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No. 43402

THE PRESIDENCY

No. 641 04 June 2020

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

Act No. 28 of 2019: Child Justice Amendment Act, 2019

MOPRESIDENTE

No. 641 04 June 2020

Go itsisiwi fano gore MoPresidente o saennwe Molao o o latelang o o phasale-diwang kitso ya botlhe fano:—

No 28 wa 2019: Molaotlhabololo wa Bo-siamisi wa Ngwana, 2019

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NTLHATLHALOSO YA KAKARETISO:

[] Mafoko a a kwetsweng ka bontsho jo bo gateletsweng mo masakaneng a sekwere a bontsha tseo di tlogetsweng go tswa mo melawaneng e e leng teng.

_____ Mafoko a a thaletsweng ka mothalo o o kopaneng a bontsha tseo di tsentsweng mo melawaneng e e leng teng.

(English text signed by the President)
(Assented to 26 May 2020)

MOLAO

Go tlhabolola Molao wa Bosiamisi wa Ngwana, 2008, gore go fetolwe tlhaloso; gape le go laola bonnye jwa dingwaga tsa kitso ya bosenyi; gape le go laola ditaello tse di amanang le tshwetso ya go sekisa ngwana yo o dingwaga di le 12 kgotsa go feta mme a le kwa tlase ga dingwaga di le 14; gape le go laola bosupi jwa kitso ya bosenyi; gape le go laola pegelo ya tshakatsheko ka modiredi wa tsamaiso e e sa letleleleng motlolamolao go ya kwa kgolegelong; gape le go laola dintlha tse di tshwanetsweng go elwa tlhoko ke mothšutšhisi fa a faposa kgetsi fa pele ga patlisiso ya pele ga tsheko; gape le go laola ditaello tse di ka dirwang kwa patlising ya pele ga tsheko; go fetola ka moo mafoko a dirisitsweng ka teng go nolofatsa bokao jwa polelwana; gape le go laola dintlha tse di tshwanetsweng go elwa tlhoko ke motlhankedi wa kgotlatshekelo fa a faposa kgetse kwa kgotlatshekelong ya bosiamisi jo bo mabapi le bana; le go tlamela mabapi le merero e e amanang le ona.

Palamente ya Rephaboliki ya Aforika borwa, e dira molao jaana:—

Tlhabololo ya karolo 1 ya Molao 75 wa 2008, jaaka o tlhabolotswe ka karolo 25 ya Molao 39 wa 2014

1. Karolo 1 ya Molao wa Bosiamisi wa Ngwana, 2008 (o jaanong o itsegeng jaaka Molaomogolo), o tlhabololwa ka go emisetswa ga tlhaloso ya “mogolo yo o tshwanetseng” ka tlhaloso e e latelang: 5

“‘[mogolo] **motho yo o tshwanetseng**’ go tewa mongwe le mongwe wa losika la ngwana, go akaretsa le ngwana wa thari yo o dingwaga tse 16 kgotsa go feta, kgotsa motlamedi wa tlhokomelo yo o kailweng mo karolong 1 ya *Children’s Act*;” 10

Tlhabololo ya karolo 4 ya Molao 75 wa 2008

2. Karolo 4 ya Molaomogolo e tlhabololwa ka kemisetso ya karotlaleletso (1) ka karotlaleletso e e latelang:

“(1) Go latela karotlaleletso (2), Molao ono o diriswa mo mothong mongwe le mongwe mo Rephaboliking yo o latofatswang ka go tlola molao e bile— 15
 (a) o ne a le ka fa tlase ga dingwaga tse [10] 12 ka nako ya go dirwa ga molato o a o latofatswang; kgotsa

- (b) was [10] 12 years or older but under the age of 18 years when he or she was—
- (i) handed a written notice in terms of section 18 or 22;
 - (ii) served with a summons in terms of section 19; or
 - (iii) arrested in terms of section 20, for that offence.”

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Amendment of section 5 of Act 75 of 2008

3. Section 5 of the principal Act is hereby amended by the substitution for subsections (1), (2) and (3) of the following subsections, respectively:

“(1) Every child who is alleged to have committed an offence and is under the age of [10] 12 years, must be referred to a probation officer to be dealt with in terms of section 9. 10

(2) Every child who is [10] 12 years or older, who is alleged to have committed an offence and who is required to appear at a preliminary inquiry in respect of that offence must, before his or her first appearance at the preliminary inquiry, be assessed by a probation officer, unless assessment is dispensed with in terms of section 41(3) or 47(5). 15

(3) A preliminary inquiry must be held in respect of every child referred to in subsection (2) after he or she has been assessed, except where the matter—

- (a) has been diverted in accordance with Chapter 6;
- (b) involves a child who is [10] 12 years or older but under the age of 14 years where criminal capacity is not likely to be proved, as provided for in section 10(2)(b); or 20
- (c) has been withdrawn.”

Amendment of section 7 of Act 75 of 2008

4. Section 7 of the principal Act is hereby amended by the substitution for subsections (1) and (2) of the following subsections, respectively: 25

“(1) A child who commits an offence while under the age of [10] 12 years does not have criminal capacity and cannot be prosecuted for that offence, but must be dealt with in terms of section 9.

(2) A child who is [10] 12 years or older but under the age of 14 years and who commits an offence is presumed to lack criminal capacity, unless the State proves that he or she has criminal capacity in accordance with section 11.”. 30

Substitution of section 8 of Act 75 of 2008

5. The following section is hereby substituted for section 8 of the principal Act:

“**Review of minimum age of criminal capacity** 35

8. In order to determine whether or not the minimum age of criminal capacity as set out in section 7(1) should be raised, the Cabinet member responsible for the administration of justice must, not later than five years after the commencement of [this section] section 5 of the Child Justice Amendment Act, 2019, submit a report to Parliament, as provided for in section 96(4) and (5).” 40

Amendment of section 9 of Act 75 of 2008

6. Section 9 of the principal Act is hereby amended—

- (a) by the substitution for the heading of the following heading: “Manner of dealing with child under the age of [10] 12 years”; and 45

- (b) o ne a le dingwaga tse [10] 12 kgotsa go feta mme a le ka fa tlase ga dingwaga tse 18 fa a ne a—
- (i) newa kitsiso e e kwetsweng go ya ka karolo 18 kgotsa 22;
 - (ii) newa tagafara go ya ka karolo 19; kgotsa
 - (iii) tshwarwa go ya ka karolo 20, mabapi le tlolomolao eo.”

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Tlhabololo ya karolo 5 ya Molao 75 wa 2008

3. Karolo 5 ya Molaomogolo e tlhabololwa ka kemisetso ya dikarotlaleletso (1), (2) le (3) ka dikarotlaleletso tse di latelang, ka tatelano:

“(1) Ngwana mongwe le mongwe yo o latofatswang ka tlolomolao mme a le ka fa tlase ga dingwaga tse [10] 12, o tshwanetse go romelwa kwa go modiredi wa tsamaiso e e sa letleleleng motlolamolao go ya kwa kgolegelong gore a sekisiwe go ya ka karolo 9.

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(2) Ngwana mongwe le mongwe yo o dingwaga tse [10] 12 kgotsa go feta, yo o latofatswang ka tlolomolao mme a tshwanetse go tlhagelela kwa lefelong la dipatlisiso tse di dirwang pele ga tsheko mabapi le tlolomolao eo, pele ga go tlhagelela la ntsha kwa lefelong la dipatlisiso tse di dirwang pele ga tsheko, o tshwanetse go sekasekwa ke modiredi wa tsamaiso e e sa letleleleng motlolamolao go ya kwa kgolegelong ntle le fa tshekotsheko e dirilwe go ya ka karolo 41(3) kgotsa 47(5).

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(3) Patlisiso e e dirwang pele ga tsheko e tshwanetse go tshwarwa mabapi le ngwana mongwe le mongwe yo o tlhaloswang mo karotlaleletsong (2) morago ga fa a sena go sekasekwa, ntle le fa kgetse e—

- (a) fapositswe mo tshekong go ya ka Kgaolo 6;
- (b) akaretsa ngwana yo o dingwaga tse [10] 12 kgotsa go feta mme a le ka fa tlase ga dingwaga tse 14 mo go ka palelwang ke go supa fa a na le kitso ya bosenyi, jaaka go tlhaloswa mo karolong 10(2)(b); kgotsa
- (c) tsholotswe.”

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Tlhabololo ya karolo 7 ya Molao 75 wa 2008

4. Karolo 7 ya Molaomogolo e tlhabololwa ka kemisetso ya dikarotlaleletso (1) le (2) ka dikarotlaleletso tse di latelang, ka tatelano:

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“(1) Ngwana yo o tloang molao a santse a le ka fa tlase ga dingwaga tse [10] 12 ga a na kitso ya bosenyi mme ga a kitla a sekisetswa tlolomolao eo, mme o tshwanetse go sekiswa go ya ka karolo 9.

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(2) Ngwana yo o leng dingwaga tse [10] 12 kgotsa go feta mme a le ka fa tlase ga dingwaga tse 14 e bile a dira tlolomolao o tsewa a sena kitso ya bosenyi go ya ka karolo 11.”

Kemisetso ya karolo 8 ya Molao 75 wa 2008

5. Karolo e e latelang e emisetsa karolo 8 ya Molaomogolo:

“Go thalwa ga bonnye jwa dingwaga tsa go nna le kitso ya bosenyi

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8. Go tlhomamisa bonnye jwa dingwaga tsa go nna le kitso ya bosenyi jaaka bo tlhaloswa mo karolong 7(1) bo tshwabnetse go oketswa, leloko la Kabinete le le nang le maikarabelo a tsamaiso ya bosiamisi, le tshwanetse gore mo lobakeng le le sa feteng dingwaga tse tlhano morago ga go tsengwa mo tirisong ga [karolo eno] karolo 5 ya Molaotlhabololo wa Bosiamisi wa Ngwana, 2019, go romela pegelo kwa Palamenteng, jaaka go tlhaloswa mo karolong 96(4) le (5).”

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Tlhabololo ya karolo 9 ya Molao 75 wa 2008

6. Karolo 9 ya Molaomogolo e tlhabololwa jaana—

- (a) ka kemisetso ya setlhogo ka setlhogo se se latelang:
 - “Tsela ya go sekisa ngwana yo o dingwaga tse di ka fa tlase ga [10] 12”; le

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(b) by the substitution for subsections (1), (2) and (3) of the following subsections, respectively:

“(1) Where a police official has reason to believe that a child suspected of having committed an offence is under the age of **[10] 12** years, he or she may not arrest the child, and must, in the prescribed manner, immediately hand the child over—

(a) to his or her parents or an appropriate **[adult] person** or a guardian; or

(b) if no parent, appropriate **[adult] person** or a guardian is available or if it is not in the best interests of the child to be handed over to the parent, an appropriate **[adult] person** or a guardian, to a suitable child and youth care centre,

and must notify a probation officer.

(2) A probation officer who receives notification from a police official in terms of subsection (1), must assess the child in terms of the provisions of Chapter 5 which are applicable to children under the age of **[10] 12** years as soon as possible but not later than seven days after being notified.

(3) (a) After assessing a child in terms of subsection (2), the probation officer may, in the prescribed manner—

(i) refer the child to the children’s court on any of the grounds set out in section 50;

(ii) refer the child for counselling or therapy;

(iii) refer the child to an accredited programme designed specifically to suit the needs of children under the age of **[10] 12** years;

(iv) arrange support services for the child;

(v) arrange a meeting, which must be attended by the child, his or her parent or an appropriate **[adult] person** or a guardian, and which may be attended by any other person likely to provide information for the purposes of the meeting referred to in subsection (4); or

(vi) decide to take no action.

(b) Any action taken under paragraph (a) does not imply that the child is criminally liable for the incident that led to the assessment.”.

Substitution of section 10 of Act 75 of 2008

7. The following section is hereby substituted for section 10 of the principal Act:

“Decision to prosecute child who is **[10] 12 years or older but under the age of 14 years**

10. (1) A prosecutor who is required to make a decision whether or not to prosecute a child referred to in section 7(2) must take the following into consideration:

(a) The educational level, **[cognitive ability,]** domestic and environmental circumstances, age and maturity of the child;

(b) the nature and seriousness of the alleged offence;

(c) the impact of the alleged offence on any victim;

(d) the interests of the community;

(e) a probation officer’s assessment report in terms of Chapter 5;

(f) the prospects of establishing criminal capacity in terms of section 11 if the matter were to be referred to a **[preliminary inquiry] child justice court** in terms of Chapter **[7] 9**;

(b) ka kemisetso ya dikarotlaleletso (1), (2) le (3) ka dikarotlaleletso tse di latelang, ka tatelano:

“(1) Fa go na le lebaka le le dirang gore lepodisi le nne le pelaelo ya gore ngwana yo a naganelwang ka gore o tlotse molao o ka fa tlase ga dingwaga tse [10] 12, ga a tshwanela go tshwara ngwana, mme o tshwanetse, ka mokgwa o o neetsweng, ka bonako a ise ngwana kwa—

(a) batsading ba gagwe kgotsa kwa [mogolong] mothong yo o tshwanetseng; kgotsa

(b) fa motsadi kgotsa [mogolo] motho yo o tshwanetseng a se teng kgotsa fa go se ka fa dikgatlhegolong tsa ngwana gore a neelwe motsadi kgotsa [mogolo] motho yo o tshwanetseng, kwa lefelong le le matshwanedi la tlhokomelo ya bana le bašwa, ebile o tshwanetse go itsise modiredi wa tsamaiso e e sa letleleleng motlolamolao go ya kwa kgolegolong.

(2) Modiredi wa tsamaiso e e sa letleleleng motlolamolao go ya kwa kgolegolong yo o amaogelang kitsiso go tswa kwa mapodising go ya ka karotlaleletso (1), o tshwanetse go sekaseka ngwana go ya ka ditaello tsa Kgaolo 5 tse di diriswang mo baneng ba ba ka fa tlase ga dingwaga di le [10] 12 ka bonako jo bo ka kgonegang mme fela e se ke ya nna morago ga malatsi a le supa morago ga go itsisiwe.

(3) (a) Morago ga go sekaseka ngwana go ya ka karotlaleletso (2), modiredi wa tsamaiso e e sa letleleleng motlolamolao go ya kwa kgolegolong o ka, go ya ka mokgwa o o beilweng—

(i) romela ngwana kwa kgotlatshekelong ya bana go ya ka lengwe le lengwe la mabaka a a beilweng mo karolong 50;

(ii) romela ngwana go ya go bona kgakololo kwa go moitseanape kgotsa kalafi ya bothata jwa monagano;

(iii) romela ngwana go tsenela porogerama e e letleletsweng semmuso mme e tshwanela dikgatlhego tsa ngwana yo o ka fa tlase ga dingwaga tse [10] 12;

(iv) rulaganyetsa ngwana ditirelo tsa tshegetso;

(v) rulaganya kopano, e e tshwanetseng go tsenelwa ke ngwana, motsadi wa gagwe kgotsa [mogolo] motho kgotsa motlhokome-disemolao wa ngwana, e bile e ka tsenelwa ke motho mongwe le mongwe yo o kgonang go neelana ka tshedimosetso mabapi le kopano e e umakilweng mo karotlaleletsong (4); kgotsa

(vi) tsaya tshwetso ya go se tseye kgato epe.

(b) Kgato nngwe le nngwe e e tsewang ka fa tlase ga temana (a) ga e kaye gore ngwana o rwala maikarabelo a tiragalo ya bosenyi e e dirileng gore go dirwe tshkatsheko.”

Kemisetso ya karolo 10 ya Molao 75 wa 2008

7. Karolo e e latelang e emisetsa karolo 10 ya Molaomogolo:

“Tshwetso ya go sekisa ngwana yo o nang le dingwaga di le [10] 12 kgotsa go feta mme a le ka fa tlase ga dingwaga tse 14

10. (1) Motšhutšhisi yo o kopilweng go dira tshwetso ya gore ngwana yo o umakwang mo karolong 7(2) a sekiswe kgotsa nnyaa, o tshwanetse go tsaya tsia tse di latelang:

(a) Maemo a borutegi, [bokgoni jwa go akanya,] mabaka a selegae le a tikologo, dingwaga le bogolo jwa kakanyo tsa ngwana;

(b) mofuta wa tlolomolao le gore e masisi go le kana kang;

(c) go amega ga motswasetlhabelo mongwe le mongwe ka ntlha ya tatofatso ya tlolomolao;

(d) dikgatlhego tsa setšhaba;

(e) pegelo ya tshkatsheko e e dirilweng ke modiredi wa tsamaiso e e sa letleleleng motlolamolao go ya kwa kgolegolong go ya ka Kgaolo 5;

(f) diponelopele tsa go tlhoma kitso ya bosenyi go ya ka karolo 11 fa e le gore kgetse e tshwanetse go fetisetswa kwa [lefelong la dipatlisiso tse di dirwang pele ga tshoko] kgotlatshekelo ya bosiamisi jo bo mabapi le bana go ya ka Kgaolo [7] 9;

- (g) the appropriateness of diversion; and
 (h) any other relevant factor.
- (2) If a prosecutor decides in respect of a child referred to in subsection (1) that criminal capacity is—
- (a) likely to be proved in terms of section 11, he or she may [— 5
 (i) **divert the matter in terms of Chapter 6 if the child is alleged to have committed an offence referred to in Schedule 1; or**
 (ii)] refer the matter to a preliminary inquiry as provided for in Chapter 7; or 10
- (b) not likely to be proved in terms of section 11, he or she may cause the child to be taken to a probation officer to be dealt with in terms of section 9.
- (3) A prosecutor may divert the matter in terms of Chapter 6, if the matter is suitable for diversion.” 15

Substitution of section 11 of Act 75 of 2008, as amended by section 2 of Act 14 of 2014

8. The following section is hereby substituted for section 11 of the principal Act:

“Proof of criminal capacity

- 11.** (1) The State must, for purposes of plea and trial, prove beyond 20
 reasonable doubt the capacity of a child who is [10] 12 years or older but under the age of 14 years to appreciate the difference between right and wrong at the time of the commission of an alleged offence and to act in accordance with that appreciation.
- (2) In making a decision regarding the criminal capacity of the child in 25
 question[—
- (a) (i) **the inquiry magistrate, for purposes of diversion; or**
 (ii) **if the matter has not been diverted,] the child justice court[, for purposes of plea and trial,]**
- must consider— 30
- (a) [the assessment report of the probation officer referred to in 30
 section 40 and] all evidence placed before the [inquiry magistrate or] child justice court [prior to diversion or conviction, as the case may be], which evidence may include a report of an evaluation referred to in subsection (3); and 35
- (b) [the inquiry magistrate or child justice court must consider] the cognitive, moral, emotional, psychological and social development of the child.
- (3) [An inquiry magistrate or] A child justice court may, on own accord, or on the request of the prosecutor or the child’s legal representative, order an evaluation of the criminal capacity of the child referred to in subsection (1), in the prescribed manner, by a suitably qualified person. 40
- (4) If an order has been made by the [inquiry magistrate or] child justice court in terms of subsection (3), the person identified to conduct an evaluation of the child must furnish the [inquiry magistrate or] child 45
 justice court with a written report of the evaluation within 30 days of the date of the order.

- (g) matshwanedi a go faposa mo tshekong; le
 (h) lebaka lengwe le lengwe le le matshwanedi.
 (2) Fa motšhutšhisi a tsaya tshwetso ka ga ngwana yo o kaiwang mo karotlaleletsong (1) gore kitso ya bosenyi—
 (a) e ka kgona go supiwa go ya ka karolo 11, o ka [— 5
 (i) **faposa kgetse mo tshekong go ya ka Kgaolo 6 fa ngwana a latofatswa ka tlolomolao e e umakilweng mo Setlhopheng 1; kgotsa**
 (ii) fetisetsa kgetse kwa lefelong la dipatlisiso tse di dirwang pele ga tsheko jaaka go tthaloswa mo Kgaolong 7; kgotsa 10
 (b) e ka se supiwe go ya ka karolo 11, o ka laela gore ngwana a isiwe kwa go modiredi wa tsamaiso e e sa letleleleng motlolamolao go ya kwa kgolegelong gore a sekiswe go ya ka karolo 9.
 (3) Motšhutšhisi o ka faposa kgetse go ya ka Kgaolo 6, fa kgetse e tshwanela go faposwa.” 15

Kemisetso ya karolo 11 ya Molao 75 wa 2008, jaaka e tshabotswe ka karolo 2 ya Molao 14 wa 2014

8. Karolo e e latelang e emisetsa karolo 11 ya Molaomogolo:

“Bosupi jwa go nna le kitso ya bosenyi

- 11.** (1) Puso e tshwanetse, mabapi le maitlhommo a boikuelo le tsheko, go supa ntle le pelaelo epe gore ngwana yo o nang le dingwaga tse [10] 12 mme a le ka fa tlase ga di le 14 o na le kitso ya go kgona go farologanya molemo le bosula le gore ka nako e a neng a itlhophela go dira tlolomolao e a e dirileng, o ne a na le kitso e e jalo. 20
 (2) Mo go tseyeng tshwetso mabapi le kitso ya bosenyi ya ngwana yo o umakwang[— 25
 (a) (i) **magiseterata yo o dirang dipatlisiso tse di dirwang pele ga tsheko, mabapi le go faposa kgetse mo tshekong; kgotsa**
 (ii) **fa kgetse e ise e faposiwe mo tshekong,** kgotlatshekelo ya bosiamisi jo bo mabapi le bana[, **mabapi le maitlhommo a boikuelo le tsheko,** 30
 o tshwanetse go tsaya tsia—
 (a) [pegelo ya tshekatsheko e e dirilweng ke modiredi wa tsamaiso e e sa letleng motlolamolao go ya kwa kgolegelong e e umakilweng mo karolong 40 le] bopaki jotlhe jo bo tlišitsweng fa pele ga [magiseterata yo o dirang dipatlisiso kgotsa] kgotlatshekelo ya bosiamisi jo bo mabapi le bana [pele kgetse e faposwa kgotsa pele ga go bonwa molato, go ya ka se se diragalang pele], mme bopaki e ka nna jo bo akaretsang pegelo ya tshekatsheko e e kailweng mo karotlaleletsong (3); le 40
 (b) [magiseterata yo o dirang dipatlisiso tse di dirwang pele ga tsheko kgotsa kgotlatshekelo ya bosiamisi jo bo mabapi le bana e tshwanetse go ela tlhoko] nonofo ya ngwana ya tshaloganyo, maitsholo a go itse molemo le bosula, maikutlo, le monagano. 45
 (3) [Magiseterata yo o dirang dipatlisiso tse di dirwang pele ga tsheko kgotsa] Kgotlatshekelo ya bosiamisi jo bo mabapi le bana e ka, ka go rata ga yona, kgotsa go ya ka kopo ya motšhutšhisi kgotsa moemedisemolao wa ngwana, laela gore go dirwe tshekatsheko ya kitso ya bosenyi mabapi le ngwana yo o umakwang mo karotlaleletsong (1), ka tsela e e tshwanetseng, ke motho yo o letleletsweng ebile a le matshwanedi. 50
 (4) Fa taelo e dirilwe ke [magiseterata yo o dirang dipatlisiso tse di dirwang pele ga tsheko kgotsa] kgotlatshekelo ya bosiamisi jo bo mabapi le bana go ya ka karotlaleletso (3), motho yo o tlhophilweng go dira tshekatsheko ya ngwana o tshwanetse go tlamela [magiseterata yo o dirang dipatlisiso tse di dirwang pele ga tsheko kgotsa] kgotlatshekelo ya bosiamisi jo bo mabapi le bana pegelo e e kwetsweng ya tshekatsheko mo malatsing a le 30 a letlha la taelo. 55

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(4A) The provisions of section 77(2), (3) and (4) of the Criminal Procedure Act apply with the changes required by the context to a report referred to in subsection (4).

(5) Where **[an inquiry magistrate or]** a child justice court has found that a child's criminal capacity has not been proved beyond a reasonable doubt, the **[inquiry magistrate or]** child justice court may, if it is in the interests of the child, cause the child to be taken to a probation officer for any further action in terms of section 9.”. 5

Substitution of section 12 of Act 75 of 2008

9. The following section is hereby substituted for section 12 of the principal Act: 10

“Responsibility of police official where age of child is uncertain

12. If a police official is uncertain about the age of a person suspected of having committed an offence but has reason to believe that—

- (a) the person may be a child under the age of **[10] 12** years, the police official must act in accordance with the provisions of section 9; or 15
 - (b) the person may be a child who is **[10] 12** years or older but under the age of 14 years, or a child who is 14 years or older but under the age of 18 years, the police official must treat the person as a child with due regard to the provisions relating to—
 - (i) arrest in terms of Chapter 3; or 20
 - (ii) release or detention in terms of Chapter 4, and, in particular, section 27 relating to placement options before a child's first appearance at a preliminary inquiry, 20
- until a probation officer or medical practitioner has expressed an opinion on the age of the person or until the determination of that person's age at the preliminary inquiry or child justice court, after which the police official must treat the person in accordance with the opinion or determination.”. 25

Amendment of section 24 of Act 75 of 2008

10. Section 24 of the principal Act is hereby amended by the substitution in subsection (3) for paragraph (c) of the following paragraph: 30

“(c) the fact that the child is **[10] 12** years or older but under the age of 14 years and is presumed to lack criminal capacity;”.

Substitution of section 27 of Act 75 of 2008

11. The following section is hereby substituted for section 27 of the principal Act:

“Placement options for child who has not been released before first appearance at preliminary inquiry 35

27. If, at any stage before a child's first appearance at a preliminary inquiry, the child has not been released from detention in police custody and is charged, in the case of a child who is—

(4A) Ditaello tsa karolo 77(2), (3) le (4) tsa *Criminal Procedure Act* di a diriswa le diphetogo tse di tlhokegang go ya ka bokao jwa pegelo e e kailweng mo karotlaleletsong (4).

(5) Fa [magiseterata yo o dirang dipatlisiso tse di dirwang pele ga tshoko kgotsa] kgotlatshekelo ya bosiamisi jo bo mabapi le bana e fitlhela gore kitso ya bosenyi ya ngwana ga e a kgona go supywa kwa ntle ga pelaello, [magiseterata yo o dirang dipatlisiso tse di dirwang pele ga tshoko kgotsa] kgotlatshekelo ya bosiamisi jo bo mabapi le bana, fa go le ka fa dikgatlhegolong tsa ngwana, e ka laela gore ngwana a isiwe kwa go modiredi wa tsamaiso e e sa letleleleng motlolamolao go ya kwa kgolegolong go tsaya dikgato tse dingwe go ya ka karolo 9.”.

Kemisetso ya karolo 12 ya Molao 75 wa 2008

9. Karolo e e latelang e emisetsa karolo 12 ya Molaomogolo:

“Maikarabelo a lepodisi fa go le pelaello ka dingwaga tsa ngwana

12. Fa lepodisi le na le pelaello ka ga dingwaga tsa motho yo o gopolelwang gore o tlotse molao mme le na le lebaka le le dirang gore le dumele gore—

(a) motho o ka nna ngwana yo o ka fa tlase ga dingwaga di le [10] 12, motlhankedi wa sepodisi o tshwanetse go dira go ya ka ditaello tsa karolo 9; kgotsa

(b) motho o ka nna ngwana yo o nang le dingwaga di le [10] 12 kgotsa go feta mme a le ka fa tlase ga dingwaga di le 14, kgotsa ngwana yo o nang le dingwaga di le 14 kgotsa go feta mme a le ka fa tlase ga dingwaga di le 18, motlhankedi wa sepodisi o tshwanetse go tshola motho jaaka ngwana ka kelotlhoko go ditaello tse di amanang le—

(i) tshwara go ya ka Kgaolo 3; kgotsa

(ii) kgololo kgotsa tlhatlhelo go ya ka Kgaolo 4, seglobogolo, karolo 27 e e mabapi le ditlhopho tsa go bewa mo lefelong le le rileng kgotsa mo tlhokomelong ya motho yo o rileng pele ngwana a tlhagelela kwa lefelong le go dirwang dipatlisiso kwa go lona,

go fitlha modiredi wa tsamaiso e e sa letleleleng motlolamolao go ya kwa kgolegolong kgotsa ngaka e tlhagisa kakanyo ya yona ka ga dingwaga tsa motho yoo kgotsa go fitlha maiteko a go tlhotlhomisa dingwaga tsa motho yoo kwa lefelong la dipatlisiso tse di dirwang pele ga tshoko kgotsa kgotlatshekelo ya bosiamisi jo bo mabapi le bana, mme morago ga foo motlhankedi wa sepodisi o tshwanetse go tshola motho go ya ka kakanyo kgotsa tlhotlhomiso.”.

Tlhabololo ya karolo 24 ya Molao 75 wa 2008

10. Karolo 24 ya Molaomogolo e tlhabololwa ka kemisetso mo karotlaleletsong (3) ya temana (c) ka temana e e latelang:

“(c) ntlha ya gore ngwana o na le dingwaga di le [10] 12 kgotsa go feta mme o ka fa tlase ga dingwagadi le 14 mme ka jalo o tsewa a sena kitso ya bosenyi;”.

Kemisetso ya karolo 27 ya Molao 75 wa 2008

11. Karolo e e latelang e emisetsa karolo 27 ya Molaomogolo:

“Ditlhopho tsa go bewa ga ngwana, mo lefelong le le rileng, yo a iseng a gololwe, pele ga go tlhagelela lekgetlho la ntlha kwa lefelong la dipatlisiso tse di dirwang pele ga tshoko

27. Fa, ka nako nngwe le nngwe pele ngwana a tlhagelela kwa lefelong la dipatlisiso tse di dirwang pele ga tshoko, mme a ise a gololwe kwa mapodising kwa a tlhatlhetsweng gona mme a setse a latofaditswe, mo lebakeng la ngwana yo o—

- (a) (i) [10] 12 years or older but under the age of 14 years, with any offence; or
 (ii) 14 years or older, with an offence referred to in Schedule 1 or 2,
 the police official must give consideration to the detention of the child 5
 in an appropriate child and youth care centre, if a centre is available
 and there is a vacancy, or if a centre or vacancy is not available, in a
 police cell or lock-up; or
 (b) 14 years or older, with an offence referred to in Schedule 3, the police
 official must cause the child to be detained in a police cell or 10
 lock-up.”.

Amendment of section 34 of Act 75 of 2008

12. Section 34 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

- “(3) A probation officer who has been notified by a police official that a child 15
 under the age of [10] 12 years has been dealt with in terms of section 9, must make
 arrangements to assess the child within seven days of the notification.”.

Amendment of section 35 of Act 75 of 2008

13. Section 35 of the principal Act is hereby amended—

- (a) by the substitution for paragraph (f) of the following paragraph: 20
 “(f) in the case of a child under the age of [10] 12 years or a child
 referred to in section 10(2)(b), establish what measures need to be
 taken in terms of section 9;”; and
 (b) by the deletion of paragraph (g).

Amendment of section 40 of Act 75 of 2008

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14. Section 40 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for paragraph (e) of the following
 paragraph:
 “(e) in the case of a child under the age of [10] 12 years, establish what
 measures need to be taken in terms of section 9;”; and 30
 (b) by the deletion in subsection (1) of paragraph (f).

Amendment of section 41 of Act 75 of 2008

15. Section 41 of the principal Act is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection: 35
 “(1) A prosecutor may divert a matter involving a child who is alleged
 to have committed an offence referred to in Schedule 1 and may, for this
 purpose, select any level one diversion option set out in section 53(3) or
 any combination thereof, if the prosecutor is satisfied—
 (a) that the factors referred to in section 52(1)(a) to (d) have been
 complied with; and 40
 (b) in the case of a child who is [10] 12 years or older but under the age
 of 14 years, that [criminal capacity is likely to be proved in terms
 of section 11] the child will benefit from diversion.”; and
 (b) by the insertion after subsection (1) of the following subsection: 45
 “(1A) If the prosecutor is of the view that the child is unlikely to
 benefit from diversion, or if diversion is for any reason not appropriate,
 the prosecutor may refer the child to a probation officer to be dealt with
 as a child who lacks criminal capacity, in terms of section 9 of the Act.”.

- (a) (i) dingwaga di le [10] 12 mme a le ka fa tlase ga dingwaga di le 14, ka tlolomolao nngwe le nngwe; kgotsa
 (ii) dingwaga di le 14 kgotsa go feta, ka tlolomolao e e kailweng mo Setlhopheng 1 kgotsa 2 sa ditlolomolao, lepodisi le tshwanetse go akanya ka go tthatlhela ngwana kwa lefelong le le tshwanetseng la thokomelo ya ngwana le mošwa, fa lefelo le le jalo le le teng mme go nna le phatlha, kgotsa fa lefelo kgotsa phatlha e se teng, kwa seleng ya mapodisi kgotsa lefelong la tthatlhelo; kgotsa
 (b) dingwaga di le 14 kgotsa go feta, ka tlolomolao e e umakwang mo Setlhopheng 3 sa ditlolomolao, lepodisi le tshwanetse go tthatlhela ngwana kwa seleng ya mapodisi kgotsa kwa lefelong la tthatlhelo.”.

Tlhabololo ya karolo 34 ya Molao 75 wa 2008

12. Karolo 34 ya Molaomogolo e tlhabololwa ka kemisetso ya karotlaleletso (3) ka karotlaleletso e e latelang:

- “(3) Modiredi wa tsamaiso e e sa letleleleng motlolamolao go ya kwa kgolegelong, yo a itisisitsweng ke lepodisi gore ngwana yo o ka fa tlase ga dingwaga di le [10] 12 o ne a tshotswe go ya ka karolo 9, o tshwanetse go dira dithulaganyo tsa go dira tshekatsheko ya ngwana mo malatsing a le supa a go itsisiwe.”.

Tlhabololo ya karolo 35 ya Molao 75 wa 2008

13. Karolo 35 ya Molaomogolo e tlhabololwa—

- (a) ka kemisetso ya temana (f) ka temana e e latelang:
 “(f) mo lobakeng la ngwana yo o leng ka fa tlase ga digwaga di le [10] 12 kgotsa ngwana yo o umakwang mo karolong 10(2)(b), go batlisisa gore ke magato afe a a tshwanetseng go tsewa go ya ka karolo 9;” le
 (b) ka go phimolwa ga temana (g).

Tlhabololo ya karolo 40 ya Molao 75 wa 2008

14. Karolo 40 ya Molaomogolo e tlhabololwa—

- (a) ka kemisetso mo karotlaleletsong (1) ya temana (e) ka temana e e latelang:
 “(e) fa ngwana a le ka fa tlase ga dingwaga di le [10] 12, go tthothomisa gore ke dikgato dife tse di tshwanetseng go tsewa go ya ka karolo 9;” le
 (b) ka go phimolwa mo karotlaleletsong (1) ga temana (f).

Tlhabololo ya karolo 41 ya Molao 75 wa 2008

15. Karolo 41 ya Molaomogolo e tlhabololwa jaana—

- (a) ka kemisetso ya karotlaleletso (1) ka karotlaleletso e e latelang:
 “(1) Motšhutšhisi o ka faposa kgetse mo tshekong e e akaretsang ngwana yo o latofatswang ka tlolomolao e e umakilweng mo Setlhopheng 1 sa ditlolomolao, mme mo lobakeng leno, o ka tlhopha mofuta mongwe le mongwe wa ntlha wa phaposo ya kgetse mo tshekong jaaka go tthaloswa mo karolong 53(3) kgotsa kopanyo ya yona, fa motšhutšhisi a kgotsofetse—
 (a) gore mabaka a a umakilweng mo karolong 52(1)(a) go fitlha go (d) a diragaditswe; le
 (b) mo lebakeng la ngwana yo o dingwaga di le [10] 12 kgotsa go feta mme a le ka fa tlase ga dingwaga di le 14, gore [kitso ya bosenyi e ka kgona go ka supetswa go ya ka karolo 11] ngwana o tla una molemo go tswa mo phaposong ya kgetse mo tshekong.”; le
 (b) ka go tsenngwa morago ga karotlaleletso (1) ga karotlaleletso e e latelang:
 “(1A) Fa motšhutšhisi a akanya gore ngwana o ka se une molemo ope go tswa mo phaposong, kgotsa fa ka lebaka lengwe phaposo e se matshwanedi, motšhutšhisi o ka romela ngwana kwa modireding wa tsamaiso e e sa letleleleng motlolamolao go ya kwa kgolegelong gore a sekasekwe jaaka ngwana yo o senang kitso ya bosenyi, go ya ka karolo 9 ya Molao.”.

Amendment of section 43 of Act 75 of 2008, as amended by section 36 of Act 42 of 2013

16. Section 43 of the principal Act is hereby amended—

- (a) by the substitution in subsection (2) for paragraph (a) of the following paragraph: 5
- “(a) consider the assessment report of the probation officer, with particular reference to—
- (i) the age estimation of the child, if the age is uncertain;
 - [(ii) the view of the probation officer regarding the criminal capacity of the child if the child is 10 years or older but under the age of 14 years and a decision whether an evaluation of the criminal capacity of the child by a suitably qualified person referred to in section 11(3) is necessary;]** and 10
 - (iii) whether a further and more detailed assessment of the child is needed as referred to in section 40(1)(g);” 15
- (b) by the substitution in subsection (3) for paragraph (a) of the following paragraph:
- “(a) A preliminary inquiry must be held in respect of every child who is alleged to have committed an offence, except where— 20
- (i) the matter has been diverted by a prosecutor in terms of Chapter 6;
 - (ii) the child is under the age of **[10] 12** years; or
 - (iii) the matter has been withdrawn.” 25

Amendment of section 49 of Act 75 of 2008 25

17. Section 49 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

- “(1) (a) An inquiry magistrate may, subject to paragraph (b), make an order that the matter be diverted in terms of section 52(5). 30
- (b) An inquiry magistrate may, **in the case of a child who is 10 year or older but under the age of 14 years,** only make an order that the matter be diverted in terms of paragraph (a) if he or she is satisfied **[that the child has criminal capacity]**— 35
- (i) that the factors referred to in section 52(1)(a) to (d) have been complied with; and
 - (ii) in the case of a child who is 12 years or older but under the age of 14 years, that the child will benefit from diversion.
- (c) If the inquiry magistrate is of the view that the child is unlikely to benefit from diversion, or if diversion is for any reason not appropriate, the inquiry magistrate may refer the child to a probation officer to be dealt with as a child who lacks criminal capacity, in terms of section 9 of the Act.” 40

Amendment of section 52 of Act 75 of 2008

18. Section 52 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph (c) of the following paragraph:

- “(c) there is **[a] prima facie [case against the child] evidence that the child committed the offence;**” 45

Amendment of section 58 of Act 75 of 2008

19. Section 58 of the principal Act is hereby amended by the addition of the following subsection:

- “(5) If the prosecutor decides to proceed with the prosecution in terms of subsection (4)(a) in the case of a child who is 12 years old but under the age of 14 years, criminal capacity of that child must be proved in terms of section 11.” 50

Tlhabololo ya karolo 43 ya Molao 75 wa 2008, jaaka o tlabololwa ka karolo 36 ya Molao 42 wa 2013**16. Karolo 43 ya Molaomogolo e tlabololwa—**

- (a) ka kemisetso mo karotlaleletsong (2) ya temana (a) ka temana e e latelang: 5
 “(a) tsaya tsia pegelo ya tshkatsheko ya modiredi wa tsamaiso e e sa letleleleng motlolamolao go ya kwa kgolegolong, ka kaelo e e rileng go—
- (i) tekanyetso ya dingwaga tsa ngwana, fa dingwaga di sa itsiwe;
- [(ii) **pono ya modiredi wa tsamaiso e e sa letleleleng motlolamolao go ya kwa kgolegolong mabapi le kitso ya ngwana ya bosenyi fa ngwana a na le dingwaga di le 10 kgotsa go feta mme a le ka fa tlase ga dingwaga di le 14, le tshwetso ya gore a go tlhokega tshkatsheko ya ngwana ya kitso ya bosenyi e e dirilweng ke motho yo o letleletsweng jaaka go tlaboswa mo karolong 11(3);] le 10 15**
- (iii) gore a go tlhokega tshkatsheko e nngwe ya ngwana e e nang le dintlha tsothe jaaka go umakwa mo karolong 40(1)(g);” le
- (b) ka kemisetso mo karotlaleletsong (3) ya temana (a) ka temana e e latelang: 20
 “(a) Dipatlisiso tse di dirwang pele ga tshko di tshwanetse go dirwa mo lebakeng la ngwana mongwe le mongwe yo o latofatswang ka tlolamolao, ntle le fa—
- (i) kgetse e fapositswe mo tshkong ke motshutshisi go ya ka Kgaolo 6; 25
- (ii) ngwana a le ka fa tlase ga dingwaga di le [10] 12; kgotsa
- (iii) kgetse e tsholotswe.”.

Tlhabololo ya karolo 49 ya Molao 75 wa 2008**17. Karolo 49 ya Molaomogolo e tlabololwa ka kemisetso ya karotlaleletso (1) ka karotlaleletso e e latelang: 30**

- “(1) (a) Magiseterata yo o dirang dipatlisiso, go ya ka temana (b), o ka dira taelo ya gore kgetse e faposwe mo tshkong go ya ka karolo 52(5). 30
- (b) Magiseterata yo o dirang dipatlisiso o ka, **mo lebakeng la ngwana yo o nang le dingwaga di le 10 kgotsa go feta mme a le ka fa tlase ga dingwaga di le 14,**] dira fela taelo ya gore kgetse e faposwe mo tshkong go ya ka temana (a) fa a kgotsofetse **[gore ngwana o na le kitso ya bosenyi]**— 35
- (i) gore mabaka a a kailweng mo karolong 52(1)(a) go filha go (d) a obametswe; le
- (ii) mo lebakeng la ngwana yo o nang le dingwaga di le 12 kgotsa go feta mme a le ka fa tlase ga dingwaga di le 14, gore ngwana yoo o tla una molemo go tswa mo go faposweng ga kgetse mo tshkong. 40
- (c) Fa magiseterata wa dipatlisiso a akanya gore ngwana o ka se une molemo ope go tswa mo phaposong, kgotsa fa ka lebaka lengwe phaposi e se matshwanedi, motshutshisi o ka romela ngwana kwa modireding wa tsamaiso e e sa letleleleng motlolamolao go ya kwa kgolegolong gore a sekasekwe jaaka ngwana yo o senang kitso ya bosenyi, go ya ka karolo 9 ya Molao.”. 45

Tlhabololo ya karolo 52 ya Molao 75 wa 2008**18. Karolo 52 ya Molaomogolo e tlabololwa ka kemisetso mo karotlaleletsong (1) ya temana (c) ka temana e e latelang: 50**

- “(c) go na le **[kgetsi kgatlhanong le ngwana]** bopaki jo bo popota jwa gore ngwana o tlotse molao;”.

Tlhabololo ya karolo 58 ya Molao 75 wa 2008**19. Karolo 58 ya Molaomogolo e tlabololwa ka go tsenngwa ga karotlaleletso e e latelang: 55**

- “(5) Fa motshutshisi a swetsa ka go tswelala ka tshko go ya ka karotlaleletso (4)(a) mo lebakeng la ngwana yo o dingwaga di le 12 kgotsa go feta mme a le ka fa tlase ga dingwaga di le 14, kitso ya bosenyi ya ngwana yoo e tshwanetse go netefatswa go ya ka karolo 11.”.

Amendment of section 67 of Act 75 of 2008

20. Section 67 of the principal Act is hereby amended by the insertion in subsection (1) after paragraph (a) of the following paragraphs:

“(aA) A child justice court may only make an order for diversion in terms of paragraph (a) if the court is satisfied—

- (i) that the factors referred to in section 52(1)(a) to (d) have been complied with; and
- (ii) in the case of a child who is 12 years or older but under the age of 14 years, that the child will benefit from diversion.

(aB) If the child justice court is of the view that the child is unlikely to benefit from diversion, or if diversion is for any reason not appropriate, the court may refer the child to a probation officer to be dealt with as a child who lacks criminal capacity, in terms of section 9 of the Act.”.

Amendment of section 71 of Act 75 of 2008

21. Section 71 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) (a) A child justice court imposing a sentence must, subject to paragraph (b), request a pre-sentence report prepared by a probation officer prior to the imposition of sentence.

(b) A child justice court may, subject to paragraph (c), dispense with a pre-sentence report where a child is convicted of an offence referred to in Schedule 1 or where requiring the report would cause undue delay in the conclusion of the case, to the prejudice of the child[, **but no child justice court sentencing a child may impose a sentence involving compulsory residence in a child and youth care centre providing a programme referred to in section 191(2)(j) of the Children’s Act or imprisonment, unless a pre-sentence report has first been obtained**].

(c) A child justice court may not dispense with a pre-sentence report where the court may—

- (i) impose a sentence involving compulsory residence in a child and youth care centre providing a programme referred to in section 191(2)(j) of the Children’s Act or imprisonment; or
- (ii) make an order referred to in section 50(2)(c)(ii) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007).”.

Substitution of section 92 of Act 75 of 2008

22. The following section is hereby substituted for section 92 of the principal Act:

“**[Children used by adults] Persons using children to commit crime**

92. If it comes to the attention of any court official or probation officer that a child has been used by **[an adult] another person** to commit a crime referred to in Schedule 1 or 2 of the Criminal Procedure Act, that **[adult] person** must be reported to the South African Police Service for the consideration of a prosecution as provided for in section 141(1)(d), read with section 305(1)(c), of the Children’s Act, and the fact of the **[adult’s] person’s** involvement must be taken into account when determining the treatment of the child in the child justice system.”.

Tlhabololo ya karolo 67 ya Molao 75 wa 2008

20. Karolo 67 ya Molaomogolo e tlhabololwa ka go tsenya mo karotlaleletsong (1) morago ga temana (a) ditemana tse di latelang:

- “(aA) Kgotlatshekelo ya bosiamisi jo bo mabapi le ngwana e ka dira fela taelo ya phaposo ya kgetse mo tshekong go ya ka temana (a) fa kgotlatshekelo e kgotsofetse—
- (i) gore mabaka a a kailweng mo karolong 52(1)(a) go fitlha go (d) a obametswe; le
- (ii) mo lebakeng la ngwana yo o nang le dingwaga di le 12 kgotsa go feta mme a le ka fa tlase ga dingwaga di le 14, gore ngwana yoo o tla una molemo go tswa mo go faposweng ga kgetse mo tshekong.
- (aB) Fa kgotlatshekelo ya bosiamisi jo bo mabapi le ngwana e akanya gore ngwana o ka se une molemo ope go tswa mo phaposong, kgotsa fa ka lebaka lengwe phaposo e se matshwanedi, motšhutšhisi o ka romela ngwana kwa modireding wa tsamaiso e e sa letleleleng motlolamolao go ya kwa kgolegelong gore a sekasekwe jaaka ngwana yo o senang kitso ya bosenyi, go ya ka karolo 9 ya Molao.”.

Tlhabololo ya karolo 71 ya Molao 75 wa 2008

21. Karolo 71 ya Molaomogolo e tlhabololwa ka kemisetso ya karotlaleletso (1) ka karotlaleletso e e latelang:

- “(1) (a) Kgotlatshekelo ya ngwana e e ntshang katlholo, go ya ka temana (b), e tshwanetse go kopa pegelo ya pele e e kwetsweng ke modiredi wa tsamaiso e e sa letleleleng motlolamolao go ya kwa kgolegelong pele katlholo e ntshiwa.
- (b) Kgotlatshekelo ya bosiamisi jo bo mabapi le ngwana, go latela temana (c), e tshwanetse go dira mmogo le pegelo ya pele ga katlholo fa ngwana a bonwe molato wa tlolomolao e e kailweng mo Setlhopheng 1 sa ditlolomolao kgotsa fa go kopa pegelo go ka baka tiego e e sa tlhokegeng mo go konosetsweng ga kgetse, mo go gobeleleng ngwana[, mme kgotlatshekelo ya bosiamisi ya ngwana e e atholang ngwana ga e a tshwanela go ntsha katlholo e e akaretsang go romelwa ga ngwana ka pateletso kwa lefelong la tlhokomelo ya bana le bašwa le le neelanang ka porograma e e tlhaloswang mo karolong 191(2)(j) ya Molao wa Bana kgotsa kgolegelo, ntle fela le fa ripoto ya pele ga katlholo e amogetswe pele].
- (c) Kgotlatshekelo ya bosiamisi jo bo mabapi le ngwana e ka se dire ntle le ripoto ya pele fa kgotlatshekelo e ka—
- (i) dira katlholo e e akaretsang go romelwa ngwana ka pateletso kwa lefelong la tlhokomelo ya bana le bašwa le le neelanang ka porograma e e tlhaloswang mo karolong 191(2)(j) ya Molao wa Bana kgotsa kgolegelo; kgotsa
- (ii) dira taelo e e umakilweng mo karolong 50(2)(c)(ii) ya *Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007* (Molao 32 wa 2007).”.

Kemisetso ya karolo 92 ya Molao 75 wa 2008

22. Karolo e e latelang e emisetsa karolo 92 ya Molaomogolo:

“**[Bana ba ba diriswang ke bagolo] Batho ba ba dirisang bana go dira bosenyi**

92. Fa modiri mongwe le mongwe wa kwa kgotlatshekelong kgotsa modiredi wa tsamaiso e e sa letleleleng motlolamolao go ya kwa kgolegelong a ka itse gore ngwana o dirisitswe ke [mogolo] motho mongwe go dira bosenyi jo bo umakilweng mo Setlhopheng 1 kgotsa 2 sa *Criminal Procedure Act*, [mogolo] motho yoo o tshwanetse go ya go begwa kwa Tirelong ya Sepodisi sa Aforikaborwa gore go tle go akanngwe ka go mo sekisa jaaka go tlhaloswa mo karolong 141(1)(d), o buiswa le karolo 305(1)(c), ya *Children’s Act*, mme ntlha ya go nna le seabe ga [mogolo] motho e tshwanetse go tsewa tsia fa go swetswa ka moo ngwana a tla tsholwang ka teng mo tsamaisong ya bosiamisi jo bo mabapi le ngwana.”.

Amendment of section 96 of Act 75 of 2008, as amended by section 19 of Act 24 of 2015

23. Section 96 of the principal Act is hereby amended by the substitution for subsection (4) of the following subsection:

- “(4) In order for Parliament to review the minimum age of criminal capacity, as provided for in section 8, the Intersectoral Committee must, not later than five years after the commencement of **[this Act]** section 5 of the Child Justice Amendment Act, 2019, submit a report to the Cabinet member responsible for the administration of justice, setting out the following:
- (a) The statistics of the following categories of children who are alleged to have committed an offence and the offences they are alleged to have committed:
- [(i) **Children who are 10 years at the time of the commission of the alleged offence;**
- (ii) **children who are 11 years at the time of the commission of the alleged offence;**
- (iii) children who are 12 years at the time of the commission of the alleged offence;
- (iv) children who are 13 years at the time of the commission of the alleged offence;
- (b) sentences imposed on the children in the categories referred to in paragraph (a), if they were convicted;
- (c) the number of children referred to in paragraph (a) whose matters did not go to trial, as provided for in section 10(2)(b) on the grounds that the prosecutor was of the view that criminal capacity would not be proved and reasons for that decision in each case;
- (d) the number of children referred to in paragraph (a) whose matters were dealt with in accordance with section 11, whether expert evidence was led, and the outcome of each matter regarding the establishment of criminal capacity;
- (e) an analysis of the statistics referred to in paragraphs (a) to (d); and
- (f) a recommendation based on the analysis as to whether the minimum age of criminal capacity should remain at **[10] 12** years as provided for in section 7(1) or whether the minimum age of criminal capacity should be raised.”.

Amendment of table of contents of Act 75 of 2008

- 24.** The table of contents of the principal Act is hereby amended—
- (a) by the substitution for item 9 of the following item:
- “**9.** Manner of dealing with child under the age of **[10] 12** years”;
- (b) by the substitution for item 10 of the following item:
- “**10.** Decision to prosecute child who is **[10] 12** years or older but under the age of 14 years”; and
- (c) by the substitution for item 92 of the following item:
- “**92.** **[Children used by adults]** Persons using children to commit crime.”.

Amendment of principal Act

25. The principal Act is hereby amended by the substitution for the expression “appropriate adult”, wherever it occurs, of the expression “appropriate person”.

Amendment of Act 51 of 1977

26. The Criminal Procedure Act, 1977 (Act No. 51 of 1977), is hereby amended by the substitution in sections 73, 77 and 78 for the expression “appropriate adult”, wherever it occurs, of the expression “appropriate person”.

Tlhabololo ya karolo 96 ya Molao 75 wa 2008, jaaka o tlhabololwa ka karolo 19 ya Molao 24 wa 2015

23. Karolo 96 ya Molaomogolo e tlhabololwa ka kemisetso ya karotlaleletso (4) ka karotlaleletso e e latelang:

- “(4) Gore Palamente e thadise bonnye jwa dingwaga tsa kitso ya bosenyi, jaaka go tthaloswa mo karolong 8, Komiti ya Motlhakanelwa e tshwanetse, mo seabakeng se se sa feteng dingwaga di le tlhano morago ga tshimologo ya **[Molao ono]** karolo 5 ya Molaotlhabololo wa Bosiamisi wa Ngwana, 2019, go romelela leloko la Kabinete le le nang le maikarabelo mo tsamaisong ya bosiamisi pegelo, e e tthalosang tse di latelang:
- (a) Dipalopalo tsa mefutafuta e e latelang ya bana ba ba latofatswang ka tlolomolao le ditlolomolao tse go tweng ba di dirile:
- (i) **bana ba ba nang le dingwaga di le 10 ka nako e ba neng ba dira tlolomolao e ba latofatswang ka yona;**
- (ii) **bana ba ba nang le dingwaga di le 11 ka nako e ba neng ba dira tlolomolao e ba latofatswang ka yona;**
- (iii) bana ba ba nang le dingwaga di le 12 ka nako e ba neng ba dira tlolomolao e ba latofatswang ka yona;
- (iv) bana ba ba nang le dingwaga di le 13 ka nako e ba neng ba dira tlolomolao e ba latofatswang ka yona;
- (b) dikatlholo tse di atholetseng bana mo mefutafuteng e e umakilweng mo temaneng (a), fa ba ne ba bonwe molato;
- (c) palo ya bana ba ba umakwang mo temaneng (a) ba dikgetse tsa bona di sa yang kwa tshetshong, jaaka go tthaloswa mo karolong 10(2)(b) ka mabaka a gore motšhutšhisi o ne a akanya gore kitso ya bosenyi e ka seka ya kgona go supywa le mabaka a tshwetso e e jalo;
- (d) palo ya bana ba ba umakwang mo temaneng (a) ba dikgetse tsa bona di sa yang kwa tshetshong go latela karolo 11, go ka tswa go reeditse bopaki jwa moitseanape, le ditlamorago tsa kgetse nngwe le nngwe mabapi le patlisiso ya kitso ya bosenyi;
- (e) tshetshetsho ya dipalopalo tse di umakilweng mo ditemaneng (a) go fitlha go (d); le
- (f) katlanegiso e e ikaegileng mo tshetshetshong ya gore a bonnye jwa dingwaga tsa kitso ya bosenyi di tshwanetse go sala e ntse e le dingwaga di le **[10] 12** jaaka go tthaloswa mo karolong 7(1) kgotsa gore a bonnye jwa dingwaga tsa kitso ya bosenyi di tshwanetse go tlhatloswa.”.

Tlhabololo ya lenane la diteng la Molao 75 wa 2008

24. Lenane la diteng la Molaomogolo le tlhabololwa—

- (a) ka kemisetso ya ntlha 9 ka ntlha e e latelang:
- “9. Tsela ya go sekisa ngwana yo o dingwaga tse dika fa tlase ga di le **[10] 12**”;
- (b) ka kemisetso ya ntlha 10 ka ntlha e e latelang:
- “10. Tshwetso ya go sekisa ngwana yo o dingwaga di le **[10] 12** mme a le ka fa tlase ga dingwaga di le 14”;
- (c) ka kemisetso ya ntlha 92 ka ntlha e e latelang:
- “92. **[Bana ba ba diriswang ke bagolo]** Batho ba ba dirisang bana go dira bosenyi.”.

Tlhabololo ya Molaomogolo

25. Molaomogolo o tlhabololwa ka kemisetso ya tlhagiso “mogolo yo o tshwanetseng”, gongwe le gongwe fa e tlhagelelang, ka tlhagiso “motho yo o tshwanetseng”.

Tlhabololo ya Molao 51 wa 1977

26. *Criminal Procedure Act, 1977* (Molao 51 wa 1977), o tlhabololwa ka kemisetso mo dikarolong 73, 77 le 78 ya tlhagiso “mogolo yo o tshwanetseng”, gongwe le gongwe fa e tlhagelelang, ka tlhagiso “motho yo o tshwanetseng”.

Transitional arrangement

27. Any criminal proceedings in which the age of criminal capacity of a child is applicable which were instituted before the commencement of section 4 of this Act, must be continued and concluded as if this Act had not been passed.

Short title and commencement

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28. (1) This Act is called the Child Justice Amendment Act, 2019, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

(2) Different dates may be so fixed in respect of different provisions of this Act.

Thulaganyo ya diphetogo

27. Ditsamaiso dingwe le dingwe tsa bosenyi tse dingwaga tsa kitso ya bosenyi tsa ngwana di diriswang mo go tsona, tse di dirisitsweng pele ga tshimologo ya karolo 4 ya Molao ono, di tshwanetse go tseweletswa le go konosetswa jaaka e ketse Molao ono ga o ise o dirwe. 5

Setlhogo se se khutshwane le tshimologo

28. (1) Molao ono o bidiwa Molaotlhabololo wa Bosiamisi wa Ngwana, 2019, e bile o tsenngwa mo tirisong ka letlha le le beilweng ke Moporesidente ka kgoeletso mo Lokwalodikgannyeng la Puso.

(2) Matlha a a farologaneng a ka bewa jalo mabapi le ditaelo tse di farologaneng tsa Molao ono. 10

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