



- including possible referral of that child to the Children's Court. The Bill is however silent as to the purpose of referral to the Children's Court. This presupposes accountability for wrongdoing on a minor said to irrebuttably lack criminal capacity.
3. The Bill does not address the designation of specialised police officers or units instructed and capacitated to handle child offenders, as required by Clause 12 ("Specialization within the police") of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules").
  4. The Bill provides that in certain cases a child may be provided legal representation at the state's expense, effectively regurgitating the position of the Constitution in section 70(1)(d). The Bill does not provide for an unqualified right to legal representation for all children in conflict with the law at all times, as required by Article 40 (2)(b)(ii) of the Convention on the Rights of the Child ("UNCRC") and Article 17 (2)(c)(iii) of the African Charter on the Rights and Welfare of the Child ("ACRWC").
  5. Clause 10 allows for age estimation by probation officers or diversion officers, with the concerned officers taking into consideration a multiplicity of factors, including an estimation of age by a medical practitioner. This takes away the primacy of the medical age estimation, and creates room for manipulation, corruption and falsification.
  6. Other than a provision for an assessment by the probation officer or diversion officer, a possible psychoanalysis of the child ordered by the court, and setting the standard of proof to beyond reasonable doubt, the Bill is silent on the procedure of determining criminal capacity for children rebuttably presumed to lack criminal capacity (12-14 years).
  7. There is an apparent conflation of roles of the

probation officer and the diversion officer in the Bill. Presently, only probation officers carry out assessments in non-diverted cases, and diversion officers only deal with children diverted from the criminal justice system.

8. Clause 81 on "privacy and confidentiality" does not carry an express prohibition of the press in court proceedings involving child offenders or child witnesses, as required by the ACRWC.
9. The Bill does not specify time-limits within which child justice cases must be heard and concluded, thereby failing to provide concrete and enforceable standards of promptness in treatment of cases.
10. The Bill allows for imprisonment of a child to up to 15 years, which is steep (Clause 90(5)).
11. While the Bill recognises the need for an intersectoral approach to child justice by stakeholders, there is no provision for civil society representation on the National Child Justice Committee, but only at provincial and district levels.

### Conclusion

The Bill marks significant progress in the treatment of children in conflict with the law. By and large the best interests of the child principle is upheld. However, the Bill is fraught with some glaring inconsistencies, omissions, and shortcomings in meeting international law stipulations and standards in child justice as provided for in the UNCRC, the ACRWC and the Beijing Rules, such as compulsory provision of legal assistance, enumerating timeframes within which cases must be heard and completed, expressly prohibiting the press from the courtroom in proceedings involving child offenders and child witnesses, and designating specialised and/or specially trained police officers to attend to child justice.

## The Draft Child Justice Bill



[www.justiceforchildren.org.zw](http://www.justiceforchildren.org.zw)

**Progressive with shortcomings.  
An analysis of the proposed  
Child Justice Bill**

In June 2019, a “layman’s draft” of the proposed Child Justice Bill was released by the Ministry of Justice Legal and Parliamentary Affairs. The Draft Bill is yet to be gazetted, meaning it remains in draft form.

### **What is the purpose of the Bill?**

The Bill seeks to establish a distinct criminal justice system for children who are in conflict with the law, so that due protections accorded to children by the Constitution are observed. These include all procedural and substantive issues attendant to a child alleged to have committed a criminal offence.

### **What new things does the Bill introduce?**

Zimbabwe currently has a criminal justice system for children. However, this system is scattered across various legal instruments that include the Constitution, Children’s Act [*Chapter 5:06*], Criminal Procedure and Evidence Act [*Chapter 9:07*] (“CPEA”), and the Criminal Law (Codification and Reform) Act [*Chapter 9:23*]. As this was subsumed within the monolithic criminal justice system applicable to adults, the Bill is an attempt to give primacy to the best interests of the child principle, consolidating existing protections, and creating the following new features:

1. The Bill creates Child Justice Courts (different from Children’s Courts created by the Children’s Act), with specially selected and trained personnel to man the courts. However, the Child Justice Courts may not try treason, murder and rape (Schedule 3 offences).
2. The Bill creates a distinct set of criminal procedure for children. Where the Bill is silent, the CPEA applies, and where there is conflict between the Bill and the CPEA, the Bill prevails (Clause 3).

3. The pre-trial diversion process is given primacy, in that diversion options that will channel the child away from formal criminal proceedings are, if appropriate and possible, to be used at every stage (Clause 5(g)).
4. The age of criminal capacity is raised from the current 7 years to 12 years. Clause 13(2) requires that for children rebuttably presumed to lack criminal capacity (12-14 years), a diversion officer or a probation officer must provide an assessment report on this matter and, where necessary, a child justice court may order that a suitably qualified person make an assessment of the cognitive, moral, emotional, psychological and social development of the child.
5. The Bill expressly recognises the role of stakeholders outside the formal criminal justice system, specifically non-governmental organisations and communities as involved in the delivery of child justice services, and provides that implementers must co-operate in fulfilling the objectives of the Bill and in delivering the specific services. (Clause 7). The provision is aptly titled “Intersectoral collaboration and the implementation of this Act”.
6. Clause 21 empowers the police, without involving the diversion officer or probation officer, to issue an “informal police caution” rather than resorting to criminal proceedings for minor offences which would, if tried in court, attract a prison sentence of no more than 3 months. The clause also provides for a “formal police caution” to be issued for an offence for which the penalty is not more than six months imprisonment, with or without conditions, but only upon a diversion committee’s recommendation.
7. Confessions, admissions and pointing out may only be admitted in criminal proceedings against a child if a parent, guardian, probation officer or a legal practitioner representing the

child or other appropriate adult was present at the time when the child made the confession or statement or pointed out anything or gave inculpatory information (Clause 22(2)).

8. Every assessment report by the probation officer or the diversion officer must be forwarded to the Diversion Committee for consideration of diversion.
9. Where children are jointly charged with adults, separation of trials is now the default, with an application for joinder of trials having to be made if circumstances warrant for such (Clause 78).
10. The Bill provides for a transfer of a child found to be “in need of care” at any time during the proceedings to the Children’s Court (Clause 82). This is an expansion of section 351(2) of the CPEA which currently only allows transfer upon conviction but prior to sentencing.
11. A child can only be imprisoned if he or she was 16 years and above at the time of committing the offence (Clause 90(2)).
12. A mechanism to monitor and coordinate implementation of the child justice system is provided for through multi-sectoral Child Justice Committees at national, provincial and district levels, as well as for a National Child Justice Coordinator (Clauses 97-104).

### **What are the shortcomings in the draft Bill?**

1. Although Child Justice Courts are created, the Bill leaves room for cases other than treason, murder and rape to be tried in ordinary magistrates’ courts, although such ordinary courts are empowered to employ the provisions of the Bill in trying children.
2. While the Bill raises the age of criminal capacity from 7 to 12 years, it provides for some procedure to handle children below 12 years accused of criminal offences (Clause 8 and 14),