



THE JUDICIARY
OF GHANA



JUVENILE JUSTICE

BENCH BOOK

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FOREWORD

As part of the efforts to make justice delivery more efficient, the Judicial Training Institute (JTI) on behalf of the Judiciary of Ghana has developed this handbook as a guide to the Juvenile Court panel members in the performance of their judicial duties.

The effort to produce a guide of this kind underscores the fact that the Juvenile Court's work comprises an important part of the work of the courts, particularly in juvenile justice delivery.

We are mindful of the fact that the handbook may not embody all the essential guidelines covering all areas critical to the functions of the Juvenile Court. We are convinced however, that it will serve as a beneficial starting point and a basis for standardizing practice in the operations of the Juvenile Court.

We hope that all Juvenile Court members and key staff will diligently study and apply the guidelines contained therein together with the Juvenile Justice Act, the Children's Act, the Criminal Procedure Act, other relevant legislation on children and the Code of Ethics for Judges and Magistrates.

We trust that this handbook will serve our Juvenile Courts well.

Ag. Director,
Judicial Training Institute (JTI)

May, 2011
Accra

INTRODUCTION

This part must be used in conjunction with the relevant laws and regulations on Juvenile Justice in Ghana, notable among which are the Juvenile Justice Act, (2003) Act 653; The Children’s Act, (1998) Act 560; The Courts Act, (1993) Act 459; Domestic Violence Act and any Practice Directives currently in force.

The main object of the Act 653 is to provide for an alternative criminal justice system to protect the rights of children in conflict with the law and also to provide for young offenders in accordance with international standards based on the United Nations Convention on the rights of the child and the United Nations (UN) Standard Minimum Rules for the administration of Juvenile Justice. The underlying principle of the Act 653 is that a juvenile offender must be dealt with in a manner which is different from an adult, except under exceptional circumstances (see 17 (3) and (4) of Act 653).

A juvenile offender for purposes of the Act 653 is defined as a person under eighteen (18) years who is in conflict with the law. [see section 1 (1) of Act 653]

RIGHTS OF THE JUVENILE DURING TRIAL

The rights and privileges of the juvenile during a trial before the juvenile court are set out in Act 653 as follows:

- a. The juvenile has a right to privacy at the trial and at any stage of the cause or matter (*see section 3(1) of Act 653*); and
- b. No person shall in the course of the trial of an offence connected with a juvenile, or at any stage of the matter release any information that may lead to the identification of the juvenile in the course of arrest, investigation or trial. [See section 3 (2) of Act 653]]. Any breach of the aforementioned rights of the juvenile is punishable on summary conviction by a fine not exceeding two hundred penalty units or a term of imprisonment not exceeding twelve months or to both. [*See section 3 (3) of Act 653*]

There are other rights which must be brought to the attention of the accused juvenile during the trial and these are set out in section 22 of Act 653 as follows:

- a. The right to remain silent;
- b. The right to have a parent, guardian, close relative or probation officer present at the proceedings;
- c. The right to legal representation; and
- d. The right to legal aid

THE JUVENILE COURT

The Courts Act, (1993) Act 459 as amended by Act 620, in section 39 (c) creates the Juvenile Court. It is important to note therefore that a District Court does not have an automatic inherent jurisdiction to sit as a juvenile court. The Chief Justice must first designate that District Court to sit as a Juvenile Court (see section 49 (1) of the Courts Act, (1993) Act 459 as amended by Act 2002). It is important to ensure that your court has been designated by the Chief Justice as a Juvenile Court before hearing any cause or matter affecting a juvenile. Where therefore a District Court has not been so designated, the Magistrate may deal with the juvenile in respect of bail applications only and refer the juvenile to the appropriate juvenile court.

COMPOSITION OF THE JUVENILE COURT

The Juvenile Court sits as a panel of three made up of the magistrate, who presides over the court and two others, one of whom shall be a social welfare officer.

JURISDICTION OF THE JUVENILE COURT

- a. The juvenile court has jurisdiction to try and sentence only juveniles who are in conflict with the law. (See section 17 of Act 653).
- b. It also has power to sentence juveniles who have been tried by other courts with summary jurisdiction (see section 18 of Act 653) and remitted to the Juvenile Court for sentencing.

The Juvenile Court has no power to hear a charge against a juvenile for an offence which if committed by an adult is punishable by death. Examples of such offences include murder, genocide and high treason (See article 3 (3) (a) and (b) of the 1992 Constitution and Act 29).

Offences tried at the Juvenile Court are classified into two broad categories: minor and serious offences.

“Minor offences” is defined in section 60 of Act 653 as matters such as petty theft, petty assault and threatening offences.

“Serious offences” is defined in section 46 (8) of Act 653 as murder, rape, defilement, indecent assault involving unlawful harm, robbery with aggravated circumstances, drug offences and offences related to firearms. Act 459 by section 49 (3) confers jurisdiction on the Juvenile Court in civil

matters involving juveniles. See section 47 (1) (h) of the Court's Act which also confers civil jurisdiction on the District Court to determine matters affecting juveniles.

THE TRIAL PROCESS

Expeditious Hearing

It is a statutory requirement that trials are conducted expeditiously (see section 33 of Act 653). Trial of offences involving juveniles must be completed within six months from the date of first appearance. The juvenile must be discharged without any further proceeding if the trial is not completed within six months. The discharge under this section refers to an absolute discharge and no further proceeding can be brought against the juvenile in respect of the same offence previously charged.

DETERMINATION OF THE AGE OF A JUVENILE

Where it appears to the court that a person before it is a juvenile, it is mandatory for the court to conduct an inquiry to determine the age of that person in accordance with section 19 (1) of Act 653.

In determining the age of a person, the court may rely on a birth certificate or a baptismal certificate. In the absence of these, the court may consider a certificate signed by a medical officer indicating the age of the child (see section 19 (2) of Act 653). This provision in the Juvenile Justice Act is similar to that contained in section 122 of the Children's Act, (1998) Act 560, except that under Act 560, a statutory declaration issued and certified by the High Court of Justice or a person authorised by law to authenticate the age of a child upon an application by a parent or guardian of the child will also constitute evidence of the age of that child. (See section 122 (3) of Act 560).

Under no circumstances shall a Juvenile Court try offences committed by a person who has attained the age of eighteen. These persons are not juveniles and can only be tried under the Criminal and Other Offences (Procedure) Act, (1960) Act 30. Where it appears to the Juvenile Court that a person brought before it has attained the age of eighteen, the court must decline to hear the matter and discharge accordingly.

JUVENILE COURT SITTING

A juvenile has a right to privacy in the course of his trial. This in effect means that all hearing must be conducted in camera. Thus the Juvenile Court must conduct its business either in a different building or room from

that in which regular sitting of the court takes place or sit on different days from those of the ordinary sittings of the District Court (see section 16 (1) of Act 653).

- a. The proceeding during the hearing must be informal.
- b. Police officers attending the court must not wear uniform (See s.16 (3) of Act 653).
- c. No restraint must be used on the juvenile, unless exceptional circumstances so warrant (See section 16 (4) of Act 653).
- d. Both the hearing and the dress code must be informal, in order to put the juvenile at ease.

PARTICIPATION AT SITTING

Juvenile court sittings are not held in public. Therefore section 16 (2) of the Act 653 excludes all persons from attending the sitting except the following:

- a. Members and officers of the court;
- b. Parties to the case before the court, their lawyers and witnesses, and any other persons directly concerned with the case; and
- c. Any other persons that the court may specially authorise to be present.

TAKING THE PLEA OF THE JUVENILE

Before taking the plea of the juvenile, the allegations in the charge sheet shall be translated in a language that the juvenile can understand after which he shall be called upon to plead. (See section 20 (1) and (2) of Act 653).

Whenever the police deem it necessary at any stage of the proceedings to withdraw the charges against the juvenile, the juvenile may be discharged or acquitted (see section 20 (4) of Act 653). This section must be read in conjunction with Section 59 (2) (b) of Act 30 which further highlights when it is appropriate to acquit or discharge when the police withdraw charges against an accused:

- a. Before the close of the prosecution case, the accused shall be discharged in respect of the offence (s);
- b. After the close of the prosecution case the accused shall be acquitted and discharged in respect of the offences.

BAILS AND REMANDS

Notwithstanding the strict provisions of section 96 (7) (a) of Act 30, a Juvenile Court may only refuse bail if it is satisfied that the juvenile when granted bail may:

- a. Not appear to stand trial; or
- b. Interfere with a witness, the evidence or hamper police investigations; or commit a further offence when on bail. (See section 21 (5) of Act 653)

Bail may be granted on the juvenile's own undertaking or with sureties from the parents, guardian, close relative of the juvenile or a responsible person. (Section 21 (3) of Act 653).

The amount of bail must be fixed with due regard to the circumstances of the case and should not be excessive or harsh. (Section 21 (4) of Act 653).

If however bail is not granted, the Juvenile Court must record the reasons for the refusal and inform the applicant by way of education that he or she has a right to repeat the application for bail in the High Court. (See section 21 (6) of Act 653).

Where a juvenile is not released on bail, the Juvenile Court may make any of the following orders:

- a. Commit the juvenile to the care of the juvenile's parents, guardian, close relative or any fit person who is willing to take care of the juvenile, or
- b. Remand the Juvenile to a remand home situated within a reasonable distance from the Court. (See section 23 (1) of Act 653).

In making the order to remand the juvenile, absolute care must be taken not to place the juvenile in an adult prison (section 23 (6) of Act 653). Secondly any order for the detention of the juvenile offender must be made within forty-eight hours of the arrest of the juvenile. (See section 14 (3) of Act 653).

PERIOD OF REMAND

The maximum period of a remand warrant shall be seven days. The warrant shall not be extended in the absence of the juvenile at the hearing (see section 23 (4) of Act 653). The cumulative period of remand of the juvenile shall not exceed three months except in the case of an offence which is punishable by death where the period of remand shall not exceed six months. (see section 23 (4) and (5) of Act 653).

INTERVIEW OF JUVENILE OFFENDERS IN THE COURTROOM

It is absolutely important that juvenile offenders must not be disturbed or harmed by the experience of being interviewed in court .

DECISION MAKING IN THE JUVENILE COURT

Under the Juvenile Justice Act, the court must consider the juvenile's best interest as an essential element in its decision making. The welfare principle is defined in section 2 of the Act as follows:

"The best interest of a juvenile is

- a. Paramount in a matter concerned with the juvenile; and
- b. The primary consideration by a juvenile court, institution or any other body in a matter concerned with a juvenile.

This definition is a repeat of what appears in section 2 of the Children's Act, 1998 (Act 560), except for the word "Child" which was substituted with "Juvenile".

The considerations for assessing what is in the best interest of the juvenile are not reflected in any legislation. It is however important to note that the objective of the juvenile justice system is to fashion out specific provisions which are appropriate to the needs of juveniles. The measures which are in the best interest of the juvenile offender must be guided by the principles of reformation, education and the proper growth of the juvenile into adulthood and not punishment or deterrence. Additionally all interventions resorted to must be proportional to the seriousness of the offence committed by the juvenile.

THE SOCIAL ENQUIRY REPORT

Where a juvenile is charged with an offence, the court is enjoined to order a Social Enquiry Report (SER) on the juvenile to be prepared by a Probation Officer for the due consideration of the court in making any order or orders (see section 24 (1) and (2) of Act 653). NOTE that as per section 24 (1) & (2) the SER must be ordered and considered before any order or orders are made in respect of the juvenile and not just before sentencing. The SER provides information about juvenile offenders and their circumstances which are relevant for consideration by the Juvenile Court. The contents of a SER should include particulars of the background of the juvenile, the conditions under which the offence was committed

and recommendations for a sentence (see section 24 (3) of Act 653). Where however a recommendation is made suggesting that the matter be referred to a Child Panel, such suggestions for referrals can only be in respect of minor offences (see section 24 (4) of Act 653). Child Panels are dealt with under section 29 (1) of Act 560, to mediate in criminal and civil matters that concern a child (see section 28, 31 and 32 of Act 560, see also Bench Book on Family Tribunals).

Once the SER is prepared, the juvenile court must ensure that the contents of the SER are made known to the juvenile and a copy of it also made available to the juvenile or his legal representative (see section 24 (5) of Act 653). The court may also in addition to the SER cause the probation officer to make an oral report to the court (see section 24 (6) of Act 653).

The court may reject the recommendations stated in the SER, but in doing so it shall record its reasons for so departing from the SER (see *section 24 (7) of Act 653*).

DIVERSION

Diversion is the referral of cases of children alleged to have committed offences away from the juvenile justice system. It is intended to play a key role in reducing the effect of the criminal justice system on the juvenile while promoting the rehabilitation of juvenile offenders. The concept of diversion is based on the theory that taking certain youth through the juvenile justice system may do more harm than good. However the juvenile justice law prohibits diversion in the case of serious offences. (see *section 25 and 26 of Act 653*)

The Juvenile Court, shall upon receipt and consideration of the SER determine whether or not a juvenile offender should be diverted from the normal juvenile justice system. If it so decides, then it shall state whether the said diversion should be with conditions or not.

OTHER ORDERS

The Juvenile Court may where appropriate order the parents, guardian or close relative of the juvenile offender to give security for the good behaviour of the juvenile where he is charged with an offence. (see section 28 of Act 653)

In ordinary criminal trials, the court convicts the accused once the charge has been proved. However, in case the juvenile court, the court has the option to order the parents to give security for good behavior as follows:

- a. The court may make an order under s.28 (2) of Act 653 against the parents, guardian or close relative of the juvenile for the payment of damages and costs, or require that person to give security for the good behavior of the juvenile without proceeding to convict the juvenile
 - i. Before making an order against the above-listed persons, the affected person must be given an opportunity to be heard by the court. However, if the person is invited, but fails to attend without good reason, the court may proceed to make the order against him or her as provided by s.28 (3) of Act 653.
- b. The other option is to convict the juvenile and proceed to deal with the juvenile offender under s.29 (1) and (2) of Act 653.

The Juvenile Court shall not exercise the options granted it under s.28 and 30 of Acts 653 nor any other discretions open to it in a discriminatory manner. Every discretion granted the Juvenile Court shall be exercised judiciously.

METHODS OF DEALING WITH JUVENILE OFFENDERS AFTER TRIAL

The various methods for dealing with juvenile offenders after a trial or after having pleaded guilty as outlined in Section 29 of Act 653 are as follows:

- a. A discharge of the juvenile offender either conditionally or unconditionally;
- b. A discharge of the juvenile offender after the juvenile has given an undertaking;
- c. The release of the juvenile offender on probation (see section 31 of Act 653);
- d. Commit the juvenile offender to the care of a relative or other fit persons (see also section 34 (1) of Act 653). However the juvenile court in the exercise of this power shall not designate a manager of a children's home as a fit person unless the home is one which the Minister responsible for Social Welfare has approved by notice published in the Gazette (see section 36 of Act 653);
- e. Send the juvenile offender to a correctional center established under the Act;
- f. Order the offender to pay a fine, damages or costs;
- g. Order the parents, guardian or close relative of the juvenile offender to pay a fine, damages or costs (see section 30 of Act 653), where

it is proven that any of them contributed to the commission of the offence by neglecting to exercise due care for the juvenile. (see section 30 (1) of Act 653)

- h. Deal with the case in any other lawful manner that the court considers just.

PUNISHMENT OF THE JUVENILE OFFENDER

No juvenile can be sentenced to death, imprisonment or detained in an adult prison (see section 32 (1) and 46 (7) of Act 653). The previous conviction of a juvenile before the age of 18 is not to be considered in the sentencing and punishment of the juvenile (*See section 300 (4) of Act 30*).

Where a juvenile or young person is convicted of an offence for which the juvenile court has power to impose a sentence of detention for one month or more without the option of a fine and it appears to the court that it is in the best interest of the juvenile or young offender, the court may make an order for the detention of the juvenile or young offender at a correctional centre. (*See section 43 (1) of Act 653*)

The Juvenile court when making the detention order must forward the SER and any additional information on the juvenile or young offender to the person in charge of the center not later than seven days before the order is made. (*See section 45 (2) of Act 653*)

When the Juvenile Court makes an order for detention against the juvenile offender to a correctional centre, it may direct that he be placed in the custody of, or in any of the following until the juvenile or young offender can be transported to the centre;

- a. The parents of the juvenile or young offender;
- b. Guardian or any fit person; or
- c. In a remand home

See section 43 (3) of Act 653

APPEALS

Under section 43 (2) of Act 653 the Juvenile has a right of appeal to the High Court.

CONTENTS OF THE DETENTION ORDER

The Juvenile Court in making an order for detention must state the reasons for the imposition of a detention order on the juvenile or young offender. *[see section 44 (1) of Act 653]*

The detention order shall disclose the following information. *[see section 44 (2), (3) and (4) of Act 653]:*

- a) The age of the juvenile or young offender.
 - a. The religious persuasion of the juvenile or young offender.
 - b. The correctional centre to which the juvenile or young offender is to be sent.
 - c. The person responsible for conveying the juvenile or young offender to the correctional centre.

DURATION OF DETENTION

The duration of every detention order shall be as follows:

- a. Three months for a juvenile offender under the age of sixteen years;
- b. Six months for a juvenile offender of or above sixteen (16) years but less than eighteen (18) years of age.
- c. Twenty-four months for young offenders of or above the age of eighteen years; or
- d. Three years for a serious offence.

Before making the order for detention the court must take into consideration the period spent by the juvenile or young offender on remand prior to the time the detention order is made. *[see section 46 (6) of Act 653]*

PLACE OF DETENTION

The Juvenile Justice Act provides for the detention of juveniles and young offenders according to age groups and/or nature of offence committed (See section 46 (2), (3) and (4) of Act 653). Before the court makes the order for detention it must satisfy itself that a suitable place is available for the juvenile or young offender at the correctional centre (see section 46 (5) of Act 653). The various classifications are:

- a. A juvenile under the age of eighteen shall be detained in a junior correctional center.
- b. A young offender above the age of eighteen shall be detained in a senior correctional center.
- c. A juvenile under the age of fifteen years who has been convicted of a serious offence shall be detained at a senior correctional center.

EXPUNGING OF RECORD

A juvenile offender, probation officer or close relative of the juvenile may apply to the court to expunge the record of conviction order imposed on the juvenile. The application shall be made to the Juvenile Court which imposed the sentence or order (see section 37 (1) and (2) of Act 653). The juvenile court shall however not be permitted to expunge the records for which conviction was made in respect of a serious offence such as murder, rape, defilement, indecent assault involving unlawful harm, robbery with aggravated circumstances, drug offences and offences relating to firearms (see section 37 (3) of Act 653).

The courts may order records to be expunged under the various circumstances set out in section 37 (3) of Act 653.

REFERENCES

Treatment of Juvenile Offender: Paper presented by Justice Osafo Sampong JA, at a Judicial Education Workshop in Ghana.

International Handbook of Juvenile Justice, published by Springer, edited by Josine Junger and Scott H. Deckor. ISBN: 978-1-4020-4970-5 ebook.

