

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

- (a) placement under a supervision and guidance order for a period longer than six months but not exceeding one year in duration;
- (b) compulsory attendance at a specified centre or a place for a specified vocational or educational purpose for a period of not more than twenty hours each week for a maximum of six months;
- (c) performance without remuneration of some service for the benefit of the community under the supervision and control of an organisation or institution, or specified person or group identified by a social worker when effecting the assessment for a period exceeding twenty-five hours but not exceeding hundred hours to be completed within a maximum period of six months;
- (d) 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 a specified place;
- (e) restitution of a specified object to a victim or victims of the alleged offence where the object concerned can be returned or restored or payment of compensation to a maximum of E10,000,00 to a specified person, persons, group or institution where the child or his family is able to afford this;
- (f) referral to a programme with a residential element, where the duration of the programme does not exceed three months, and no portion of the residence requirement exceeds twenty-one consecutive nights with a maximum of thirty-five nights; and
- (g) one or more of the above options used in combination, or combined with one or more of the orders referred to in paragraphs (b), (c), (d), or (e) of subsection (3) or in paragraph (a) of subsection (2).

(5) Diversion options that may be applied in respect of a child over the age of fourteen years in the fourth instance, which shall be imposed only by an inquiry magistrate or other officer presiding in proceedings in terms of the provisions of this Act if he has reason to believe that the Children's Court, in relation to the circumstances of the child and the offence, would impose a term of imprisonment exceeding six months or a reform school sentence, are not limited to but may include-

- (a) referral to a programme with a residential element, where the duration of the programme does not exceed six months, and no portion of the residence requirement exceeds twenty-one consecutive nights with a maximum of sixty nights during the operation of the programme;
- (b) performance without remuneration of some services for the benefit of the community under the supervision and control of an organisation or institution, or a specified person or group identified by the social worker effecting the assessment for a maximum period of 250 hours, to be completed within a maximum period of twelve months;

(c) where a child is over the age of compulsory approved school attendance, and is no longer attending formal schooling, compulsory attendance at a specified centre or place for a specified vocational or educational purpose for a maximum period of not more than 35 hours per week, to be completed within a maximum period of six months; and

(d) any of the options referred to in paragraphs (a), (d), (e) and (g) of subsection (4) in combination with any of the options referred to in this subsection.

(6) A victim-offender mediation, family group conference or other restorative justice process referred to in subsections (3) (i) and (4) (d) may apply any option referred to under subsections (2), (3) or (4) to a child referred to such mediation, conference or process, or reach another resolution appropriate to the child, his family and to local circumstances, provided that such mediation, conference or process may not, in the case of another resolution, contravene any applicable principle under this Act.

***Referral and powers of prosecution in respect of children above the minimum age of prosecution with respect to diversion.***

129. (1) Where an assessment has not been effected, the prosecutor to whose notice the case involving a child under the age of eighteen years has been brought, shall arrange that assessment be effected, or, if this is not possible, arrange for the opening a preliminary inquiry.

(2) Where a social worker has recommended diversion in relation to a child alleged to have committed a minor offence not listed in the schedule, the prosecutor may divert the matter without opening a preliminary inquiry.

(3) Where the prosecutor has made a decision to divert under section 129(1), he shall cause the matter to be brought before a Magistrate in chambers in the presence of the child for the decision to divert to be made an order of Court.

**PART XV  
BAIL AND DETENTION PENDING TRIAL**

***Bail.***

130. (1) Where a child appears before the Children's Court charged with an offence, the presiding officer shall inquire into the case and unless there is a serious danger to the child, release the child on bail-

- (a) on a court bond on his own recognisance; or
- (b) with sureties, preferably, the child's parents, guardian, family member or responsible person on a court bond.

(2) If bail is not granted, the Children's Court shall record the reasons for refusal and inform the child of his right of appeal or review to the High Court.

***Remand.***

131. (1) Where a child is not released on bail, the Children's Court may make an order remanding or committing him in a remand home.

(2) If there is no remand home within a reasonable distance from the Children's Court, the Children's Court shall make an order as to the detention of the child in a place of safe custody as it deems fit.

(3) For the purposes of this section, a place of safe custody shall be a place which the Children's Court considers suitable to ensure that the child shall be brought to the Children's Court when required and shall not associate with any adult detainee.

(4) Remand in custody shall be for the shortest period possible and shall not exceed three months.

(5) No child shall be remanded in custody with an adult.

(6) A child who escapes from a remand home or other place of safe custody in which he is detained may be arrested with or without a warrant and returned to that place.

(7) Pending the establishment of a remand home, the Minister may declare by notice in the Gazette any establishment as a remand home.

(8) Notwithstanding anything to the contrary herein contained, the Children's Court shall consider alternatives to remand such as close supervision or placement with a fit and proper person determined by the Children's Court on the recommendation of a social worker.

#### **PART XVI CHILDREN'S COURT**

##### ***Jurisdiction of Children's Court.***

132. (1) Every Magistrate Court shall be a Children's Court within its area of jurisdiction and shall have jurisdiction to hear and determine matters in accordance with the provisions of this Act.

(2) A magistrate presiding in proceedings in a Children's Court shall be designated by the Chief Justice and the Children's Court shall, as far as possible, be staffed by specially trained personnel.

(3) For the purposes of this Act, any suitable room may be regarded as a Children's Court provided it is presided over by a Magistrate.

##### ***Proceedings under this Act by court other than Children's Court.***

133. (1) A court, other than a Children's Court, has jurisdiction to try the case of an accused child where such child is charged with murder or unlawful sexual act, or where he is charged with any other offence and -

- (a) the likely sentence will exceed the jurisdiction of the Children's Court;
- (b) there are multiple charges in respect of the child concerned and any other court other than the Children's Court has jurisdiction in respect of one or more of those charges; or
- (c) a decision has been made under section 139 that there will be a joinder of trials.

(2) Where the Director of Public Prosecution is satisfied that the circumstances referred to under subsection (1) (a) or (b) exist in respect of the matter involving a particular child, he may, prior to the commencement of the trial, refer the matter to the appropriate court for plea and trial.

(3) A Subordinate Court and a Children's Court have concurrent jurisdiction in respect of matters in which a child is charged together with an adult and a successful application for joinder of the trials has been made under section 139.

(4) The court hearing the matter under this section shall conduct the proceedings in accordance with the provisions of this Act and with due regard to the best interests of the child.

(5) If the Children's Court has proved a charge against a child and the Children's Court is of the view that exceptional circumstances exist which indicate that the appropriate sentence may exceed the sentencing jurisdiction of the Children's Court, the Children's Court may refer the matter to the High Court for sentencing, and cause a copy of the record of the proceedings to be made available to the Children's Court.

***Assistance to the children who appear in court.***

134 (1) At the commencement of the proceedings in the Children's Court, the presiding officer shall inform a child appearing before such court in a language that the child understands of the following rights-

- (a) the right to challenge testimony of witnesses;
- (b) the right to remain silent;
- (c) the right to have the child's parents or guardian present at the proceedings;
- (d) the right to choose and to be represented by a legal representative at his own cost; and
- (e) the right to be represented by a legal representative chosen by the Court or provided by the State.

(2) A child who is under the age of eighteen years shall be assisted by his parent or guardian at criminal proceedings, and this requirement may be dispensed with where -

- (a) all efforts to locate such person have been exhausted and any further delay would be prejudicial to the best interests of the child; or
- (b) the child is charged with an offence under the Schedule and the sentence referred to under section 153 (a) (i), (ii) or (iii), (b), (c) or (k) is likely to be imposed and is in the best interests of the child.

***Parent or guardian to attend proceedings.***

135. (1) A parent or guardian of a child who has been warned by an inquiry magistrate to attend proceedings involving such child under section 118 (1) (b), shall attend such proceedings unless exempted from the obligation to do so under subsection (3).

(2) If a person referred to under subsection (1) has not been warned to attend the relevant proceedings, the court before which the proceedings are pending may at any time during the proceedings direct any person to warn a person referred to under subsection (1) to attend such proceedings.

(3) A person who has been warned in terms of subsection (1) or (2), may apply to the officer presiding in the court in which the child is to appear for exemption from the obligation to attend the proceedings in question, and if such presiding officer exempts such person, he shall do so in writing.

(4) A person who has been warned under subsection (1) or (2) and who has not been exempted from the obligation to attend the relevant proceedings under subsection (3), and a person who is present at proceedings and who is warned by the court to remain in attendance, shall remain in attendance at the relevant proceedings, whether in that court or any other court, unless excused by the court before which such proceedings are pending.

(5) A person who has been warned in terms of subsection (1) or (2) and who fails to attend the proceedings in question or who fails to remain in attendance at such proceedings in accordance with the provisions of subsection (4), commits an offence and is liable on conviction to a fine not exceeding twenty thousand Emalangeni or to imprisonment for a term not exceeding one year.

***Charge sheet and withdrawal of charge.***

136. (1) The allegations contained in any charge sheet shall be formulated in a language that the child can read or understand.

(2) A legal representative, parent or guardian of a child offender shall be provided with a copy of a charge sheet at the beginning of the proceedings.

(3) Nothing contained in this Act shall be construed as precluding the prosecuting authority from exercising the discretion to withdraw a charge at any stage of the proceedings.

***Conduct of proceedings in Children's Court.***

137. (1) The officer presiding in the Children's Court may, if it would be in the best interests of the child, actively participate in eliciting evidence from any person involved in the proceedings.

(2) All proceedings conducted in the Children's Court shall be held in camera and the privacy of the child concerned and other child witnesses, subject to the provisions of section 144, shall be protected at all times.

(3) The proceedings of the Children's Court shall, with regard to the child's procedural rights, be conducted in an informal manner to encourage the maximum participation of the child, his parent or guardian and other child witnesses.

(4) Where the presence of a parent, guardian or any other person who is not an officer of the Children's Court is likely to discourage the maximum participation of the child, the Children's Court shall order that person to recuse himself from the proceedings.

(5) The children shall be permitted to speak in their own language with the assistance, where necessary, of an interpreter and the presiding officer shall ensure that they are addressed in a language that they understand.

(6) In the case of a child with speech or hearing impairment, the Children's Court shall order that a person with expertise in sign language be engaged to assist the child and the court.

(7) The presiding officer shall ensure that the conduct of all proceedings and the conduct of all court personnel are conducive to the protection of all the children participating in the proceedings.

(8) In cases involving children in conflict with the law, no handcuffs, leg-irons or other restraints may be used when a child appears in the Children's Court, unless an imminent danger exists that the safety of any person may be endangered if such restraints are not used.

(9) A child held in a lock-up, cell or at the court on suspicion of having committed an offence or who is being transported to court shall be kept separately from adults and be treated in a manner and kept in conditions which take account of his age.

(10) A female child offender shall be kept separately from any male child offender and shall be under the care of an adult woman.

(11) The proceedings of the Children's Court may, at the discretion of the presiding officer, be held in a place other than a court.

(12) The presiding officer shall protect a child offender and other child witnesses from hostile or intimidating cross-examination where such cross-examination is regarded by the presiding officer as being prejudicial to the well-being of the child or the fairness of the proceedings.

***Evidence in cases involving child offenders.***

138. (1) Evidence of admissions, confessions and pointing out made under coercive circumstances or in the absence of a child's parent, guardian or legal representative is inadmissible in proceedings in the Children's Court or any other court acting under the provisions of this Act.

(2) No evidence of an admission or confession made by a child during an assessment or during the course of a preliminary inquiry is admissible at bail or trial proceedings in the Children's Court.

***Separation and joinder of trials involving children and adults.***

139. (1) If a child appearing in a Children's Court is co-accused with an adult, the case of the adult concerned shall be separated from that of the child and is not subject to the provisions of this Act unless any person involved in the proceedings, including the child, his parent, such child's legal representative and the prosecutor, before the commencement of the trial, may make an application to the court in which the adult is due to appear for a joinder of the trials concerned.

(2) A person making an application for joinder of trials to the court in which the adult concerned is to appear shall give notice to all parties concerned.

(3) The rules of the court to which an application as referred to in subsection (1) is made, relating to applications, time periods for applications and opposition of applications, apply to the provisions of this section.

(4) If a person making an application under this section has shown, on a balance of probabilities, that a miscarriage of justice or prejudice to the victim or victims of the alleged offence would otherwise occur, the court to which the application is directed, may order a joinder of the trials of the child and adult concerned, provided that the best interests of the child are duly considered.

(5) If the court makes a finding under subsection (4), the matter before the Children's Court shall be transferred to the court in which the adult is to appear.

(6) The court to which the matter has been transferred to under subsection (5), shall act in accordance with the provisions of this Act in relation to the proceedings involving the child concerned.

***Separation and joinder of trials involving children only.***

140. (1) A prosecutor may join the trial of a child offender with that of any other accused child in the same proceedings at any time before evidence has been led in respect of the charge in question.

(2) Where two or more children are charged jointly, whether with the same offence or different offences, the Children's Court may at any time during the trial, upon the application of the prosecutor or by or on behalf of any of the children, direct that the trial of any one or more of the children shall be held separately from the trial of the other children, and the Children's Court may abstain from giving judgement in respect of any such children.

***Adjournment of proceedings.***

141. (1) The Children's Court or any other court acting under the provisions of this Act shall finalise all trials of accused children as speedily as possible and shall ensure that remands are limited in number and in periods between remands.

(2) A court other than Children's Court acting under the provisions of this Act shall ensure that trials of accused children receive priority on the roll of such court.

(3) Where the child has been remanded in custody, the presiding officer shall ensure that the requirements set out under section 115 (6) regarding remands to places of safety or prison are complied with.

(4) Where a child has been remanded to custody pending trial in the Children's Court or any other court acting under the provisions of this Act, the plea and trial of such child shall be finalised within a period not exceeding three months, after which period the child shall be released from detention.

***Powers of officer presiding in Children's Court.***

142. (1) If, at any time before conviction, or after conviction and before sentence, the child accepts responsibility for an offence and the prosecutor decides to divert, the Court may order the child to attend to any diversion option referred to under section 115 without making a pronouncement of guilt.

(2) If, at any time after conviction and before sentence, the Children's Court is of the opinion that substantial grounds exist that an alternative dispute resolution mechanism may be appropriate to the resolution of the matter before the court, the Court may stop the proceedings and order that the matter be referred to a victim-offender mediation, a family group conference or other restorative dispute resolution or make any other order as it may deem necessary to resolve the matter.

(3) If the matter is referred to victim-offender mediation, family group conference or other restorative dispute resolution process, the written recommendations emanating from such mediation, conference or process shall be re-submitted to the Children's Court within 14 days if the child is not in custody upon which such Court may -

- (a) confirm the recommendations by making such recommendations an order of the Court;
- (b) substitute or amend the recommendations and make an appropriate order; and
- (c) reject the recommendations and proceed with the trial.

(4) If the child is in custody the written recommendations emanating from such mediation, conference or process shall be re-submitted to the Children's Court within five days after referral of the matter.

(5) Where the Children's Court acts under the provisions of subsection (3) (a) or (b), any finding of guilt made in relation to the matter before the Children's Court shall be considered not to have been made.

***Failure to attend court proceedings.***

143. (1) If a child fails to appear at any proceedings in the Children's Court or any other court acting in terms of the provisions of this Act, the prosecutor may request the presiding officer in such proceedings to issue a warrant of arrest in respect of such child.

(2) If the presiding officer, upon the appearance of a child in the Children's Court or any other court acting under the provisions of this Act, after the execution of a warrant of arrest, finds that the failure of the child to appear at the proceedings concerned was due to fault on the part of the child, he may take that factor into account when making a decision as to how the matter should proceed.

***Privacy and confidentiality.***

144. (1) Where a child appears before the Children's Court or any other Court acting under the provisions of this Act, no person other than the persons referred to under sections 80 (3) and 107 (4) may be present unless such person's presence is necessary in connection with such proceedings or is authorised by the Court on good cause shown.

(2) No person, institution or organisation may publish in any manner whatsoever, any information which reveals or may reveal the identity of a child under the age of eighteen years appearing at an assessment, a preliminary inquiry or before the Children's Court or any other court acting in terms of the provisions of this Act, or of a witness under the age of eighteen years appearing at any proceedings referred to in this Act.

(3) Subject to the provisions of subsection (4), no prohibition or direction under this section may prevent -

- (a) any person, institution or organisation from gaining access to information pertaining to a child or children governed by this Act if such access would be in the interests, safety or welfare of any such child or of children in general;
- (b) the publication, in the form of a bona fide law report, of-



- (i) information for the purpose of reporting any question of law relating to the proceedings in question; or
- (ii) any decision or ruling given by any court on such question, and
- (c) the publication, in the form of any report of a bona fide professional or technical nature, of research results and statistical data pertaining to a child or children governed by this Act if such publication would be in the interests, safety or welfare of any such child or of children in general.

(4) The reports referred to under subsection (3) (b) and (c) shall not mention the name of the child charged or of the child against whom or in connection with whom the offence in question was alleged to have been committed or of any child witness at such proceedings, and may not mention the name of a person accused with the child or place where the offence in question was alleged to have been committed if this may reveal the name of the child.

(5) Nothing under this section prevents publication of information or making of reports that expose the identity and names of persons, institutions and organisations that are involved in the commission or aiding and abetting the commission of offences involving children.

(6) Any person who publishes any information in contravention of this section or contrary to any direction or authority under this section or who in any manner reveals the identity of a child or of a witness in contravention of a direction under this section, commits an offence and is liable on conviction to a fine not exceeding twenty thousand Emalangeni or to imprisonment term not exceeding two years.

***Evidence through intermediaries.***

145. (1) Whenever proceedings involving children are pending before any court and it appears to such court that it would expose any witness under the age of eighteen years to undue mental stress or suffering if he testifies at such proceedings, the court may, subject to subsection (5), appoint a competent person as an intermediary in order to enable such witness to give evidence through an intermediary.

(2) Except for examination by the court, examination, cross-examination or re-examination of any witness in respect of whom a court has appointed an intermediary under subsection (1), shall take place in any manner other than through that intermediary.

(3) The appointed intermediary may, unless the court directs otherwise, convey the general purport of any question to the relevant witness.

(4) If a court appoints an intermediary under subsection (1), the court may direct that the relevant witness may give his evidence at any place -

- (a) which is formally arranged to set that witness at ease;
- (b) which is so situated that any person whose presence may upset that witness, is outside the sight and hearing of that witness; and
- (c) which enables the court and any person whose presence is necessary at the relevant proceedings to see and hear, either directly or through the medium of any electronic or other devices, that intermediary as well as that witness during his testimony.

(5) The Minister of Justice may by notice in the Gazette determine the persons or the category or class of persons who are competent to be appointed as intermediaries.

(6) An intermediary who is not in the full-time employment of the State shall be paid such travelling and subsistence and other allowances in respect of the services rendered by him as the Minister of Finance, may determine.

(7) No oath, affirmation or admonition which has been administered through an intermediary shall be invalid and no evidence which has been presented through an intermediary shall be inadmissible solely on account of the fact that such intermediary was not competent to be appointed as an intermediary under subsection (5), at the time when such oath, affirmation or admonition was administered or such evidence was presented.

(8) If at any proceedings it appears to a court that an oath, affirmation or admonition was administered or that evidence has been presented through an intermediary who was appointed in good faith but, at the time of such appointment, was not qualified to be appointed as an intermediary under subsection (5), the court shall make a finding as to the validity of that oath, affirmation or admonition or the admissibility of that evidence, as the case may be, with due regard to-

- (a) the reason why the intermediary concerned was not qualified to be appointed as an intermediary, and the likelihood that the reason concerned will affect the reliability of the evidence so presented adversely;
- (b) the mental stress or suffering which the witness, in respect of whom that intermediary was appointed, will be subjected to if that evidence is to be presented anew, whether by the witness in person or through another intermediary; and
- (c) the likelihood that real and substantial justice will be impaired if that evidence is admitted.

(9) Nothing under this section prevents the prosecution from presenting anew any evidence which was presented through an intermediary referred to under subsection (7).

(10) The provisions of subsection (7) shall also be applicable in respect of all cases where an intermediary referred to in that subsection has been appointed, and in respect of which, at the time of the commencement of that subsection, the trial court or the court considering an appeal or review, has not delivered judgement.

## PART XVII LEGAL REPRESENTATION

### *Principles relating to legal representation.*

146. (1) A child has a right to legal representation in any legal proceedings.

(2) A legal representative appearing on behalf a child under this Act shall -

- (a) allow the child to give independent instruction on the manner in which the case is to be conducted;
- (b) clearly explain the child's rights and responsibilities in relation to any proceedings under this Act and which the child is involved to him in language which he can understand;

- (c) encourage informed decision-making by explaining possible options and the consequences of decisions;
- (d) promote diversion where appropriate whilst ensuring that the child is not unduly influenced to acknowledge guilt;
- (e) ensure that all time periods or delays throughout the case are kept to the minimum and that remands are limited in number and period of time between each remand;
- (f) ensure that the child is able to communicate in his language, and in cases where the legal representative does not speak the same language as the child, ensure that an interpreter is used who should also be apprised of these principles; and
- (g) become acquainted with the local options for diversion and alternative sentencing.

*Appointment of a legal representative.*

147.(1) A child may have legal representation at any stage of proceedings under this Act.

(2) A child shall be advised by a police officer, a social worker, the inquiry magistrate and the officer presiding in the Children's Court that he has the right to legal representation.

(3) The child, his parent or guardian may appoint a legal representative of their choice and they are responsible for the payment of such services.

(4) Where a child exercises his right to have a legal representative appointed at the State expense, a social worker, police officer or prosecutor or officer presiding in the Children's Court shall request for a court appointed attorney to represent the child pro bono.

(5) After the finalisation of the preliminary inquiry, if a legal representative has not yet been appointed and the child, his parent or guardian has indicated that they do not intend to select a legal representative of their own choice as referred to under subsection (3), such child shall be represented by a court appointed attorney pro bono if-

- (a) the child is remanded in detention;
- (b) charges are to be instituted in the Children's Court and there is a likelihood of a residential sentence.

(6) The inquiry magistrate shall cause a child referred to under subsection (5) to be made aware on the same day that the preliminary inquiry is finalised of the appointment of a legal representative.

(7) The inquiry magistrate shall -

- (a) furnish the child concerned with the name and contact details of such legal representative; and
- (b) make an appointment for the child to consult with such legal representative as soon as possible.

(8) Where a child is in detention as referred to under subsection (5) (a), the legal representative appointed in terms of that subsection shall, within seven days of receiving instructions to represent such child, consult with the child at the place where he is being held, provided that such place is within a reasonable distance from the court in which the child is appearing.

***Waiver of legal representation in some circumstances.***

148. (1) A child requiring legal representation under the provisions of section 147(5) (a) and (b) may not waive the legal representation, except where the child is charged with an offence not listed in the Schedule and such child is not in detention.

(2) Where a child mentioned under section 147(5) (a) and (b) declines to give instructions to his appointed legal representative, this factor shall be brought to the attention of the inquiry magistrate or the officer presiding in the Children's Court, as the case may be, whereupon the court shall question the child to ascertain the reasons for the child's declining to give instructions to the legal representative and note such reasons on the record of the proceedings.

(3) If, after questioning the child under subsection (2), the Children's Court is of the opinion that such application will be appropriate, the child may be given the opportunity to make a fresh application for a court appointed attorney to represent the child pro bono.

(4) If the questioning under subsection (2) reveals that the child does not wish to have the assistance of any legal representative, the court shall instruct a legal representative appointed by the court to attend all future hearings, address the court on the merits of the case and note an appeal or review if, at the conclusion of the trial, an appeal or review is considered by the legal representative to be necessary.

**PART XVIII  
SENTENCING**

***Power to impose sentence after a charge is proved.***

149. A Children's Court or any other court acting under the provisions of this Act may, after proving a charge against a child, impose a sentence in accordance with the provisions of this Part.

***Pre-sentence report.***

150. (1) A Children's Court, or any other court imposing a sentence under the provisions of this Act, shall require the preparation and placement of a pre-sentence report, whether written or verbal by a social worker, before court prior to the imposition of sentence or the court may dispense with the pre-sentence report where the proof of charge is of an offence listed in the Schedule or where requiring such a report would cause undue delay in the finalisation of the case, and which delay would be prejudicial to the best interests of the child.

(2) The Children's Court or any other court sentencing a person under the age of eighteen years shall not impose a sentence with a residential element, unless a pre-sentence report has been placed before such court.

(3) The Children's Court or any other court acting under the provisions of this Act which imposes any sentence involving detention in any residential facility, shall certify on the warrant of detention that such pre-sentence report has been placed before the court prior to the imposition of the sentence.

(4) Where the certification referred to under subsection (3) does not appear on the warrant of detention issued under the provisions of this Act, the persons admitting such child to the residential facility in question shall remit the matter back to the court.

(5) No person may admit a child under the age of eighteen years to any facility under this Act unless the warrant of detention contains the certification referred to under subsection (3), and a person who admits a child without the necessary certification commits an offence and is liable on conviction to a fine not exceeding five thousand Emalangeni or to imprisonment term not exceeding two years.

***Evidence of previous diversion and other evidence relevant to sentence.***

151. (1) Evidence that a child has been previously diverted, and has attended a programme or completed community service or other diversion option may be adduced after conviction and before the imposition of sentence, provided that such evidence of previous diversion may not be considered in aggravation of the sentence.

(2) The evidence of the previous diversion referred to under subsection (1) may be considered relevant to the selection of a particular programme, community service option or other sentence option referred to under sections 153, 154, 155 or 156.

(3) The Children's Court or any other court imposing a sentence under the provisions of this Act may consider written or oral evidence from the victim or victims of the offence about the impact of the offence as evidence relevant to the sentence.

(4) The Children's Court or any other court imposing a sentence under the provisions of this Act may consider any other written or oral evidence relevant to sentence.

(5) The Children's Court shall request the child concerned and his parents or guardian to address the court on sentence, and, where a pre-sentence report has been submitted, shall allow the child and his parents or guardian an opportunity to place in dispute any finding or recommendation made in such report.

(6) The prosecution may, after conviction, prove any previous convictions against the child, and the court shall establish whether the child admits or denies any such previous convictions, however that the prosecution may lead evidence to prove any convictions denied by the child.

(7) For the purposes of subsection (6), a document relating to the finger prints of a child which emanates from the Police is admissible as preliminary proof of the facts contained therein.

***Nature of sentences.***

152. A presiding officer imposing a sentence under this Act may impose any one of the options referred to under section 128 (2), (3), (4) or (5), or any of the sanctions referred to in sections 153, 154, 155 or 156.

***Sentences not involving residential element.***

153. (1) A sentence not involving a residential element which is available as a sentence for the purposes of this Act includes -

- (a) restitution of a 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 specified person, persons, group or institution in an amount which the child or his family is able to afford;

- (b) in a matter where there is no identifiable person or persons whom compensation or reparation could be paid or provided to in terms of paragraph (i), payment of a sum of money or restitution of specified goods to a community organisation, charity or welfare organisation concerned with activities which benefit children, identified by the child who is to be sentenced; or
- (c) any form of symbolic restitution;
- (d) an oral or written apology to a specified person or institution;
- (e) a correctional reprimand;
- (f) placement under a good behaviour order for a period not exceeding six months;
- (g) placement under a family time order for a period not exceeding six months;
- (h) placement under a compulsory school attendance order for a period not exceeding six months;
- (i) placement under a positive peer association order for a period not exceeding six months;
- (j) that the child and members of his family attend guidance or counselling with a specified provider of such services, for a period not exceeding 12 months ;
- (k) placement under the care and control of an appropriate adult specified by the court;
- (l) placement under a supervision and guidance order for a period not exceeding 12 months;
- (m) compulsory attendance at a specified centre or place for a specified programme for a specified vocational or educational purpose for a period not exceeding 20 hours each week, for a maximum of six months except that where a child is over the age of compulsory school attendance and is no longer attending formal schooling, compulsory attendance at a specified centre or place for a specified educational or vocational purpose for a maximum period of not more than 35 hours per week to be completed within a maximum period of 12 months may be imposed;
- (n) performance without remuneration of some service for the benefit of the community under the supervision or control of an organisation or an institution, or a specified person or group identified by the presiding officer, or by the social worker of the district in which the Children's Court is situated for a maximum period of 250 hours and to be completed within 12 months except that this sentence may not be -
  - (i) imposed upon a child under the age of thirteen years; or
  - (ii) harmful to a child's health or development and may not prejudice school attendance.

***Postponement or suspension of sentence.***

154. (1) The passing of any sentence may be postponed , with or without one or more of the conditions referred to under subsection (2) for a period not exceeding three years.

(2) The conditions of postponement referred to under subsection (1) may include-

- (a) restitution, compensation or symbolic restitution;
- (b) an apology;
- (c) the obligation not to re-offend;
- (d) being of good behaviour;
- (e) school attendance for a specified period;
- (f) attendance at a victim-offender mediation, a family group conference or other restorative dispute resolution process;
- (g) the attendance of guidance or counselling with a specified provider of such services for a specified period by the child and members of his family;
- (h) submitting to supervision and guidance for a specified period; or
- (i) any other condition appropriate to the circumstances of the child and in keeping with the principles of this Act, which promotes the children's reintegration into society.

(3) The whole or any part of a sentence referred to under section 153 may be suspended, without conditions, or with one or more of the conditions referred to under subsection (4).

(4) The conditions of suspension referred to under subsection (3) include -

- (a) the obligation not to re-offend;
- (b) restitution, compensation or symbolic restitution; and
- (c) any other measure, including a sanction referred to under section 153 if such sanction has not been imposed as the sentence to be suspended, which is appropriate to the circumstances of the child and in keeping with the principles of this Act, and which promotes the children's reintegration into society.

(5) Where a Children's Court has postponed the passing of sentence under subsection (1) for a specified period and the Children's Court is, after expiry of the period, satisfied that any conditions imposed have been fulfilled, the Children's Court may decline to impose a sentence and may discharge the child except that the conviction may be recorded as a previous conviction or the presiding officer may act in accordance with the provisions of section 142 (1).

*Sentences with restorative justice process.*

155. (1) A sentence involving a restorative justice process which is available as a sentence for the purposes of this Act includes-

- (a) referral of the child concerned to appear at a victim-offender mediation;
- (b) family group conference; or
- (c) other restorative justice process,

at a specified time on a specified date and at a specified place as prescribed under sections 123 and 124.

(2) The decisions or agreements reached at the process referred to under subsection (1) and instituted under this section shall be referred back to the Children's Court or any other court acting under the provisions of this Act-

- (a) within 14 days if the child concerned is in detention; or
- (b) within 21 days if the child concerned is not in detention

to be taken into account in the consideration of an appropriate sentence.

(3) Where the presiding officer in the Children's Court or any other court passing sentence under this Act does not agree with the terms of the decision or agreement reached at the process referred to under subsection (1) and imposes a sentence which differs in a material respect from that agreed to or decided upon, he shall note the reasons for deviating from the agreement or decision on the record of the proceedings.

(4) Where an agreement or a decision is not reached at a process referred to under subsection (1), the matter shall be referred back to the presiding officer in the Children's Court or other court acting under the provisions of this Act for imposition of a sentence.

***Sentences involving imprisonment.***

156. (1) Imprisonment for a maximum period of five years may be imposed as a sentence for the purposes of this Act except that this sentence may not be imposed on a child below the age of 16 years.

(2) The whole or any part of a sentence referred to under subsection (1) may be postponed or suspended with or without conditions as referred to under section 154 (2), on condition that the child performs a service for the benefit of the community or on condition that the child attend a specified centre for a specified purpose as referred to under section 153 (k).

(3) Any imposing a sentence of imprisonment under subsection (1) must be satisfied that it is a measure of last resort and for the shortest appropriate period of time.

***Sentences involving residential element.***

157. (1) No sentence involving a residential element may be imposed upon a child unless the presiding officer is satisfied that-

- (a) the seriousness of the offence justifies such a sentence;
- (b) the protection of the community justifies such a sentence;
- (c) the severity of the impact of the offence upon the victim was of such magnitude that such a sentence is justified; and
- (d) the child has previously failed to respond to non-residential alternatives.

(2) The presiding officer imposing any sentence involving a residential element on a child shall note the reasons for handing down such sentence on the record of the proceedings and communicate such reasons to the child in language that he can understand.



(3) A sentence involving a residential element which is available as sentence for the purposes of this Act includes -

- (a) referral to a programme with a periodic residential requirement where the duration of the programme does not exceed 12 months, and no portion of the residence requirement exceeds 21 nights, with a maximum of 60 nights for the duration of the programme; and
- (b) referral to a facility, and subject to the conditions set out under section 159.

***Contribution order.***

158. (1) Where an order has been made by the Children's Court placing a child in the custody of some other person or sending a child to an approved school, the Children's Court may -

- (a) order the parent or guardian of the child to make contributions towards the maintenance of the child;
- (b) order a child who has attained the age of 16 years and is engaged in remunerative work to make contributions towards his maintenance; or
- (c) from time to time vary or revoke an order made under paragraph (a) or (b).

(2) A contribution order may be made on the application of the person in whose custody the child is placed or who is named in the approved school order.

(3) A contribution order shall remain in force as long as the committal order or approved school order is in force.

(4) A person on whom a contribution order is made shall, if he changes his address, forthwith give notice thereof to the person who was, immediately before the change, entitled to receive the contributions.

(5) A person who fails to give notice under subsection (4) commits an offence and is liable on conviction to a fine of not less than one thousand Emalangeni.

***Referral to residential facility.***

159. (1) Where a sentence referred to under section 157 is a referral to an approved school, such sentence may be imposed for a period not less than six months and, subject to subsection (2), a period not exceeding two years.

(2) A sentence to an approved school for longer than two years may be imposed where the child is a child below the age of 16 years who would otherwise have been sentenced to imprisonment, and where the offence is so serious as to warrant such sentence.

(3) A child referred to under subsection (2) who, at the time of the sentence is below the 16 years, may not be permitted to reside in an approved school beyond the age of 18 years.

(4) A child referred to under subsection (1) who is 16 years or older at the time of sentence, may be permitted to reside in an approved school until expiry of his sentence.

(5) A sentence to an approved school may not be extended by administrative action and any application for the extension of the duration of the sentence should be considered by the court which imposed the original sentence.

(6) Where a sentence referred to under section 157 is a sentence to imprisonment, such sentence may not be imposed unless-

(a) the child is 16 years of age or above; and

(b) substantial and compelling reasons exist for imposing a sentence of imprisonment because a charge against the child has been proved which is both serious and violent or because the child has previously failed to respond to alternative sentences, including residential sentences other than imprisonment.

(7) No sentence of imprisonment may be imposed on a child in respect of an offence listed in the Schedule.

(8) Where a sentence referred to under section 157 is a sentence of imprisonment, the whole or any part of that sentence may be suspended on one of the conditions referred to under section 157 (2), on condition that the child perform service for the benefit of the community as referred to under section 153 (i), or on condition that the child attend a specified centre for a specified purpose referred to under section 153 (k), or on condition that the child is sent to prison as referred to under section 156.

(9) No sentence of imprisonment may be imposed on a child under the provisions of this Act for a period exceeding 5 years on any charge, and where a child is sentenced to periods of imprisonment on more than one charge and the sentences cumulatively amount to more than 15 years the sentences shall be served concurrently.

(10) Subject to subsection (11), where a child fails to comply with any condition imposed in relation to any other sentence, such child may be brought before the Children's Court for re-imposition of an appropriate sentence, which may include a sentence of imprisonment.

(11) Any period of time that a child has spent in prison while awaiting trial shall be deducted by the presiding officer from any period of imprisonment imposed as a sentence.

#### ***Monetary penalties.***

160. No monetary penalty payable to the State may be imposed as a sentence by Children's Court or any other court acting under the provisions of this Act, except that if a penalty involving a fine and imprisonment in the alternative as prescribed for an offence, the presiding officer may impose a sentence referred to under section 153 (1) (a) (i), (ii) or (iii), but not the alternative of imprisonment.

#### ***Prohibition of certain forms of punishment.***

161. (1) No sentence of life imprisonment or death may be imposed on a child or any person who was below 18 years at the time the offence was committed.

(2) No sentence of corporal punishment or any form of punishment that is cruel, inhumane or degrading may be imposed on a child.

(3) A child who has been sentenced to attend an approved school may not be detained in prison whilst awaiting designation of the place where the sentence will be served.