act.

(3) Where a preliminary inquiry is remanded for purposes of the noting of a confession, admission, pointing out or the holding of an identity parade, the inquiry magistrate shall inform the child of his right to have a parent, guardian or legal representative present during such proceedings.

(4) Where a child cannot be released into the care of a parent or guardian, such child may, subject to section 113 (2), be remanded to a place of safety or a secure care facility, or if a place of safety or secure care facility is not available, and subject to the provisions of section 103 (7), to a police cell pending finalization of the preliminary inquiry.

(5) Where the matter has not been referred to the Children's Court or any other court as referred to in subsection (2), the preliminary inquiry shall be closed and-

- (a) the child be released from custody; or
- (b) the child be released and an alternative intervention by a social worker be applied.

***Circumstances under which a child may be remanded in detention after finalisation of preliminary inquiry.***

115. (1) Subject to the remainder of the provisions of this section, a child who is accused of having committed an offence may, after finalisation of the preliminary inquiry, be detained in a place of detention, secure care facility or correctional institution pending plea and trial in the Children's Court or any other court acting in terms of the provisions of this Act, but -

- (a) the inquiry magistrate shall consider the granting of bail to ensure that the deprivation of liberty of such child is a measure of last resort; and
- (b) such child may not be detained in a police cell or lock-up.

(2) Where an inquiry magistrate has established that a child cannot be released from detention after the finalisation of the preliminary inquiry because-

- (a) it is not in the interests of justice;
- (b) a remand in detention is required in order to locate the child's parent or guardian;
- (c) there are compelling reasons to believe that the child will abscond or will fail to attend a trial;
- (d) of the seriousness of the offence;
- (e) of the likelihood that the child will interfere with the witnesses; or



(f) of the likelihood that the child will be exposed to threats or danger by any person, the child may be remanded to a place of safety, secure care facility or prison pending the hearing of the matter before the Children's Court or any other court acting in terms of the provisions of this Act, subject to the provisions of subsections (3), (4), (5) and (6).

(3) In making a determination as to whether the placement of the child should be in a place of safety or a secure care facility as referred to in subsection (2), the inquiry magistrate shall have regard to the recommendations of a social worker as contained in such officer's assessment report.

(4) Where a child is above the age of fourteen but has not attained the age of eighteen years of age, and charged with murder, unlawful sexual act, indecent assault involving the infliction of grievous bodily harm, robbery with aggravated circumstances, or theft of stock, theft of motor vehicle, drug trafficking, counterfeit goods, counterfeit currency, laundering of money, offences relating to sale of liquor and gambling, if it is alleged that the value of the dependence-producing substance in question is more than E50, 000 or any offence relating to the dealing in or smuggling of ammunition, firearms, explosives or armaments, and release or referral to a secure care facility is not possible because-

- (a) there is no such facility within a reasonable distance from the court in which the child is appearing;
- (b) there is such a facility within a reasonable distance from the court, but written or oral evidence has been provided by a social worker that there is no vacancy at the time of making the decision; or
- (c) the inquiry magistrate is satisfied, on evidence placed before him, that there is a substantial risk that the child may cause harm to other children in a place of safety or secure care facility,

the child may be remanded to a prison, and such remand to a prison shall only be possible after finalisation of the preliminary inquiry, and the matter has been referred to the Children's Court or any other court for charges to be instituted.

(5) In making an order that the child be remanded to prison as referred to in subsection (2), the inquiry magistrate shall enter the reasons for such remand on the record of the proceedings.

(6) Where a child is remanded to a place of safety, secure care facility or prison in terms of subsection (2) -

- (a) the child shall appear every 14 days before the Children's Court or any other court acting in terms of the provisions of this Act, which court shall -
  - (i) inquire whether detention in a place of safety, secure care facility or prison remains necessary;
  - (ii) if ordering further detention of the child, enter the reason for such further detention on the record of the proceedings; and
  - (iii) consider the reduction of any amount of bail that has been granted in respect of such child;

- (b) the officer presiding in the Children's Court shall be satisfied that the child is being treated in a manner and kept in conditions that take account of the child's well-being; and
- (c) the plea and trial in the Children's Court or any other court acting in terms of the provisions of this Acts shall be finalised as speedily as possible.

***Failure of child above the minimum age of prosecution to attend assessment or preliminary inquiry.***

116. (1) If a child above the minimum age of prosecution as referred to under section 79 fails to appear at an assessment or breaches any conditions of release from detention in police custody, the social worker in whose district the assessment was to have taken place, may request the inquiry magistrate to issue a warrant of arrest.

(2) If a child fails to appear at the preliminary inquiry, the prosecutor concerned may request the inquiry magistrate to issue a warrant of arrest.

(3) If a child appears at an assessment or at the preliminary inquiry, as the case may be, after the execution of the warrant of arrest referred to in subsections (1) and (2), the matter shall, in the case of an assessment, forthwith be set down for the holding of the preliminary inquiry or, in the case of appearance at the preliminary inquiry, be proceeded with.

(4) Where the preliminary inquiry referred to under subsection (3) takes place, the inquiry magistrate shall inquire into the reasons for the child's failure to appear at the assessment or at the preliminary inquiry.

(5) Where the inquiry magistrate finds that the failure of the child to appear at an assessment or at the preliminary inquiry was due to fault on the part of the child, he may take that fact into account when making a decision under section 110 (4).

***Failure to comply with diversion conditions.***

117. (1) Where a child has been diverted under Section 129 by a prosecutor and fails to comply with a condition of diversion, or with any other order, or fails to attend a programme, the prosecutor concerned may request the inquiry magistrate to issue a warrant of arrest or written notice to appear in respect of such child.

(2) If a child appears after the execution of a warrant of arrest or as result of the issue of a written notice to appear as referred to under subsection (1), the matter shall be set down for holding of a preliminary inquiry where the inquiry magistrate shall inquire as to the circumstances surrounding the failure of the child to comply with the conditions of a diversion option.

(3) Where a child has been diverted by an inquiry magistrate as referred to in section 110 (4) (a) and fails to comply with the conditions of diversion, or with any other order, or fails to attend a specified programme, the inquiry magistrate concerned may issue a warrant of arrest or written notice to appear in respect of such child.

(4) When a child appears before an inquiry magistrate after a warrant of arrest or written notice to appear has been issued in terms of subsection (3) and the child, at the time of such appearance is still below the age of eighteen years, the inquiry magistrate shall inquire as to the circumstances surrounding the failure of the child to comply with the conditions of the diversion option.

(5) The inquiry magistrate may, at the preliminary inquiry referred to under subsections (2) and (4), decide to -

- (a) divert the matter;
- (b) divert the matter to the same programme with altered conditions;
- (c) apply any other diversion option as described under section 128;
- (d) refer the matter to the prosecutor for charges to be instituted in the Children's Court or in any other court acting under the provisions of this Act; or
- (e) make an appropriate order which will assist the child and his family to comply with the diversion initially applied.

(6) The execution of a warrant of arrest referred to in this Part may be suspended by the inquiry magistrate, and the officer required to execute such warrant, may, instead of arresting a child, employ one of the alternatives to arrest as referred to under section 94.

(7) When a person who has been arrested on a warrant issued pursuant to subsections (1) and (3) is no longer below the age of eighteen years at the time of appearance, that person should appear before the inquiry magistrate, who shall inquire as to the circumstances surrounding the failure of the person to comply with the conditions of the diversion option.

(8) In circumstances referred to under subsection (7), the inquiry magistrate may take any of the steps referred to in subsection (5) (a),(b),(c), or (e) or refer the matter to a court other than the Children's Court for prosecution on the original set of facts.

***Procedure upon referral of matter to be instituted.***

118. (1) Upon finalisation of the preliminary inquiry and if diversion has not been ordered, the inquiry magistrate shall-

- (a) refer the matter for trial in the Children's Court or any other court acting under the provisions of this Act as referred to under section 105;
- (b) warn any parent or guardian of such child to attend the proceedings referred to under paragraph (a) at a specified place and on a specified date and time; and
- (c) ensure the provision of legal representation for such child in terms of the provisions of section 147.

(2) Where the child concerned is not in detention after finalisation of the preliminary inquiry, the inquiry magistrate may -

- (a) alter or extend any condition imposed under section 108 or section 113;
- (b) alter or extend any order made under section 113 (3) and shall warn any parent or guardian in whose care the child has been released to appear in the Children's Court or any other court acting under the provisions of this Act at a specified place and on a specified date and time; and
- (c) warn the child, his parent or guardian to appear in the Children's Court or any other court acting under the provisions of this Act at a specified place and on a specified date and time.

(3) An inquiry magistrate shall recuse him and may not preside in the Children's Court in relation to that matter if such magistrate has, during the course of such preliminary inquiry, heard any information prejudicial to the impartial determination of the matter.

***Application for release from detention.***

119. (1) Nothing contained in this Act shall be construed as precluding a child who is in detention in respect of an offence from applying for release from detention at any stage prior to the passing of the sentence in respect of that offence.

(2) A court, in hearing an application referred to under subsection (1), shall have regard to the circumstances referred to section 115 (3).

(3) An appeal against the decision of a court hearing an application referred to under subsection (1) may be lodged to the High court.

**PART XIV  
RESTORATIVE JUSTICE AND DIVERSION**

***Restorative justice.***

120. The purposes of restorative justice in terms of this Act are to -

- (a) provide an opportunity to the person or persons or community affected by the harm caused to express their views regarding the impact of such harm;
- (b) encourage restitution of a specified object or symbolic restitution;
- (c) promote reconciliation between the child and the person or community affected by the harm caused; and
- (d) empower communities to address children at risk of offending without resorting to the criminal justice.

***Establishment of Umphakatsi Child Justice Committee.***

121. (1) There shall be established a committee that shall be known as the *Umphakatsi* Child Justice Committee in each chiefdom.

(2) The *Umphakatsi* Child Justice Committee shall be responsible for handling all restorative justice processes at the *umphakatsi* level.

(3) The *Umphakatsi* Child Justice Committee shall comprise of the chief and six other members elected by the community in consultation with the chief.

(4) The chief shall be the chairperson of the *Umphakatsi* Child Justice Committee.

(5) Four members of the *Umphakatsi* Child Justice Committee shall form a quorum at any meeting of the *Umphakatsi* Child Justice Committee.

(6) Subject to this Act, the *Umphakatsi* Child Justice Committee shall determine its own procedure.

(7) The *Umphakatsi* Child Justice Committee shall meet as and when it is necessary or there is a case to be dealt with.

(8) For purposes of this Part, the Department of Social Welfare shall, with the necessary modifications, carry out the functions of *Umphakatsi* Child Justice Committee in urban areas and shall for that purpose appoint suitable persons to constitute a Committee.

***Restorative justice processes.***

122. The restorative justice processes include-

- (a) family group conference;
- (b) victim - offender mediation; and
- (c) any other restorative justice processes.

***Family Group Conference.***

123. (1) A family group conference shall be convened by the Chairperson of the *Umphakatsi* Child Justice Committee in consultation with the families of the children concerned.

(2) The Chairperson of the *Umphakatsi* Child Justice Committee who convenes a family group conference shall notify all persons who are entitled to attend the conference of the date, the time and the place at which the conference is to be held.

(3) No notice is required to be given pursuant to subsection (1) to any person whose whereabouts cannot, after reasonable enquiries, be ascertained.

(4) A notice required under subsection (2) shall be given at a reasonable time before the conference is to be held.

(5) The following persons are entitled to attend a family group conference-

- (a) the children in respect of whom the conference is held;
- (b) the parents or guardians;
- (c) members of the families of the children concerned;
- (d) a social worker, where the conference has been convened on the basis of a report from a social worker;
- (e) legal representative of the children concerned;
- (f) any relevant body or organisation which the concerned families may recommend as appropriate to attend the conference; and
- (g) any person, body or organisation whose attendance at the conference is recommended by the Chairperson of the *Umphakatsi* Child Justice Committee working in consultation with the concerned families.

(6) The Chairperson of the *Umphakatsi* Child Justice Committee who convenes a family group conference shall take all reasonable steps to ensure that all information and advice required by the conference to carry out its functions are made available to the conference.

(7) Where it is appropriate and with the permission of the conference, any person may attend a family group conference for the purpose of conveying to that conference any information or advice required by that conference to carry out its functions.

(8) A family group conference shall regulate its own procedure in such manner as it thinks fit.

(9) The Chairperson of the *Umphakatsi* Child Justice Committee shall provide such administrative services as may be necessary to enable a family group conference to discharge its functions.

(10) The functions of the family group conference are the following -

- (a) to consider in relation to the child(ren) in respect of whom the conference was convened such matters relating to the care and protection of those child(ren) as the conference thinks fit;
- (b) where the conference considers that the child(ren) in respect of whom the conference was convened is in need of care or protection, to make such decisions or recommendations and to formulate plans as the conference considers necessary in the best interests of that/those child(ren).
- (c) to review from time to time the decisions and recommendations made and the plans formulated by that conference and their implementation.

(11) The Chairperson of the *Umphakatsi* Child Justice Committee who convenes a family group conference shall cause to be made a written record of the details of the decisions and recommendations made and the plans formulated by the conference pursuant to this section.

(12) The Chairperson of the *Umphakatsi* Child Justice Committee who has convened a family group conference shall communicate the decisions, recommendations and the plans made by the family group conference to every person that will be directly involved in the implementation of decision, recommendation or plan and seek their agreement.

(13) Where the Chairperson of the *Umphakatsi* Child Justice Committee is unable to secure an agreement to a decision, recommendation or plan referred to under subsection (12), the Chairperson of the *Umphakatsi* Child Justice Committee may, for the purpose of enabling the conference to reconsider that decision, recommendation or plan, reconvene that conference.

(14) A family group conference reconvened under subsection (13) may confirm, rescind or modify its previous decision, recommendation or plan.

(15) Any decision, recommendation or plan confirmed or modified under subsection (14), and any new decision, recommendation or plan made or formulated under that subsection, shall be deemed to have been made in the previous conference.

(16) The Chairperson of the *Umphakatsi* Child Justice Committee who convenes a family group conference shall ensure that copies of the proceedings of the conference, where the proceedings were recorded, are given to all persons present at the conference.

(17) Admission of any information, statement or any admission made or disclosed in the course of a family conference shall be subject to the principles of admission of evidence in any court.

(18) No person shall publish any report of the proceedings of a family group conference.

(19) Nothing under subsection (18) applies to the publication of statistical information relating to family conferences or bona fide research relating to family group conferences.

***Victim - offender mediation.***

124. (1) Victim-offender mediation shall be convened by the Chairperson of the *Umphakatsi* Child Justice Committee in consultation with the victim and offender.

(2) The victim and the offender shall meet in a safe and structured setting with the assistance of a trained mediator or the Chairperson of the *Umphakatsi* Child Justice Committee.

(3) The functions of the victim-offender mediation are to -

- (a) to enable the victim and offender to talk about the crime, express their feelings and concerns;
- (b) to participate directly in developing options for trying to make things right; and
- (c) to afford the offender an opportunity to make apologies, provide information and develop reparative plans and gain insight for personal growth.

(4) The Chairperson of the *Umphakatsi* Child Justice Committee who convened a victim-offender mediation shall cause to be made a written record of the details of the decisions and recommendations made and the plans formulated in the victim-offender mediation.

(5) The Chairperson of the *Umphakatsi* Child Justice Committee who has convened a victim-offender mediation shall communicate the decisions, recommendations and the plans made by the victim-offender mediation to every person that will be directly involved in the implementation of decisions, recommendation or plan and seek their agreement.

***Referral to restorative justice process.***

125. (1) Referral to restorative justice process may be made by -

- (a) child or his parent, guardian or any appropriate adult;
- (b) chief;
- (c) police;
- (d) social worker;
- (e) prosecutor; and
- (f) Children's Court.

(2) Where the case is referred to restorative justice process by the Children's Court, the police or social worker, and the victim and offender do not agree on the decision to be made at such a forum, the case shall go back to the Children's Court, the police or social worker for further action.

***Diversion.***

126. (1) The purposes of diversion in terms of this Act are to -

- (a) encourage the child to be accountable for the harm caused by him;
- (b) promote an individualised response to the harm caused which is appropriate to the child's circumstances and proportionate to the circumstances surrounding the harm caused;
- (c) promote the reintegration of the child into the family and community;
- (d) prevent stigmatisation of a child which may occur through contact with the criminal justice system.

(2) Where possible and appropriate, diversion shall include restorative justice elements which aim at healing relationships, including the relationships of the victim (s) and offender(s).

(3) In making a decision whether to or not to divert a child, consideration shall be given to whether this would be in the best interest of the child.

(4) No child may be unfairly discriminated against on the basis of race, gender, sex, disability, ethnic or social origin, colour, religion, conscience, belief, culture, language, birth or socio-economic status in the selection of a diversion programme, process or option and all children shall have equal access to diversion options.

(5) Corporal punishment and public humiliation shall not be elements of diversion.

(6) A child under the age of thirteen years shall not be required or permitted to perform community service or other work as an element of diversion.

(7) Diversion programmes shall -

- (a) promote the dignity and well-being of the child, and the development of the sense of self-worth and ability of the child to contribute to society;
- (b) not be exploitative, harmful or hazardous to a child's physical or mental health;
- (c) be appropriate to the age and maturity of the child;
- (d) not interfere with a child's schooling;
- (e) where possible and appropriate, impart useful skills;
- (f) where possible and appropriate, include an element which seeks to ensure that the child understands the impact of his behaviour on others, including the victims of the offence, and may include compensation or restitution; and
- (g) where possible and appropriate, be presented in a location reasonably accessible to children, and children who do not have the means to afford transport in order to attend a selected diversion programme, should be provided with the means to do so.

(8) No child shall be required to pay for admission to a diversion programme.

***Circumstances to be considered for diversion.***

127. (1) A child suspected of having committed an offence may only be referred for diversion by a prosecutor as referred to in this Act, if -



- (a) such child acknowledges responsibility for the alleged offence and consents to diversion;
- (b) there are reasons to believe that there is sufficient evidence for the matter to proceed to trial;
- (c) there is no risk of infringement of the child's procedural rights; and
- (d) the child has a fixed address.

(2) Where circumstances as referred to in subsection (1) exist, diversion shall be considered as a matter of first resort.

***Diversion options.***

128. (1) A social worker, prosecutor, inquiry magistrate or officer presiding in the Children's Court, in selecting or recommending a diversion option under this section, shall ensure that -

- (a) due regard is given to a child's maturity, cultural, religious and linguistic context, the child's community of origin and the child's age;
- (b) the option recommended or selected is proportionate to the circumstances of the child, the nature of the offence and the interests of the society; and
- (c) due regard is had to the various levels of diversion options.

(2) Diversion options that may be applied in respect of a child in the first instance are not limited to but may include -

- (a) an oral or written apology to a specified person or persons or institution;
- (b) referral to a police officer above the rank of sergeant for purposes of the administration of a police caution without conditions;
- (c) referral to a senior police officer above the rank of sergeant for the purposes of the administration of a police caution with conditions;
- (d) placement under a supervision and guidance order for a period not exceeding three months or as determined by the circumstances of the case;
- (e) placement under a reporting order for a period not exceeding three months;
- (f) issuing of a compulsory approved school attendance for a period not exceeding three months;
- (g) issuing of a family time order for a period not exceeding three months;
- (h) issuing of a positive peer association order in respect of a specified person or persons or specified place for a period not exceeding three months;
- (i) issuing of a good behaviour order with conditions;

- (j) issuing of an order prohibiting the child from visiting, frequenting or appearing at a specified place;
- (k) compulsory attendance at a specified centre or place for a specified vocational or educational purpose and for a period not exceeding five hours each week, for a maximum of eight weeks;
- (l) symbolic restitution in respect of a specified object to a person, persons, group or institutions; and
- (m) restitution of a specified object to a specified victim or victims of the alleged offence where the object concerned can be returned or restored.

(3) Diversion options that may be applied in respect of a child in the second instance are not limited to but may include -

- (a) placement under a supervision and guidance order for a period longer than three months but not exceeding six months;
- (b) placement under reporting order for a period longer than three months but not exceeding six months;
- (c) issuing of compulsory approved school attendance order for a period longer than three months but not exceeding six months;
- (d) issuing of a family time order for a period longer than three months but not exceeding six months;
- (e) issuing of a positive peer association order in respect of a specified person or persons or a specified place for a period longer than three months but not exceeding six months;
- (f) compulsory attendance at a specified centre or place for a specified vocational or educational purpose for a period not exceeding five hours each week, for a maximum of twelve weeks;
- (g) performance without remuneration of some service for the benefit of the community under the supervision or control of an organisation or institution, or a specified person or group identified by the social worker when effecting the assessment for a maximum period of twenty-five hours, and to be completed within a maximum period of three months;
- (h) restitution of the specified object to a specified victim or victims of the alleged offence where the object concerned can be returned or restored or payment of compensation to a maximum of E5000.00 to a specified person, persons, group or institution where the child or his family is able to afford this;
- (i) referral to appear at the victim-offender mediation, a family group conference or other restorative justice process at a specified time, on a specified date and at a specified place; and
- (j) one or more of the options set out in paragraphs (a) to (i) of this subsection or in paragraphs (a), (i) or (l) of subsection (2) used in combination, with due regard to the age of the child concerned, the circumstances of the child and his family, and the nature of the offence.