

**PART XIX  
PROBATION**

***Probation order.***

162. (1) If the Children's Court before which a charge against a child is proved, is of the opinion that having regard to the circumstances, including the nature of the offence and the character of the child, it is appropriate to do so, the Children's Court may make a probation order.

(2) The Children's Court, before making the probation order under subsection (1), shall explain to the child in a language that the child understands -

- (a) the effect of the order; and
- (b) that if he -
  - (i) fails to comply with the probation order; or
  - (ii) commits another offence,

he shall be liable to be dealt with for the original offence as well as for the other offence.

(3) A probation order shall have effect for such period not more than two years from the date of the order as may be specified in the probation order.

(4) For the purposes of securing the good conduct and supervision of the probationer or preventing a repetition by him of the same offence or the commission of other offences, a probation order shall -

- (a) require the probationer to comply during that period to the supervision of a probation officer;
- (b) specify that the probationer shall not commit any offence during the term of probation order; and
- (c) contain such other requirements, as the Children's Court having regard to the circumstances of the case considers necessary including any one or more of the following-
  - (i) that the probationer shall reside at the probation hostel, at the home of his parent or guardian or relative or at some other place;
  - (ii) that the probationer shall attend an educational institution to be recommended by a social worker;
  - (iii) that the probationer shall remain indoors at his place of residence, be it at the probation hostel or at a home, during hours to be specified.

(5) Without prejudice to the powers of the Children's Court to make orders, the payment of sums by way of damages for injury or compensation for loss shall not be included amongst the requirements of a probation order.

(6) The Children's Court, before making a probation order containing requirements as to residence-

- (a) shall consider the home environment of the child; and
  - (b) if the order requires a child to reside in a probation hostel, shall specify in the order the period for which he is so required to reside, but that period shall not extend beyond 12 months from the date of the order.
- (7) The Children's Court which makes a probation order shall-
- (a) immediately give a copy of the order-
    - (i) to the probationer;
    - (ii) to the social worker or another person under whose supervision the probationer is placed; and
  - (b) send to a Children's Court for the district or area named in the order in which the probationer is required to reside during the probation period a copy of the order together with such documents and information relating to the case as it considers likely to be of assistance to the court.
- (8) The Children's Court in making a probation order may, if it thinks it is expedient for the reformation of the probationer, place the probationer in the charge of any person who consents to accept the probationer, on that person's giving security for the good behaviour of the probationer.

***Failure to comply with probation order.***

163. (1) If at any time during the probation period it appears to the Children's Court that a probationer has failed to comply with any of the requirements of the probation order, the Children's Court may issue -

- (a) a summons requiring the probationer to appear at the place and time specified in the summons; or
- (b) a warrant of his arrest.

(2) A warrant under subsection (1) shall not be issued except on information in writing and on oath submitted by the probation officer.

(3) A summons or warrant issued under this section shall direct the probationer to appear or be brought before the Children's Court.

(4) A probationer when arrested under subsection (1) may, if not brought immediately before the Children's Court under subsection (3)-

- (a) be placed under detention; or
- (b) be released on bail, with or without sureties,

until such time as he can be brought before the Children's Court.

(5) If it is proved to the satisfaction of the Children's Court that a probationer has failed to comply with any of the requirements of the probation order under section 162 (4)(a) or (c) the Children's Court may, without prejudice to the continuance of the probation order deal with the probationer for the offence in respect in which the probation order was made in any manner in which the Children's Court could deal with him if the Children's Court had just found him guilty of that offence.

***Effects of probation.***

164. (1) The finding of guilt for an offence for which an order was made under this Part placing the child in conflict with the law on probation shall be deemed not to be a proved charge for any purpose other than for the purposes of-

- (a) the proceedings in which the order was made; and
  - (b) any subsequent proceedings which may be taken against a child under this Part.
- (2) The provisions of subsection (1) shall not affect the right of any such child-
- (a) to appeal against the finding of guilt; or
  - (b) to rely on a finding of guilt in bar of any subsequent proceedings for the same offence.

***Variation of probation order.***

165. (1) If the Children's Court is satisfied that a probationer proposes to change or has changed his residence from the district or area named in the probation order to another district or area, the Children's Court may, and if an application is made by a social worker, shall, by order vary the probation order by substituting for the district or area named therein the district or area where the probationer proposes to reside or is residing.

(2) If the probation order contains requirements which, in the opinion of the Children's Court cannot be complied with unless the probationer continues to reside in the district or area named in the order, the Children's Court shall not vary the order except in accordance with subsection (4).

(3) If a probation order is varied under subsection (1), the Children's Court shall send to the Children's Court for the new district or area named in the order a copy of the order together with such documents and information relating to the case as it considers likely to be of assistance to that Children's Court.

(4) Without prejudice to subsections (1) and (3) the Children's Court may on the application made by a social worker or by the probationer vary the probation order by -

- (a) revoking any of the requirements in the probation order; or
- (b) inserting in the probation order, either in addition to or in substitution for any such requirement, any requirement which could be included in the order if the order were then being made by the Children's Court in accordance with section 162.

(5) The Children's Court shall not vary a probation order under subsection (4) by -

- (a) reducing the probation order; or
- (b) extending that period such that the probation period becomes more than two years.

***Variation of probation order.***

166. (1) The Children's Court by which a probation order was made may, on an application made by a social worker, the parent or guardian of the probationer or the probationer, discharge the probation order.

(2) The Children's Court shall not deal with an application under subsection (1) without summoning the probationer unless the application is made by a social worker.

(3) If -

- (a) the Children's Court discharges a probation order under subsection (1); or
- (b) a probationer dealt with under section 163 for the offence for which he was placed on probation, the probation order shall cease to have effect.

***Children's court to give copies of varying or discharging order to social worker.***

167. On the making of an order varying or discharging a probation order under section 165 or 166 respectively -

- (a) the Children's Court shall forthwith give sufficient copies of the varying or discharging order to a social worker;
- (b) the social worker shall give a copy of the varying or discharging order to -
  - (i) the probationer; or
  - (ii) the person in charge of the probation hostel.
- (c) the person in charge of the probation hostel or place in which the probationer is or was required by the order to reside.

**PART XX  
APPEAL AND REVIEW**

***Appeal by child against whom a charge has been proved.***

168. Any child against whom a charge has been proved by the Children's Court or any other court acting under the provisions of this Act has the right to appeal to an upper court.

***Automatic review in certain cases.***

169. (1) Any sentence which involves a residential element imposed on a child under section 157 or 159 and any sentence involving imprisonment imposed on a child under section 155, shall be subjected in the ordinary course to review by an upper court.

(2) Any sentence involving a residential element imposed under the provisions of this Act which is wholly or partially suspended, is subject to review under subsection (1).

(3) The review procedure referred to under subsections (1) or (2) shall be deferred where a child has appealed against a proven charge or sentence and has not abandoned the appeal, and shall cease to apply with reference to such an accused when judgement is given.

(4) Each sentence on a separate charge shall be regarded as a separate sentence for the purposes of rendering a sentence subject to the provisions of this section.

(5) Proceedings which fall within the ambit of this section for the purposes of review shall be reviewed whether or not the accused was legally represented at any stage of the proceedings.

(6) A judicial officer conducting a review under this section has the power to -

- (a) confirm, alter or quash the proven charge;
- (b) in the event of several proven charges being quashed, where the charge was proved on one of two or more alternative charges, confirm, alter or quash the other alternative charges or one or other of the alternative charges;
- (c) confirm, alter or set aside the sentence or any other order of the lower court;
- (d) set aside or correct the proceedings of the lower court;
- (e) generally give such judgement or impose such sentence or make such order as the lower court ought to have given, imposed or made on any matter which was before it at the trial of the case in question; or
- (f) increase the sentence imposed by the lower court or impose any form of sentence.

(7) A judicial officer exercising powers under this section may receive any evidence or cause a subpoena to be served on any person to appear for the purposes of giving evidence.

***Review in other instances.***

170. (1) Nothing contained in this Act shall be construed as depriving the High Court of its inherent right to review irregularities in proceedings of lower courts.

(2) If, in any case of a child in conflict with the law in which the Children's Court or any other court acting under the provisions of this Act has imposed a sentence which is not subject to automatic review in the ordinary course, it is brought to the notice of the judge of the High Court that the proceedings in which the sentence was imposed were not conducted in accordance with justice, such court or judge has the same powers as if the matter has been laid before that court or the judge concerned under section 169.

***Review of proceedings after proving a charge but before sentence.***

171. (1) If the presiding officer after a charge has been proven but before

sentence is of the opinion that the proceedings have not been conducted in accordance with justice, he may, without sentencing the accused, record reasons for this opinion and transmit them, together with the record of the proceedings, to the registrar of the High Court, who shall cause the matter to be set down before a judge in chambers for review.

(2) The review referred to under subsection (1) shall be conducted in the same way as an automatic review under section 169.

*Suspension of execution of sentence.*

172. (1) The execution of any sentence may not be suspended by the noting of an appeal against a proven charge or sentence or pending review unless the court which imposed the sentence releases the child concerned on conditions referred to under section 113 (3), (4) and (5) or, in the case of a sentence not involving a residential element, suspends the operation of the sentence pending the finalisation of the appeal or review.

(2) Where the execution of a sentence has been suspended in terms of subsection (1), it may be a further condition, where appropriate, that the child against whom a charge has been proven shall report at a specified place and time upon service, in the manner prescribed by the rules of court, of a written order upon him in order that effect may be given to any sentence in respect of the proceedings in question.

**PART XXI**  
**CHILDREN AT RISK OF OFFENDING**

*Children at risk of offending.*

173. (1) If the parent or guardian of a child requests the Children's Court orally or in writing to detain a child in an approved school, probation hostel or centre on the grounds that the parent or guardian is unable to exercise proper control over the child, the Children's Court-

- (a) shall immediately inquire into the circumstances of the parent(s) or guardian(s) request;
- (b) shall direct a social worker to submit a social assesment report to the Children's Court for the court to determine whether an order under subsection (2) may be made in respect of the child; and
- (c) after hearing the child may order the child to be temporarily detained in an approved school, probation hostel or centre if it deems it necessary to do so.

(2) If after considering the report referred to in paragraph (1)(b) and the comments of the child thereon, the Children's Court is satisfied that-

- (a) it is expedient so to deal with the child; and
- (b) the parent or guardian understands the results which will follow from and consents to the making of the order,

the Children's Court may, on the recommendation of the social worker, order that the child -

- (i) be sent to an approved school, probation hostel or centre, as may be appropriate; or
- (ii) be placed for such period not exceeding three years under the supervision of a social worker or some other person appointed for the purpose by the Children's Court,

and any such order may require the child to reside for a period not exceeding 12 months in a probation hostel, approved school or other appropriate institution.

***Supervision by social worker or other person.***

174. (1) If a Children's Court makes an order under section 173(2) (ii) placing a child under the supervision of a social worker or some other person, that officer or other person -

- (a) shall, while the order remains in force, visit, guide and counsel the child; and
- (b) may, if it appears necessary to do so, at any time while the order remains in force, bring the child before the Children's Court.

(2) The Children's Court before whom a child is brought under subsection (1) (b) may, if it deems it expedient to do so, amend the order made under section 173 and

- (a) send the child, subject to the consent of the child's parent or guardian, to an approved school, place of safety or centre, which ever is appropriate; or
- (b) place the child in the care of a fit and proper person, whether a relative or not, who is willing to undertake the care of the child, for the unexpired period of the order.

**PART XXII  
INSTITUTIONS**

***Places of safety for children in need of welfare.***

175. (1) The Minister may by notice in the gazette, designate, establish or appoint any place, institution or centre to be a place of safety for the care and protection of children.

(2) The Minister shall determine conditions and requirements to be met by all places of safety and shall not register any place of safety unless and until it has met those conditions and requirements.

(3) The Department of Social Welfare shall -

- (a) maintain a directory of all registered places of safety; and
- (b) be responsible for monitoring and supervision of the places of safety.

(4) The Director of Social Welfare shall advise the Minister on the designation, establishment or appointment of any place, institution or centre to be a place of safety for the care and protection of children.

(5) The Minister shall have powers to appoint commission of enquiry on any place of safety should need arise.

(6) The Minister shall have the power to revoke a designation or appointment made under subsection (1) if the person who runs a place of safety does not comply with the provisions of subsection (2).

***Escape or removal of child from place of safety.***

176. (1) A child who escapes or is removed from a place of safety without lawful authority -

- (a) may be apprehended by a social worker, police officer and shall be brought to the place of safety; and

(b) shall be kept for such period which is equal to the remaining term of his stay under the order originally made by the Children's Court.

(2) The social worker, or police officer who apprehended the child shall investigate the case so as to find out why the child escaped.

***Removing or helping a child to escape from place of safety.***

177. A person who -

- (a) removes a child from a place of safety without lawful authority;
- (b) assists or induces, directly or indirectly, a child to escape from a place of safety; or
- (c) harbours or conceals a child who has so escaped, or prevents him from returning to the place of safety,

commits an offence and is liable on conviction to a fine not less than ten thousand Emalangeni or to imprisonment for a term not exceeding five years or to both.

***Places of detention or custody for children in conflict with the law.***

178. (1) The Minister may, by notice in the Gazette, designate, establish or appoint such places of detention as may be required for purposes of this Act.

(2) The Minister shall determine conditions and requirements to be met by all places of detention or custody for children in conflict with the law and shall not register any institution unless and until it has met those conditions and requirements.

(3) The Department of Social Welfare shall-

- (a) maintain a directory of all places of detention and custody for children in conflict with the law; and
- (b) be responsible for monitoring and supervision of places referred to under paragraph (a).

(4) The Director of Social Welfare shall advise the Minister on the designation, establishment or appointment of any place, institution or centre to be a place of detention or custody for the care and protection of children in conflict with the law.

(5) The Minister shall have powers to appoint commission (s) of inquiry on any place of detention or custody should need arise.

(6) The Minister shall have the power to revoke a designation or appointment made under subsection (1) if the person, institution or organisation which runs a place of detention or custody does not comply with the provisions of subsection (2).

***Remanding children to places of detention or custody.***

179. (1) A child shall ordinarily be remanded in custody in a place of detention designated, established or appointed under this Act and situated in the same area as the Children's Court by which the child is remanded.



(2) The order or judgement in pursuance of which a child is committed to custody in a place of detention shall be -

- (a) delivered with the child to the person who is in charge of the place of detention; and
- (b) an authority for his detention in the place of detention in accordance with the terms of the order or judgement.

(3) A child while being detained and while being conveyed to and from the place of detention shall be deemed to be in lawful custody.

(4) The Minister -

- (a) shall cause places of detention or custody to be inspected; and
- (b) may make regulations -
  - (i) as to the classification, treatment, employment and control of children detained in such places of detention or custody; and
  - (ii) to provide for the appointment of fit and proper persons to visit periodically children detained in such places of detention.

***Escape or removal from place of detention or custody.***

180. (1) A child who escapes or is removed from a place of detention or custody without lawful authority-

- (a) may be arrested without a warrant by a social worker or a police officer and be brought back to the place of detention; and
- (b) shall be kept in a place of detention or custody for the remaining term of his term of detention under the order ordinarily issued by the Children's Court.

(2) The social worker or police officer who apprehended the child shall investigate the case so as to find out why the child escaped.

***Removing or helping child to escape from place of detention or custody.***

181. Any person who -

- (a) removes a child from a place of detention or custody without lawful authority;
- (b) assists or induces, directly or indirectly, a child to escape from a place of detention or custody; or
- (c) harbours or conceals a child who has so escaped, or prevents him from returning to the place of detention or custody,

commits an offence and is liable on conviction to a fine of not less than ten thousand emalangeni or to imprisonment for a term not exceeding five years or to both.

***Probation Hostel.***

182. (1) The Minister may, by notice in the Gazette, designate, establish or appoint such probation hostels as may be required for the purposes of this Act.

(2) The Minister shall make regulations for the management and inspection of probation hostels.

***Child under thirteen years not to be sent to probation hostel.***

183. A child under the age of thirteen years shall not be sent to a probation hostel.

***Child who escapes or is removed from probation hostel.***

184. A child who escapes or is removed from a probation hostel without lawful authority -

- (a) may be arrested without a warrant by any social worker or police officer; and
- (b) be brought back to the hostel or before the Children's Court,

and the Children's Court may deal with him for the offence for which he was sent to the probation hostel in the same manner in which the Children's Court could deal with him if it had just proven a charge against him.

***Removing or helping child to escape from probation hostel.***

185. Any person who -

- (a) removes a child from a probation hostel without lawful authority;
- (b) assists or induces, directly or indirectly, a child to escape from a probation hostel;  
or
- (c) harbours or conceals a child who has so escaped, or prevents him from returning to the probation hostel,

commits an offence and is liable on conviction to a fine of not less than ten thousand emalangeni or to imprisonment for a term not exceeding five years or to both.

***Approved school.***

186. (1) The Minister may, by notice in the Gazette designate, establish or appoint such approved schools as may be required for the education, training and detention of children to be sent there in pursuance of this Act.

(2) The Minister may classify such approved schools -

- (a) according to the ages of the persons for whom they are intended; and
- (b) in such other ways as he may think fit so as to ensure that a child sent to an approved school is sent to a school appropriate for his case.

***Child under thirteen years not to be sent to an approved school.***

187. A child under thirteen years shall not be sent to an approved school.

***When child can be sent to approved school.***

188. (1) If -

- (a) a child is found guilty of an offence;
- (b) the social assessment report submitted to the Children's Court shows that -
  - (i) the parent or guardian of the child can no longer exercise or is incapable of exercising any proper control over him; and
  - (ii) the child is in need of institutional rehabilitation; and
- (c) it appears to the Children's Court that although the offence committed is not serious in nature but it is expedient that the child be subjected to detention for such term and under instruction and discipline as appears most conducive for his reformation,

the Children's Court shall, on the recommendation of a social worker, send the child to an approved school.

(2) If the Children's Court orders a child to be sent to an approved school, the order shall be an authority for his placement in that approved school for a period of three years from the date of the order.

(3) Notwithstanding subsection (2), the management of an approved school to which a child is sent may, in their discretion -

- (a) shorten the period of detention for reasons which appear to them to be sufficient;
- (b) permit any such child to be released for such period and upon such conditions as they may deem fit to impose;
- (c) report to the Department of Social Welfare on the action taken; or
- (d) where the Department of Social Welfare is not in agreement with the action taken, the matter shall be referred to the Children's Court for determination.

(4) A child shall not be permitted to be released under subsection (3) (b) during the first twelve months of the period of detention without the written consent of the Minister.

***Delivery of approved school order to the person in charge of approved school.***

189. (1) The Children's Court which makes an approved school order shall cause the order to be delivered to the person who is in charge of the approved school.

(2) The Children's Court which makes an approved school order shall cause all such information in the possession of the Court with respect to a child as is in the opinion of the Children's Court should be known by the person who is in charge of the approved school, to be transmitted to the person who is in charge of the approved school.

(3) If a child has been ordered to be sent to an approved school, any person who knowingly harbours or conceals him after the time has come for him to go to the approved school, commits an offence and is liable on conviction to a fine not less than ten thousand emalangeni or to imprisonment for a term not exceeding five years or to both.

(4) If a person authorised to take a child to an approved school is, when the time has come for him to go to the approved school, unable to -

(a) find the child; or

(b) obtain possession of the child,

the Children's Court may, if satisfied by information on oath or affirmation that there is reasonable grounds for believing that some person named in the information can produce the child, issue a summons requiring the person so named to attend at the court on such day as may be specified in the summons and produce the child.

(5) If the person referred to under subsection (4) fails to comply with the requisition under that subsection without reasonable excuse he shall, in addition to any other liability to which he may be subject to under this Act, on conviction be liable to a fine not exceeding ten thousand Emalangeni.

***Further placement in approved school.***

190. If the person who is in charge of an approved school is satisfied that a child -

(a) whose period of placement in the approved school is about to expire needs further care or training; and

(b) cannot be placed in suitable employment without such further care and training,

he may, if the management of the approved school consent, place him for a further period not exceeding six months but any such period shall not extend beyond the date the child attains the age of eighteen years.

***After care of child released from approved school.***

191. If a child is sent to an approved school, the Children's Court making the order shall, at the same time, make an order that after the expiration of the period of his placement he shall, for a period not exceeding one year, be under the supervision of -

(a) a social worker; or

(b) such other person as the Children's Court may appoint.

***Escape from approved school or failure to return to approved school after expiry of leave.***

192. (1) Any child who -

(a) escapes from the approved school in which he is placed, or from any hospital, home or place in which he is receiving medical attention;

(b) being absent from the approved school on temporary leave of absence or with permission -

- (i) runs away from the person in whose charge he is; or
- (ii) fails to return to the approved school upon the expiration of his leave, or upon the revocation of such permission; or
- (c) being absent from the approved school under supervision, fails to return to the approved school upon being recalled,

may be arrested without a warrant and be brought before the Children's Court where the child is found or the approved school is situated.

(2) If a child brought before a Children's Court under subsection (1) is under the age of fourteen years, the Children's Court shall order the child to be brought back to the approved school or to be sent to another approved school for -

- (a) a period which is equal to the period during which he was unlawfully at large; or
- (b) the remainder of his period of placement; and
- (c) such period not exceeding six months as the Children's Court may direct, in addition to the periods mentioned in paragraphs (a) and (b).

(3) If a child brought before the Children's Court under subsection (1) has attained the age of fourteen years, the Children's Court may order the child to be brought back to the approved school or to be sent to another approved school for-

- (a) a period equal to the period during which he/she was unlawfully at large; or
- (b) the remainder of the period of his placement; and
- (c) such further period not exceeding six months as the Court may direct.

***Supervision of approved school.***

193. Every approved school shall be under the supervision of the Director of Social Welfare.

***Removing or helping child to escape from approved school.***

194. Any person who-

- (a) removes a child from an approved school without lawful authority;
- (b) assists or induces, directly or indirectly, a child to escape from an approved school;  
or
- (c) harbours or conceals a child who has so escaped, or prevents him from returning to the approved school,

commits an offence and is liable on conviction to a fine not less than ten thousand emalangeni or to imprisonment for a term not exceeding five years or to both.

***Other facilities for children in conflict with the law.***

195. (1) The Minister may, by notice in the Gazette, establish or appoint other facilities as may be required for temporary accommodation or day-training without institutionalising children in conflict with the law pursuant to this Act.

(2) A child placed in a facility referred to under subsection (1), shall be under the supervision of a social worker.

(3) The Director of Social Welfare may grant leave of absence to any child who is in temporary accommodation at the facility referred to under subsection (1), for such periods and on such conditions as he may prescribe.

(4) Where it is deemed appropriate, the Director of Social Welfare may transfer a child to any other suitable facility in the manner prescribed.

(5) A child who is placed at a specific facility and who absconds shall be arrested with or without a warrant and be brought before a Children's Court in the area in which he is found.

(6) The Children's Court shall enquire into the absconding and make an appropriate decision basing itself on the best interests of the child.

***Standards for monitoring and supervision of children's institutions established under this Act.***

196. (1) The Department of Social Welfare shall prescribe regulations for monitoring and supervision of all children's institutions established under this Act.

(2) There shall be established under the Department of Social Welfare a body to monitor and supervise all institutions providing care and protection to children under this Act in the manner prescribed.

(3) In the event of the death of a child in an institution, the Department of Social Welfare shall cause the police to investigate the circumstances surrounding the death and submit a written report to the Director of Public Prosecutions who shall determine what further cause of action should be taken if any.

**PART XXIII  
PARENTAGE, CUSTODY AND GUARDIANSHIP**

***Parentage.***

197. (1) The following persons may apply to a Children's Court for an order to confirm the parentage of a child -

- (a) the child;
- (b) the parent of a child;
- (c) the guardian of a child;
- (d) a social worker;
- (e) a chief; or
- (f) any other interested person as the Children's Court may deem fit.

(2) The application for parentage may be made -

- (a) before the child is born;

- (b) within three years after the death of the father or mother of a child; or
- (c) before a child is eighteen years of age or after the child has attained that age with special leave of Children's Court.

***Evidence of parentage.***

198. The following shall be considered by a Children's Court as evidence of parentage -

- (a) the name of the parent entered in the register of births;
- (b) performance of customary ceremony by the father of the child;
- (c) refusal by the parent to submit to medical test;
- (d) public knowledge of parentage; and
- (e) any other matter that the Children's Court may consider relevant.

***Medical test.***

199. The Children's Court may order the alleged parent to submit to a medical test and the Children's Court shall, on the basis of the evidence before it, make such order as it considers appropriate.

***Custody and access.***

200. (1) A parent, family member or any other person may apply to a Children's Court for custody of a child.

(2) A parent, family member or any other person may apply to a Children's Court for periodic access to the child.

(3) The Children's Court shall consider the best interests of the child and the importance of the child being with his mother when making an order for custody or access.

(4) Subject to subsection (3), a Children's Court shall also consider -

- (a) the age of the child;
- (b) that it is preferable for a child to be with his parents except if his rights are persistently being abused by his parents;
- (c) the views of the child;
- (d) that it is desirable to keep siblings together;
- (e) the need for the continuity in the care and control of the child; and
- (f) any other matter that the Children's Court may consider relevant.

***Non - custodial parent to have access to child.***

201. A non-custodial parent in respect of whom an application is made to the Children's Court for an order of parentage or custody under this Part shall have access to the child who is the subject of the parentage or custody order.

**Offence.**

202. Any person who unlawfully removes a child from a person who has lawful custody of a child commits an offence and is liable on conviction to a fine not exceeding ten thousand emalangenzi or to imprisonment for a term not exceeding five years or to both.

**Appointment of guardian.**

203. (1) For the purposes of this section "guardian" means a person appointed to assume parental responsibility over the child by -

- (a) will made by a parent of the child;
- (b) an order of the Children's Court;
- (c) by the family;
- (d) Master of the High Court; or
- (e) a chief.

(2) A guardian may be appointed by any of the parties referred to under subsection (1) acting alone or in conjunction with the surviving parent of the child where one of the parents is deceased, or the father of a child born out of wedlock who has acquired parental responsibility for the child, or one of the parents where the parents of the child are no longer living together.

(3) A guardian may be appointed in respect of any child who is resident in Swaziland whether or not the child was born in Swaziland or is a citizen of Swaziland.

(4) A guardian appointed under this Act need not be a Swazi citizen.

(5) A guardian may be appointed in respect of the person or estate of the child or both.

(6) Where the guardian is appointed only in respect of the estate of the child, he need not have actual custody of the child but shall, with the authority of the Master of the High Court, have -

- (a) the power and responsibility to administer the estate of the child and in particular to receive and recover and invest the property of the child in his own name for the benefit of the child;
- (b) the duty to take all reasonable steps to safeguard the estate of the child from loss or damage;
- (c) the duty to produce and avail accounts in respect of the child's estate to the parent or custodian of the child or to such other person as the Children's Court may direct, or to the Children's Court, as the case may be, on every anniversary of the date of his appointment; and
- (d) to produce any account or inventory in respect of the child's estate when required to do so by the Children's Court.



***Rights of surviving parent to guardianship.***

204. (1) On the death of the father of a child, the mother if surviving, shall subject to the provisions of this Act, be the guardian of the child.

(2) On the death of the mother of a child, the father if surviving, shall subject to the provisions of this Act, be the guardian of the child.

***Appointment of testamentary guardian.***

205. (1) A parent of a child may, by will appoint any person to be a guardian of the child after that parent's death.

(2) A guardian of a child may by will or deed appoint another individual to take his place as the guardian of the child in the event of his death.

(3) Any appointment made under subsection (1) or (2) shall not have effect unless will or deed is dated and is signed by the person making the appointment.

(4) A guardian so appointed shall act as such after the death of the surviving parent unless the surviving parent has requested otherwise.

(5) If the child, member of the family or guardian appointed considers that the parent is unfit to have legal custody of the child, they may apply to the Children's Court which may -

- (a) refuse to make any order in which case the parent shall remain the only guardian; or
- (b) make an order that the guardian shall act jointly with the parent; or
- (c) make an order appointing a relative of the child or a person who is willing to act, a guardian of the child, to act jointly with the parent or guardian or both of them; or
- (d) make an order that the guardian shall be the only guardian of the child, in which case the Children's Court may order the parent to pay the guardian a financial provision towards the maintenance of the child having regard to the means of the parent, as the Children's Court may consider reasonable but the Children's Court shall not appoint the guardian as only guardian for the child if he is not a relative of the child, unless circumstances exist with regard to the welfare of the child.

(6) Where guardians are appointed by both parents, the guardians so appointed shall, after the death of the surviving parent, act jointly.

(7) Subject to subsection (5), a guardian who has been appointed to act jointly with the surviving parent, shall continue to act as guardian after the death of the parent, but if the surviving parent has appointed a guardian, the guardian appointed by the Children's Court shall act jointly with guardian appointed by the parent.

***Appointment of guardian by the Children's Court.***

206. The Children's Court may appoint a guardian on the application made by any person where the child's parents are no longer living, or cannot be found and the child has no guardian and there is no other person having parental responsibility for him or where the parents of the child are no longer living together.

***Guardianship revocation.***

207. An appointment made under section 203 revokes an earlier appointment made by the same person in respect of the same child, unless it is clear that the purpose of the latter appointment is to appoint an additional guardian.

***Extension of guardianship beyond child's eighteenth birthday.***

208. (1) The appointment of a guardian shall be terminated upon the child attaining the age of eighteen years, unless exceptional circumstances exist that would require a Children's Court to make an order that the appointment be extended.

(2) Where an order is made under subsection (1), it shall be made prior to the child's eighteenth birthday.

(3) A Children's Court making an order under this section may attach such conditions as to the duration of the order and containing directions as to how it shall be carried out, imposing such other conditions that shall be complied with and with such incidental, supplemental or consequential provisions as the Children's Court deems fit.

(4) A Children's Court shall have power to vary, modify or revoke any order made under this section on the child's eighteenth birthday on the application made by the child, the parent or guardian of the child, a relative of the child or the Director of Social Welfare or where the child marries on his eighteenth birthday, his spouse.

***Disputes between guardians.***

209. Where two or more persons act as joint guardians to a child, or where the surviving parent and a guardian act jointly and are unable to agree on any question affecting the welfare of the child, any of them may apply to the Children's Court for its direction, and the Children's Court may make orders regarding the matters of difference as it may think proper.

***Neglect or misapplication of assets by the guardian of the estate of a child.***

210. A guardian of the estate of a child, whether or not that guardian is also a guardian of the person of the child, who neglects to recover or safeguard, or misplaces any asset forming part of the estate of the child, or subjects the estate to loss or damage, commits an offence and on that account is liable to make good any loss or damage so occasioned.

***Offences by guardians of the estate of a child.***

211. Any guardian of the estate of a child who -

- (a) neglects to receive and safeguard any asset forming part of the estate, misapplies any such asset to loss, waste or damage; or
- (b) fails to produce to the Children's Court or the parent or guardian of the child any account or inventory required by the Children's Court; or
- (c) produces any such inventory or account which is false,

commits an offence and is liable on conviction to a fine not less than fifteen thousand emalangeni or to imprisonment for a term not exceeding five years or to both.