



CHILDREN'S PROTECTION GUIDE FOR CRIMINAL JUSTICE PRACTITIONERS



“quaerimus iustitia omnibus”

ACKNOWLEDGEMENTS

Children are treasurable members of the society. It is important to nurture them to grow and be responsible citizens of the country. By so doing, the nation will be assured of a bright future. This will come into fruition when all who handle matters of children who come in contact with the law either as victims or offenders uphold their rights guaranteed and enshrined in the Children's Protection and Welfare Act No.6 of 2012. Therefore, this Guide is one of the tools that will assist in ensuring that all Criminal Justice Practitioners keep the letter of the law.

The office of the Director of Public Prosecutions expresses its profound appreciation to the United Nation Children's Fund (UNICEF) for the invaluable financial support towards the development of the Guide. Special gratitude is extended to the team that developed the Guide. The team comprised of prosecutors from the Sexual Offences and Domestic Violence Unit (Headquarters), senior prosecutors in charge of the regions and Desk Officers (Crime Managers) from all the police stations in the country. The team shared their expertise, knowledge and practical experiences and thus the development of the Guide. We are also indebted to the role played by **7290 Constable Thandukukhanya Masuku**, based at the Police Headquarters who did the Graphics and Design of the Guide.



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Designation

Principal Crown Counsel
Senior Crown Counsel
Crown Counsel
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Senior Crown Prosecutor
Senior Crown Prosecutor
Crown Prosecutor

Station

Pigg's Peak Police Station
Nhlangano Police Station
Siteki Police Station
Mbabane Police Station
Simunye Police Station
Lobamba Police Station
Matsapha Police Station
Hluthi Police Station
Gege Police Station
Tshaneni Police Station
Manzini Police Station
Mankayane Police Station
Police Headquarters - DCS
KaPhunga Police Station
Mliba Police Station
Siphofaneni Police Station
Lubuli Police Station
Malkerns Police Station
Sidvokodvo Police Station
Lavumisa Police Station
Mafutseni Police Station
Police Headquarters - CID Training
Bhunya Police Station
Big Bend Police Station
Hlathikhulu Police Station
Lomahasha Police Station
Police Headquarters - CID Training

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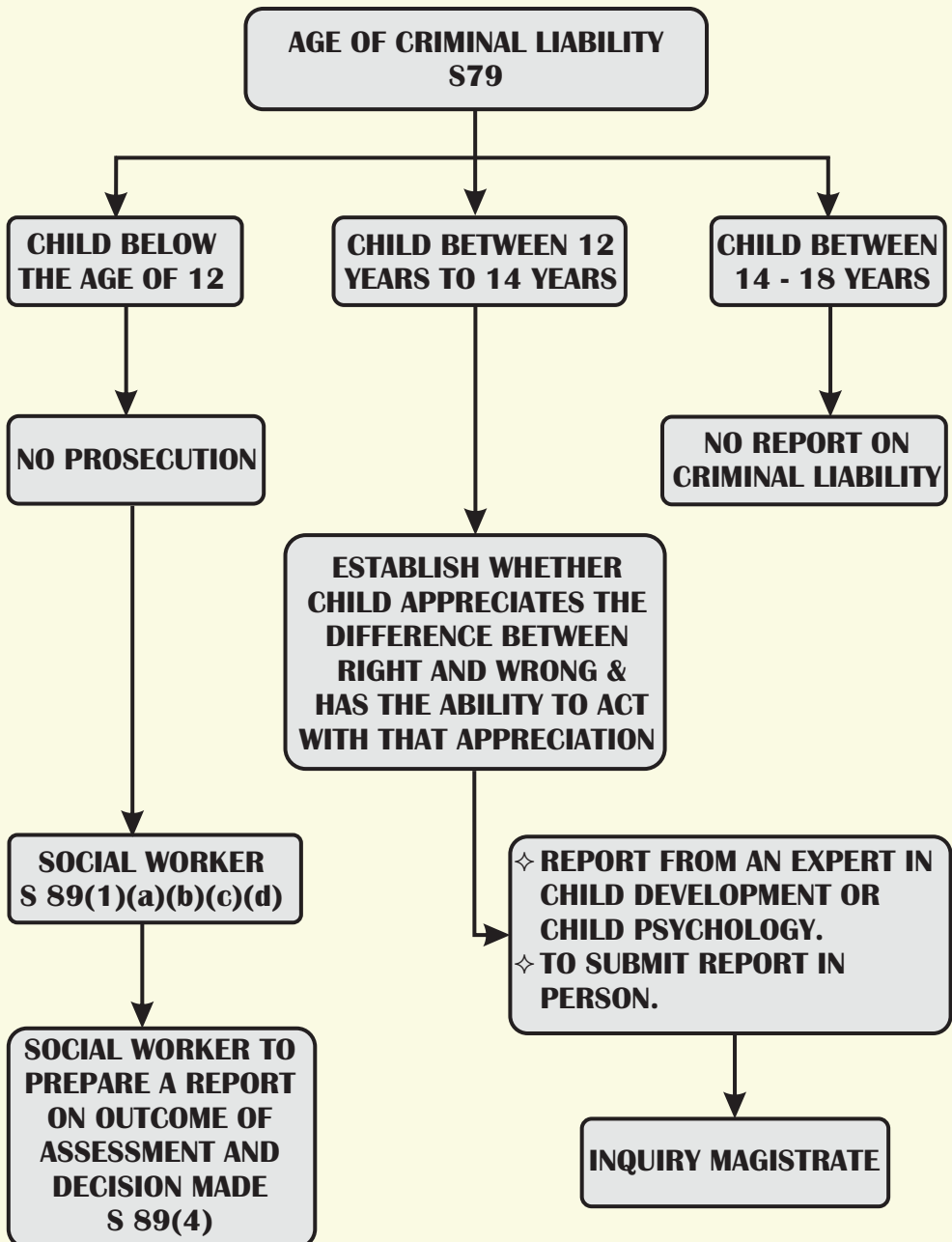
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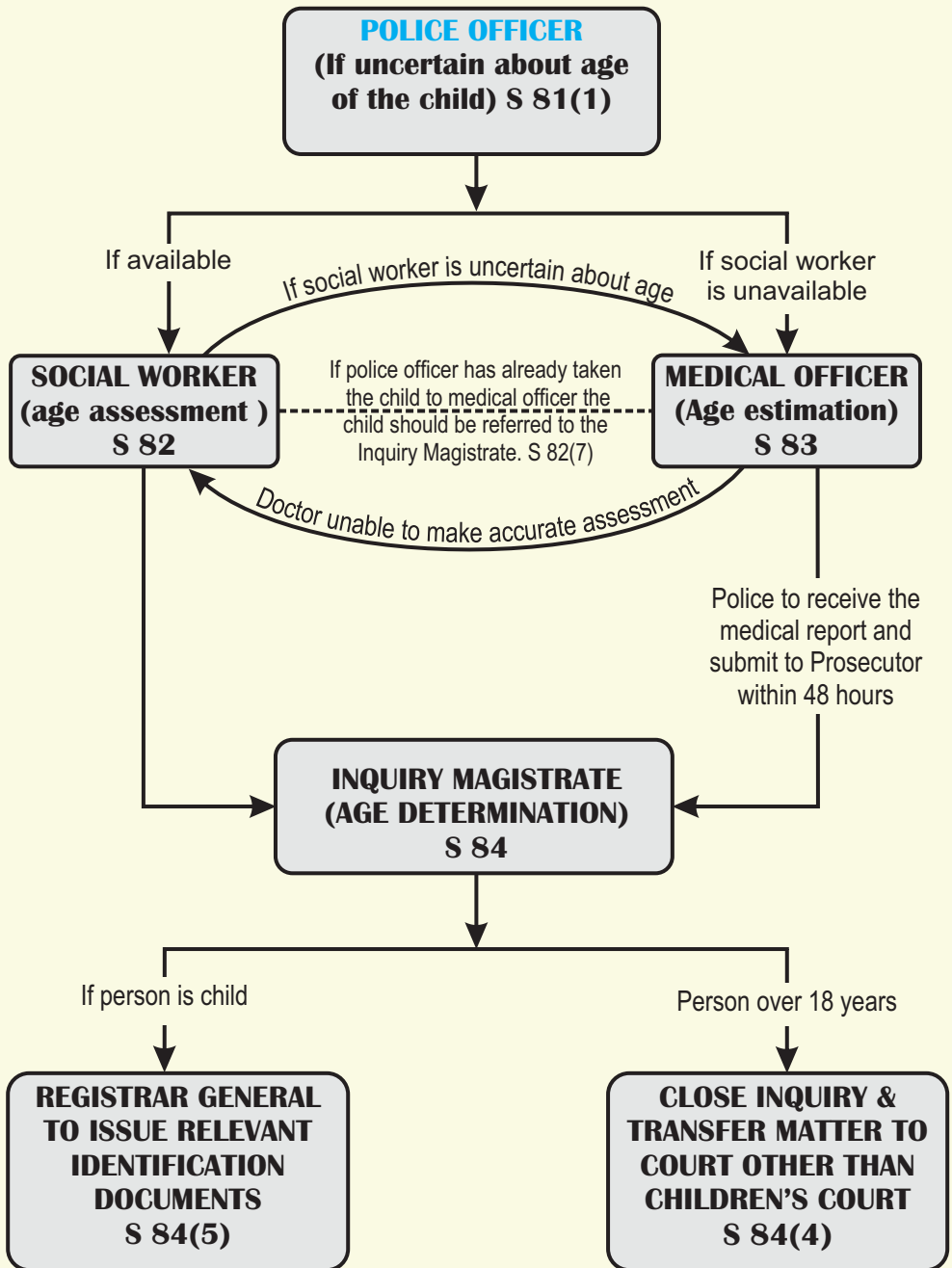
SECTION A: CHILD IN CONFLICT WITH THE LAW

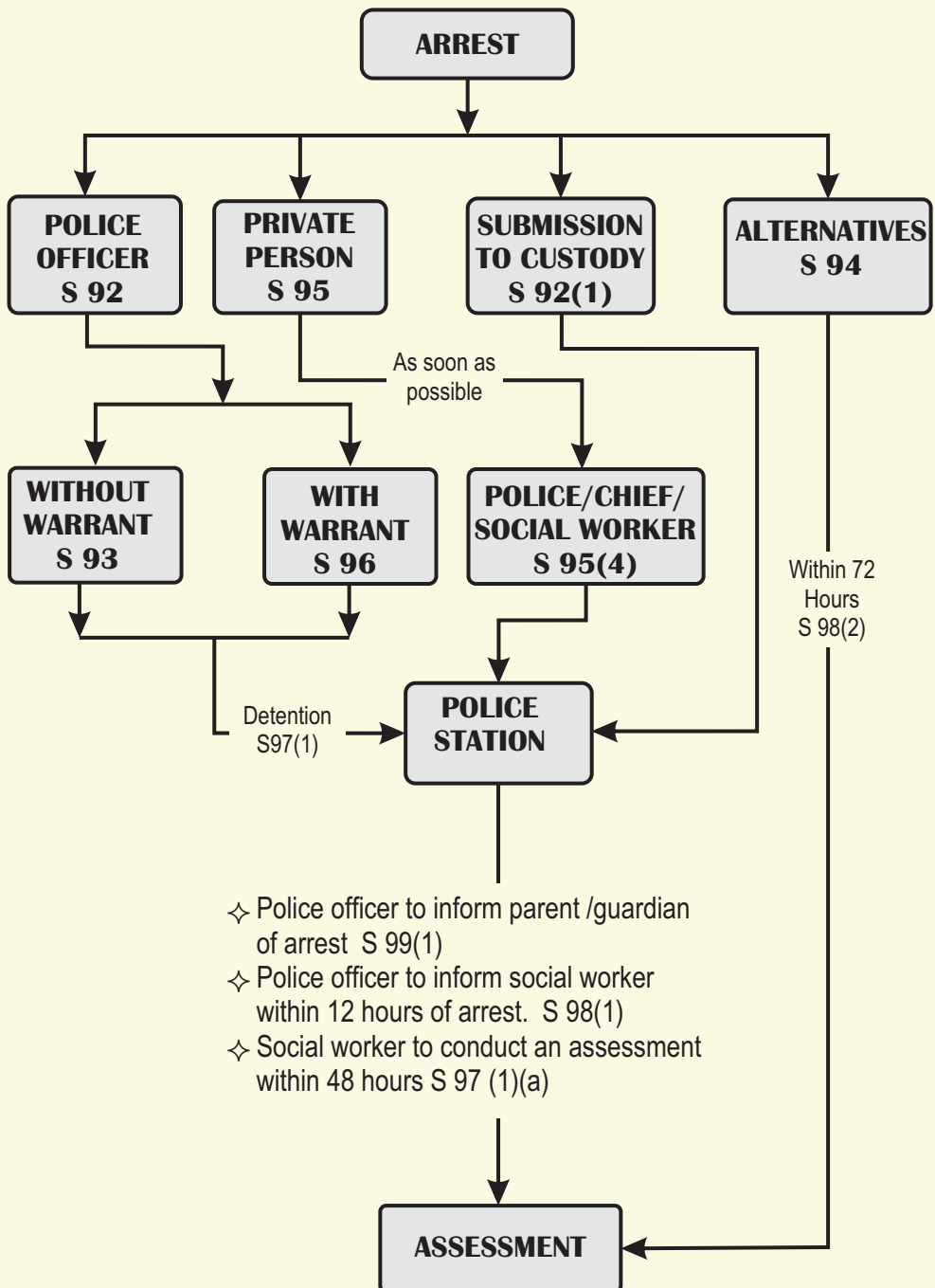


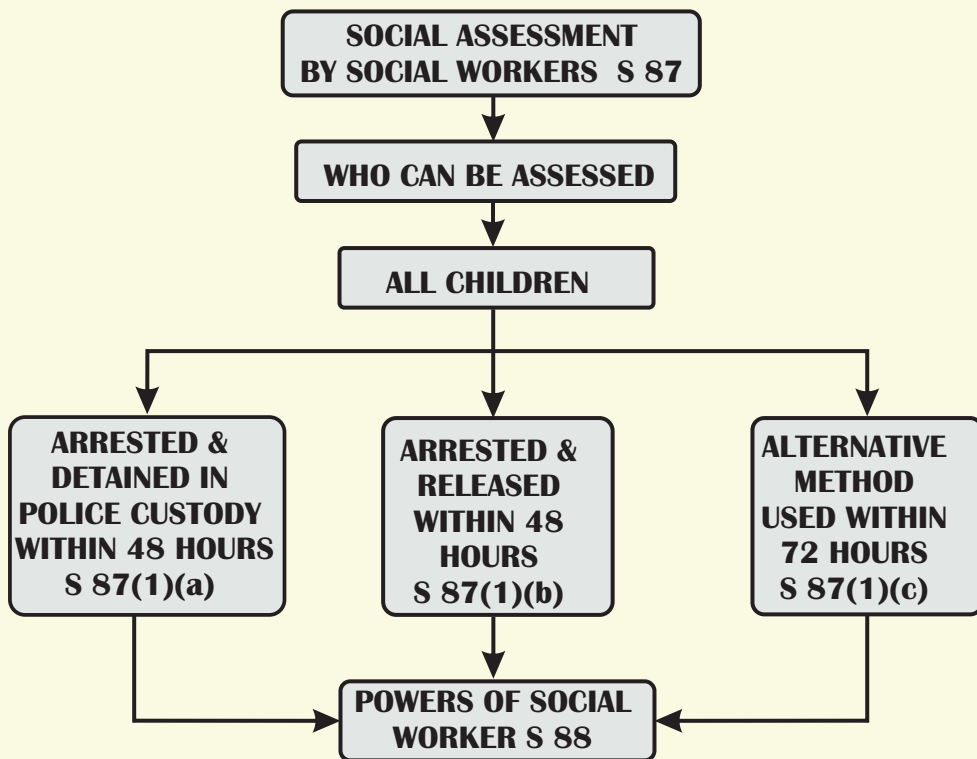
AGE ASSESSMENT

PURPOSE OF AGE ASSESSMENT S 80

- ❖ **ESTABLISH PROBABLE AGE.**
- ❖ **ESTABLISHMENT OF DIVERSION PROSPECTS BY SOCIAL WORKER.**
- ❖ **ESTABLISHMENT OF PROSPECTS OF DIVERSION BY PROSECUTOR OR INQUIRY MAGISTRATE.**
- ❖ **PROVIDE INFORMATION TO PROSECUTOR/INQUIRY MAGISTRATE TO SUPPORT RECOMMENDATIONS FOR RELEASE OF A CHILD TO A PLACE OF SAFETY, CARE OF GUARDIAN/PARENT.**
- ❖ **IN THE CASE OF CHILDREN BELOW 12 YEARS, TO ESTABLISH WHAT MEASURES IF ANY NEED TO BE TAKEN.**







Powers of Social Worker S 88

- ❖ Issue a notice to arresting officer or any other police officer to bring child for assessment.
- ❖ Bring documentation relevant to prove of child's age.
- ❖ Notify parent to appear at an assessment.

Duties of Social Worker

Shall explain in language that the child understands:

- ❖ Purpose of assessment and rights of child as per S 87(3) which includes the right to have a parent/guardian/legal representative present during an identification parade, admission, pointing out or recording of a confession.
- ❖ Interview child, parent and guardian.
- ❖ Source information from relevant people.

PURPOSE OF ASSESSMENT



MAKE RECOMMENDATIONS:

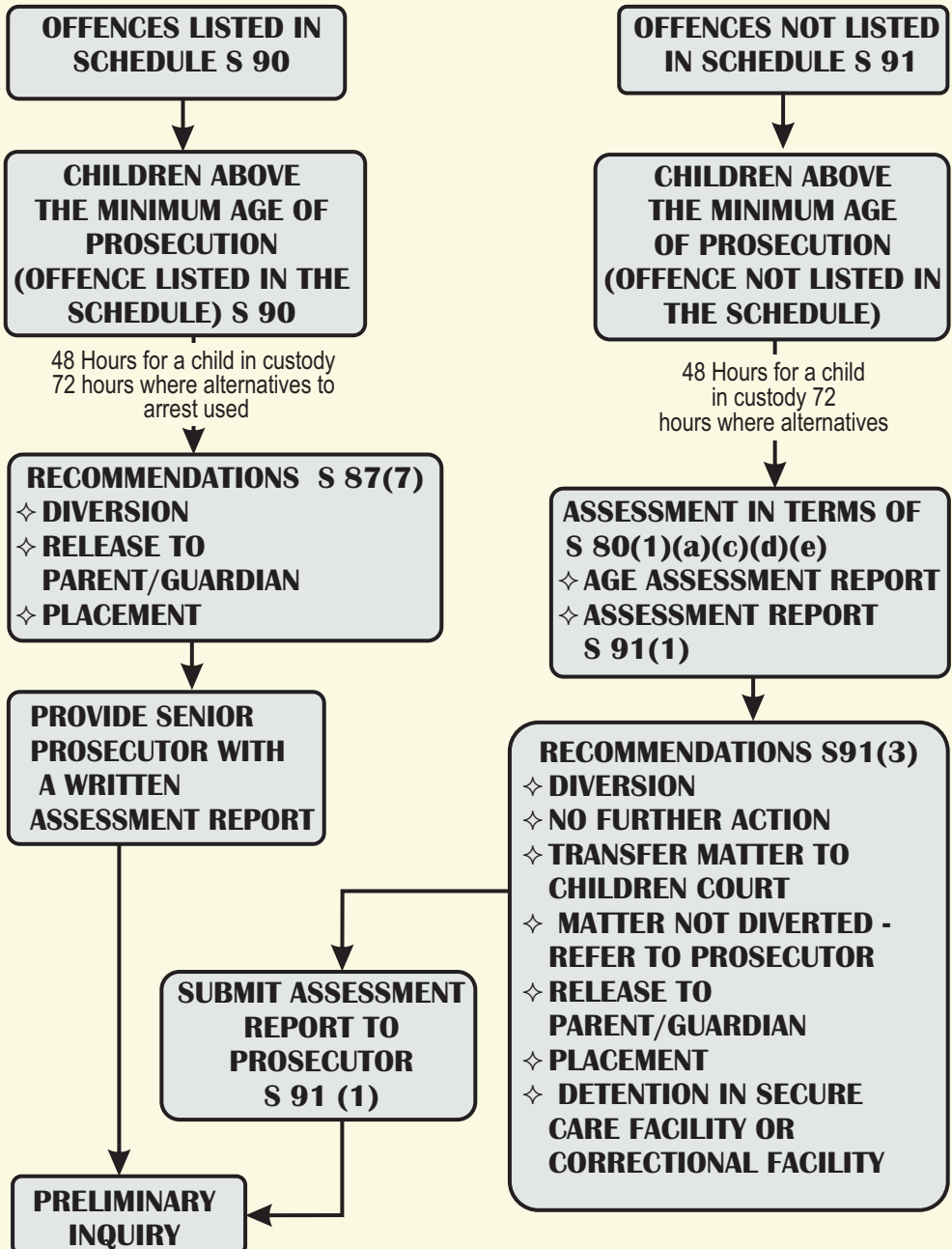
- ❖ **PROSPECTS OF DIVERSION**
- ❖ **POSSIBLE RELEASE OF CHILD TO PARENT/GUARDIAN**
- ❖ **PLACEMENT IF POSSIBLE TO A PLACE OF SAFETY AND GIVE REASONS**
- ❖ **MATTER TRANSFERRED TO CHILDREN'S COURT**
- ❖ **TEMPORARY PLACEMENT OF THE CHILD PENDING OPENING OF INQUIRY**



**REPORT SHALL BE
SUBMITTED TO PROSECUTOR
FOR OPENING OF
PRELIMINARY ENQUIRY
S 87(10)**

S 87(10) “The report mentioned in subsection (7) shall be submitted to the prosecutor for the opening of the preliminary inquiry.”

OFFENCES LISTED/NOT LISTED IN THE SCHEDULE



SCHEDULE

(under sections 2, 90, 91 134, 148, 150, 159 and 239)

Assault where grievous bodily harm has not been inflicted.

Assault, including assault involving the infliction of grievous bodily harm.

Malicious injury to property where the damage does not exceed E1000.00

Any offence under any law relating to the illicit possession of dependence producing drugs where the quantity involved does not exceed 25 grams.

Theft, where the value of the property involved does not exceed E1000.00

Any statutory offence where the maximum penalty determined by that statute is a fine of less than E300.00 or three months imprisonment.

Conspiracy, incitement or attempt to commit any offence referred to in this schedule.
Public violence.

Culpable homicide.

Arson.

House breaking, whether under common law or a statutory provision, with intent to commit an offence, if the amount involved in the offence does not exceed E20,000

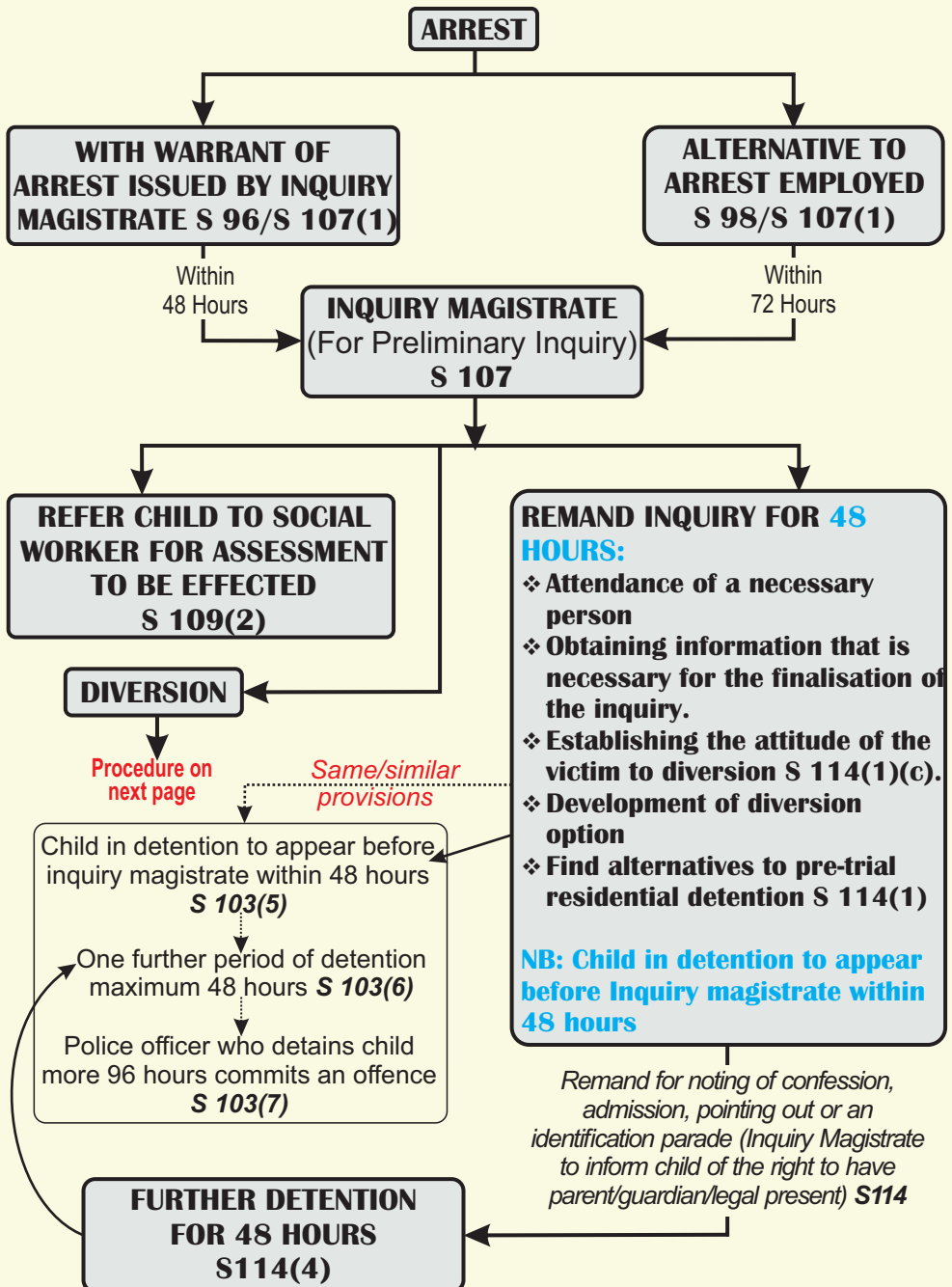
Robbery, other than robbery with aggravating circumstances, if the amount involved in the offence does not exceed E20,000

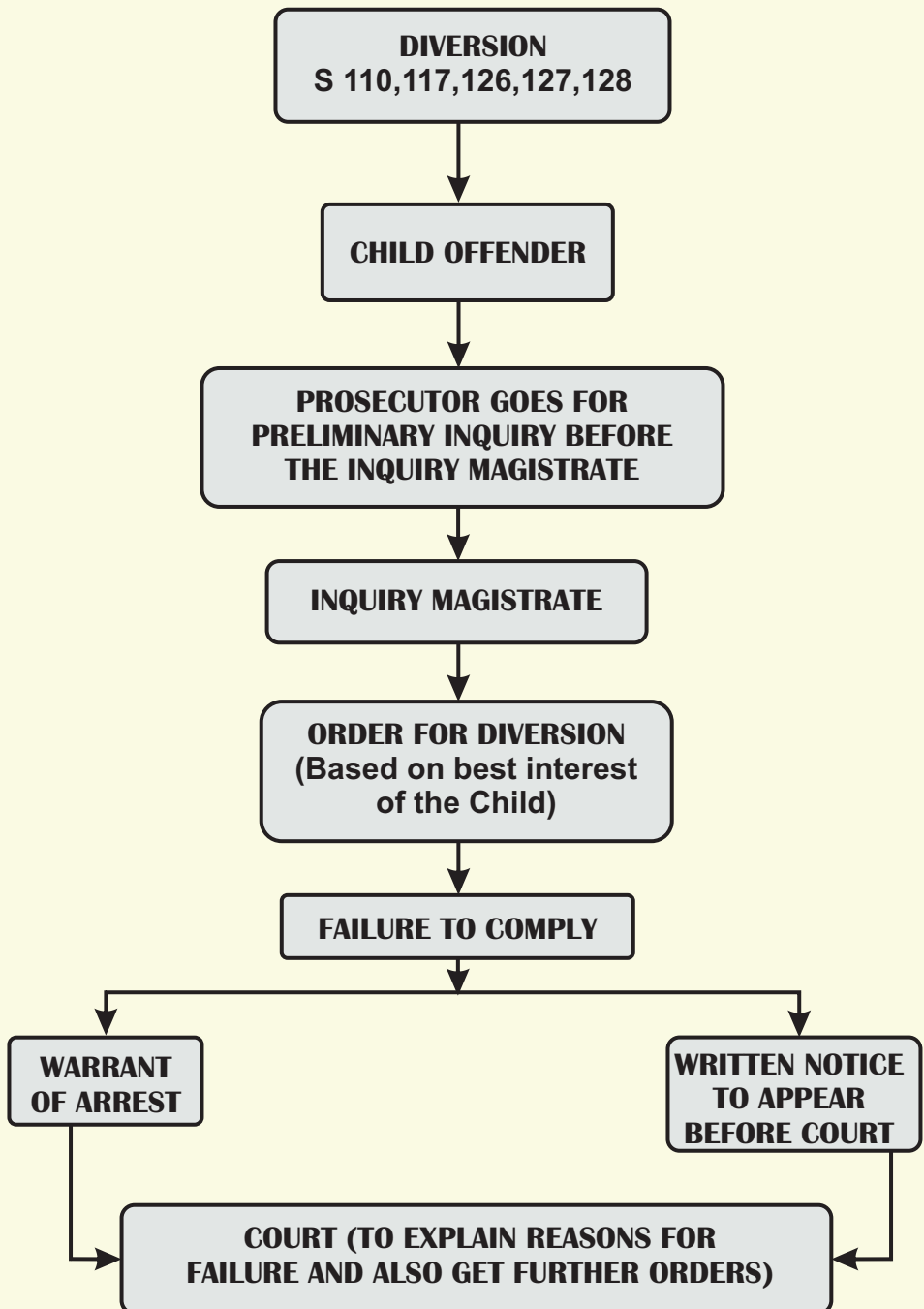
Theft where the amount involved does not exceed E20,000

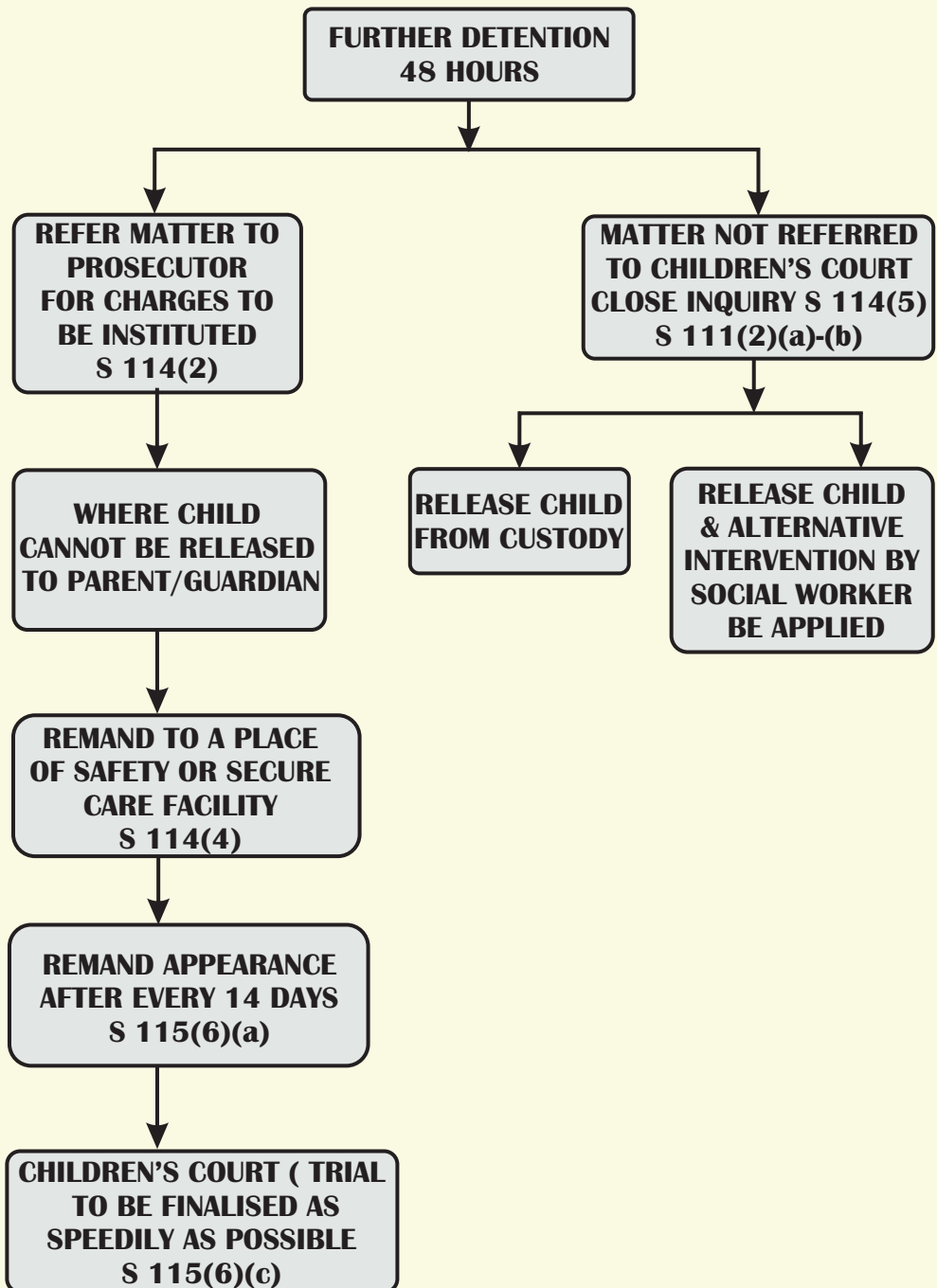
Any other offence under any law relating to the illicit possession of dependence producing drugs.

Forgery, uttering or fraud, where the amount concerned does not exceed E20,000

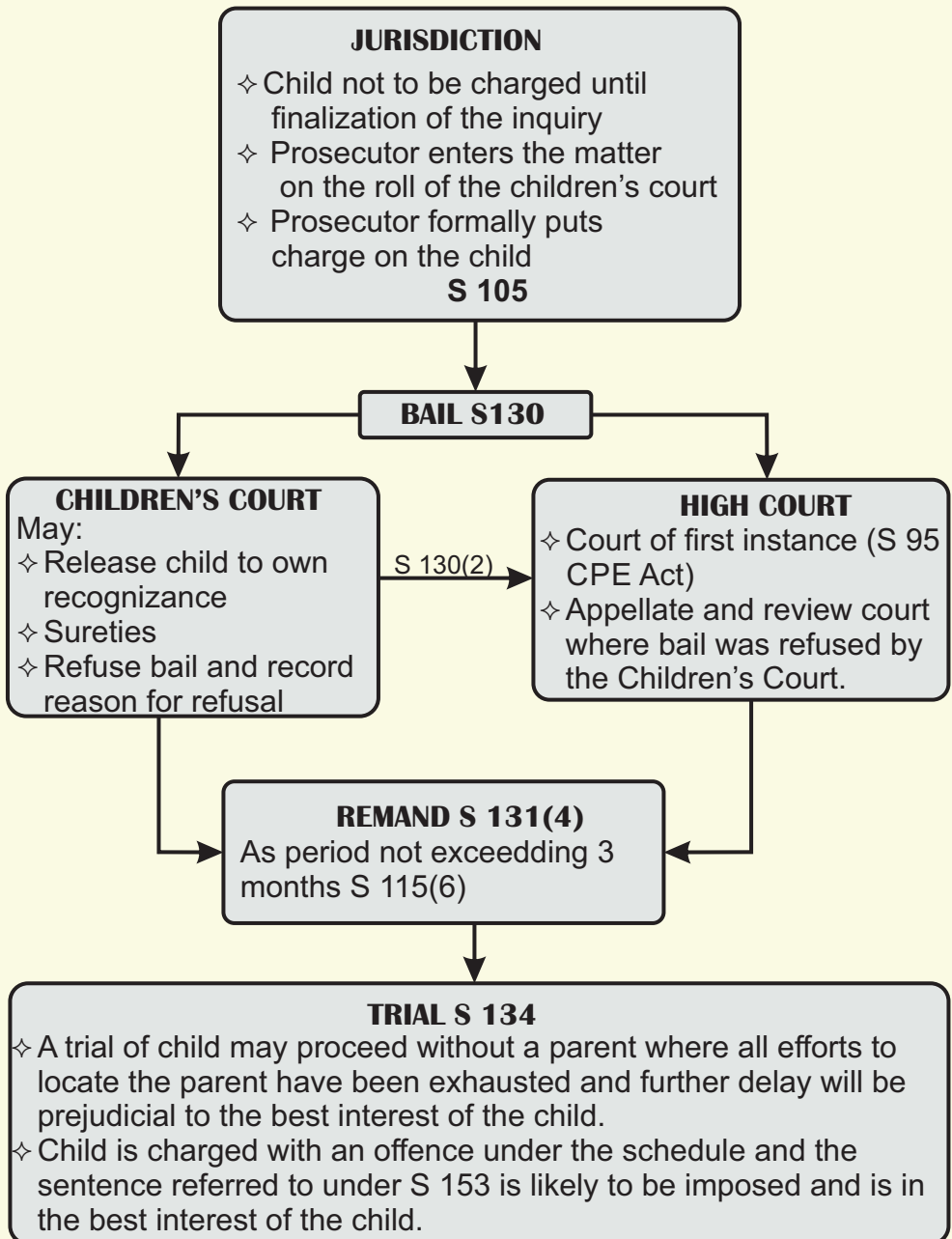
PRELIMINARY INQUIRY





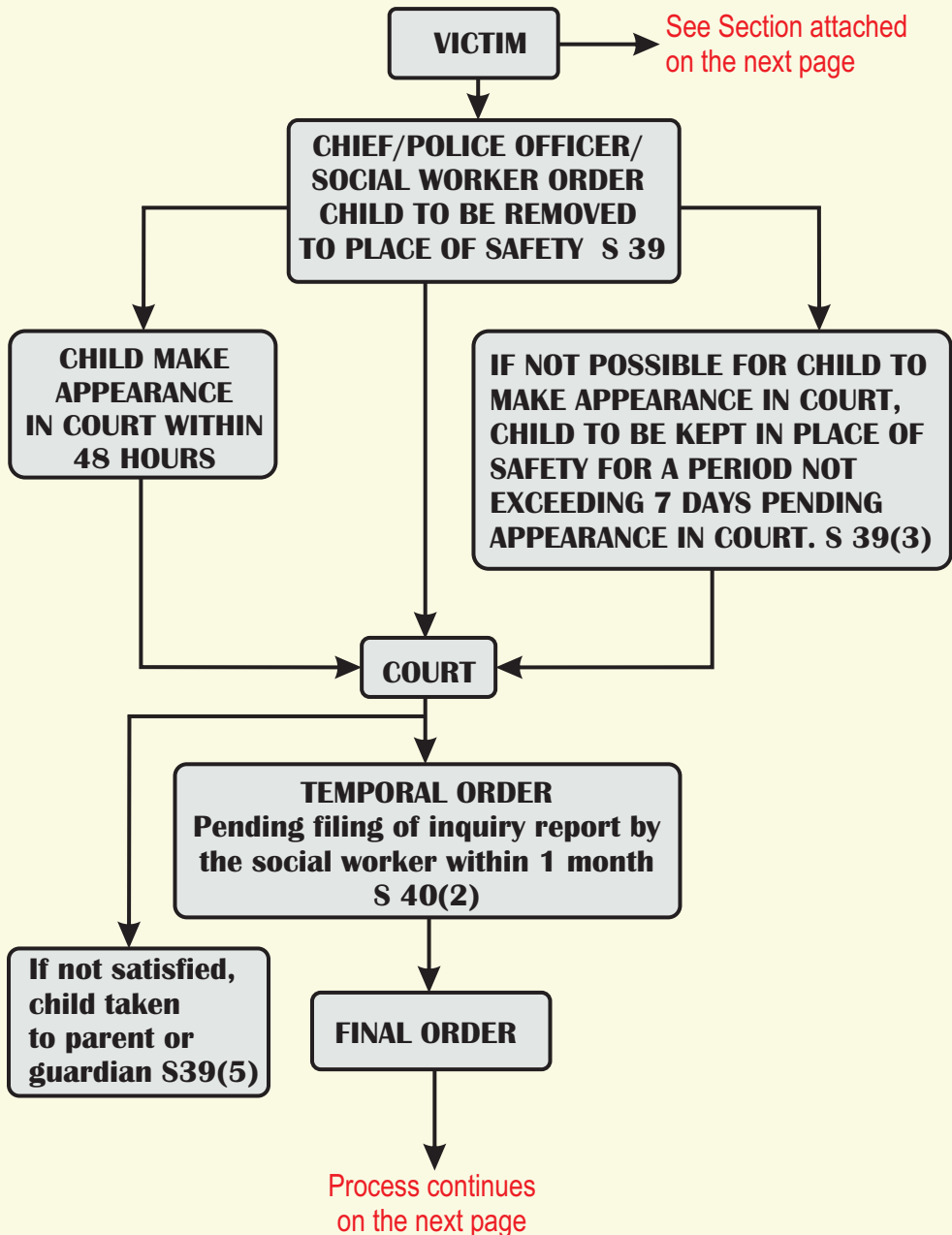


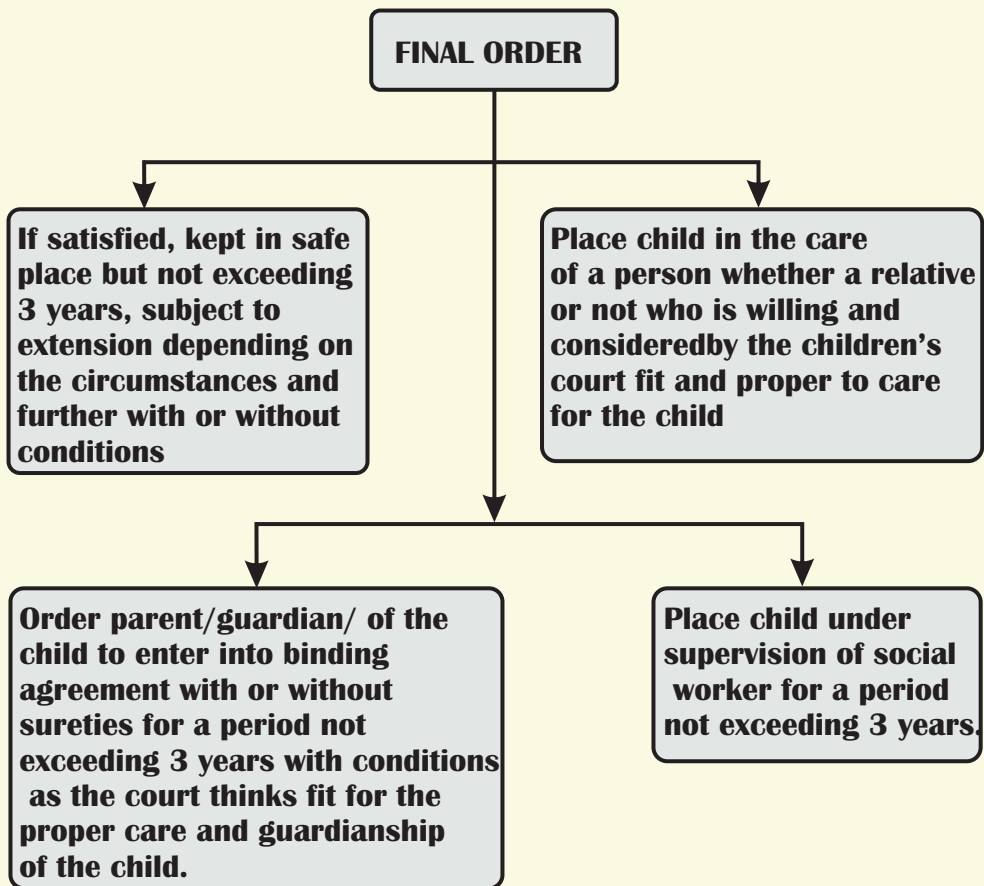
SECTION B: CHILD VICTIM



CHILD IN NEED OF REHABILITATION

§ 38 - 40



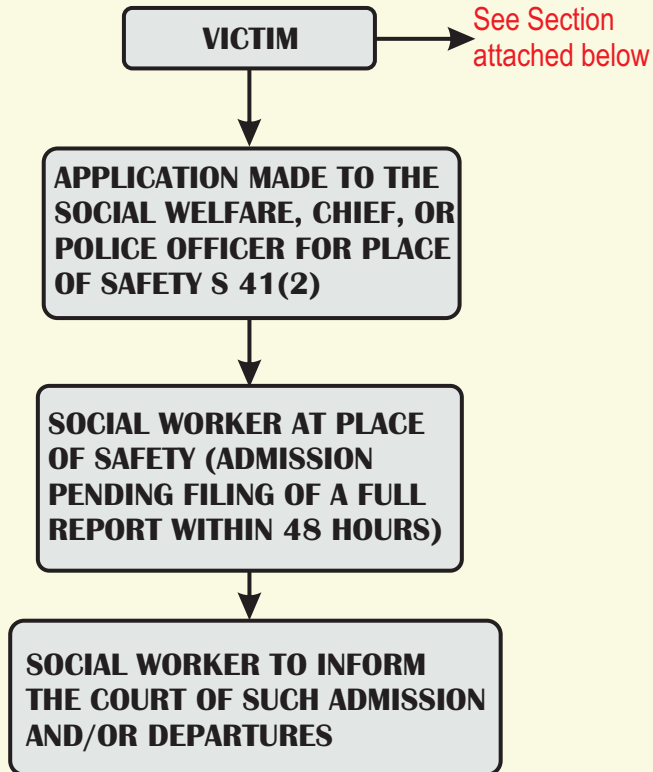


38. A child is in need of rehabilitation if there is reasonable cause to believe that the child -

- (a) is being induced to perform any sexual act, or is in any physical or social environment which may lead to the performance of such act;
- (b) lives in or frequents any brothel or place of assignation;
- (c) is habitually in the company or under the control of brothel-keepers or procurers or persons employed or directly interested in the business carried on in brothels or in connection with prostitution; or
- (d) is a victim of sexual violence or labour exploitation or is denied access to education; or
- (e) is a habitual substance abuser.

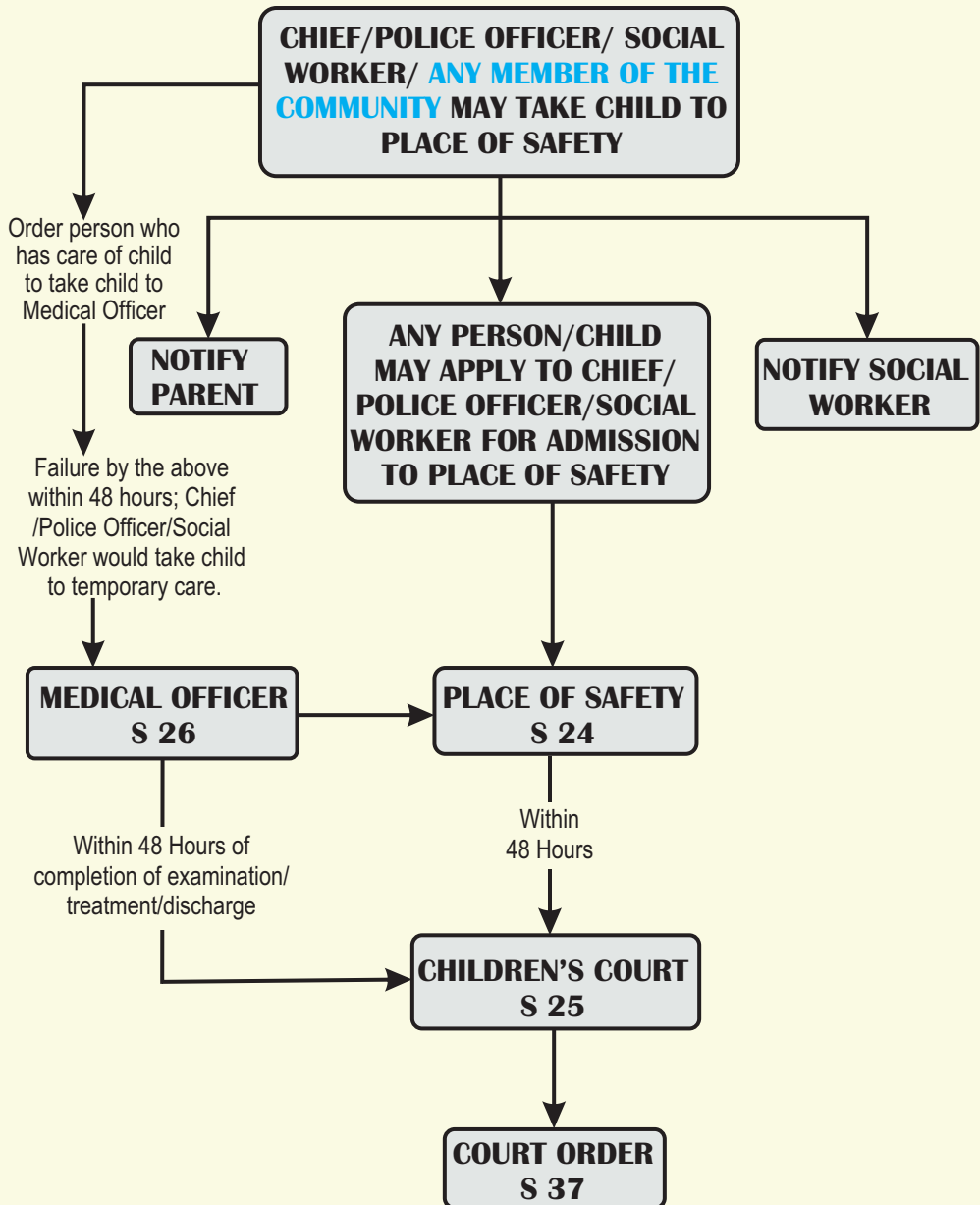
CHILD IN NEED OF URGENT PROTECTION

S 41



41. (1) A child is in need of urgent protection if there is reasonable cause to believe that-
- (a) that child is being threatened or intimidated for purposes of prostitution or for purposes of having sexual intercourse with another or for any immoral purpose;
 - (b) the child is being forced to marry;
 - (c) the child is pregnant and suicidal or rejected by the family due to this condition;
 - (d) the child is subjected to hazardous conditions of labour;
 - (e) the child is forced to undergo cultural or spiritual rituals;
 - (f) the child is compelled to leave school; or
 - (g) the child is confined or detained by another person in contravention of this Act.

CHILD IN NEED OF CARE AND PROTECTION
S 23



23. (1) A child is in need of care and protection if -

- (a) a child has been or there is risk that the child will be physically, psychologically or emotionally injured or sexually abused by the parent or guardian or a member of the extended family or any other person;
- (b) the child has been or there is risk that the child will be physically injured or emotionally injured or sexually abused and the parent or guardian or any other person, knowing of such injury or abuse or risk, has not protected or is unlikely to protect the child from such injury or abuse;
- © the parent or guardian of the child is unfit, or has neglected, or is unable, to exercise proper supervision and control over the child and the child is falling into bad association;
- (d) the parent or guardian of the child has neglected or is unwilling to provide for the child's adequate care, food, clothing and shelter, education and health;
- (e) the child -
 - (i) has no parent or guardian; or
 - (ii) has been abandoned by the parent(s) or guardian(s) and after reasonable inquiries the parent(s) or guardian(s) cannot be found, and no other suitable person is willing and able to care for the child;
- (f) the child needs to be examined, investigated or treated -
 - (i) for the purpose of restoring or preserving the child's health; and
 - (ii) the parent or guardian neglects or refuses to have the child so examined, investigated or treated;
- (g) the child behaves in a manner that is, or is likely to be, harmful to himself or to any other person and the parent or guardian is unable or unwilling to take necessary measures to remedy the situation or the remedial measures taken by the parent or guardian fail and as

- result the child cannot be controlled by his parent or guardian;
- (h) there is such a conflict between the child and the parent or guardian, or between the parent or guardian, that family relationships are seriously disrupted, thereby causing the child emotional injury;
 - (i) the child is in the custody of a person who has been convicted of physically assaulting or committing a sexual offence in connection with that child;
 - (j) the child frequents the company of any immoral or vicious person, or is living in circumstances calculated to cause or induce his seduction, corruption or prostitution;
 - (k) the child is caused to be on any street, premises or place for the purpose of -
 - (i) begging or receiving alms, whether or not there is any pretence of singing, playing, performing or offering anything for sale and as a result the child becomes a habitual beggar;
 - (ii) carrying out illegal hawking, illegal lotteries, gambling or other illegal activities detrimental to the health and welfare or retard the educational advancement of the child.
 - (l) the child is affected or infected by HIV/AIDS and other life threatening conditions;
 - (m) the child cannot be controlled by his parent (s) or guardian or the person in whose custody he is; and
 - (n) the child is below the age of fifteen years and is engaged in regular economic activity detrimental to his health, educational advancement and development.

**JURISDICTION
(CHILDREN'S COURT)**

**WHO MAY MAKE
APPLICATION**

**PARENTAGE S197
LOCUS STANDI**

- ✧ Child
- ✧ Parent of child
- ✧ Social worker
- ✧ Chief

**CUSTODY & ACCESS
S 200**

- ✧ Parents
- ✧ Family member
- ✧ Any other person

GUARDIANSHIP S 203

- ✧ Will by parent of child
- ✧ Order of Children's Court
- ✧ Family
- ✧ Master of the High court
- ✧ Chief

**WHEN CAN AN APPLICATION
BE MOVED**

- ✧ Before child is born
- ✧ Within 3 years after death of either parent of child
- ✧ Before child is 18 years special leave of court where child is above age

**EVIDENCE OF
PARENTAGE**

EVIDENCE

- ✧ Medical tests
- ✧ Appropriate order

Continues
on next page Side A

See attached
Section 198 (a)-(e)
on page 24

CONSIDERATION BY COURT

- ✧ Importance of child being with the mother
- ✧ Age of child
- ✧ Preferable for child to be with parents except if rights are abused by parents
- ✧ Views of the child
- ✧ Desirable to keep siblings together
- ✧ Need for continuity in the care of child
- ✧ Any other matter Children's Court may consider irrelevant.
- ✧ Non-custodial parent to have access to child **S 201**

Continues on the
next page side B

↓ Side A

EVIDENCE (CONT'D)

- ✧ Refusal by the parent to submit to medical test
- ✧ Public knowledge of parentage
- ✧ Any other matter the court may consider relevant person

↓ Side B

WHEN GUARDIAN IS TO BE APPOINTED S 203 (2)

- ✧ Where one of the parents is deceased
- ✧ Where a father of a child born out of wedlock has acquired parental responsibility for the child
- ✧ Where the parents of the child are no-longer living together.

NB: A GUARDIAN appointed in terms of the act need not be a Swazi citizen **S 203 (4)**

A guardian may be appointed in respect of the person, estate of the child or both **S 203(5)**

POWERS OF GUARDIAN APPOINTED BY MASTER OF THE HIGH COURT IN RESPECT OF THE ESTATE OF THE CHILD: S 203 (6)

- ✧ To administer the estate of the child, to recover and invest the property of the child in his own name for the benefit of the child
- ✧ To safeguard the estate from loss and damage
- ✧ To produce any account or inventory in respect of the child's estate when required by the children's court.

GUARDIANSHIP REVOCATION S 207

A recent appointment revokes an earlier appointment unless the purpose of the latter appointment is to appoint an additional guardian.

EXTENSION OF GUARDIANSHIP S 208

- ✧ Guardianship terminates when child attains the age of eighteen years but can be extended by the Children's Court where exceptional circumstances exist.

DISPUTES BETWEEN GUARDIANS S 209

- ✧ Any of the guardians may apply to the Children's Court for its direction

OFFENCES S 210

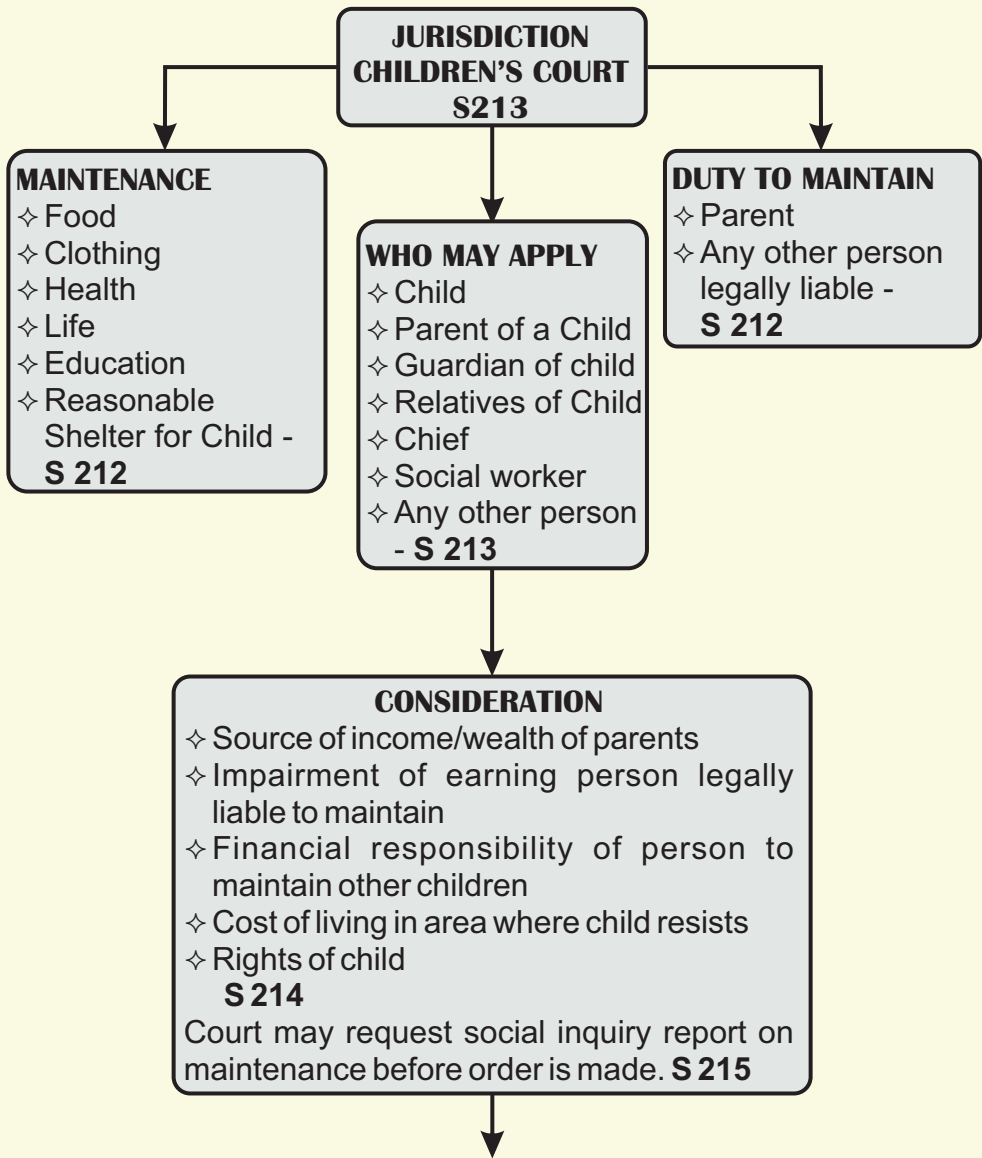
- ✧ Neglecting to recover or safeguard, misplacing any asset forming part of the estate, subjecting the estate to loss or damage for its direction

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.

MAINTENANCE OF CHILDREN
S 212 - 230



Continues on the next page

ORDER

- ✧ medical expenses of child
- ✧ Periodic allowance for maintenance
- ✧ Payment of reasonable sum for education
- ✧ periodic payments or lump sum - emoluments, property or debts may be attached.
- ✧ Arrears of maintenance

S 216



DURATION OF ORDER

- ✧ **Expire** when child attains 18 years or dies before that age.
- ✧ **Lapse** before the age of 18 if child is gainfully employed. **S 218**
- ✧ **Continue** above 18 if child in secondary education or training **S 219(1)**



Enforcement after 30 days of order



FAILURE TO COMPLY WITH ORDER

- ✧ Execution against property.
- ✧ Attachment of Emoluments
- ✧ Attachment of any debts

S 221



Order unsatisfied for 10 days amount payable



APPLY TO COURT

- (Attach copy of Maintenance & Affidavit of money due)
- ✧ Authorisation of warrant of execution (refer to **S 222**).
 - ✧ Order of attachment of emoluments (refer to **S 223 -224**)
 - ✧ Order of attachment of debts (refer **S 225**)

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previous page



**Liable to attached/
subject to execution**

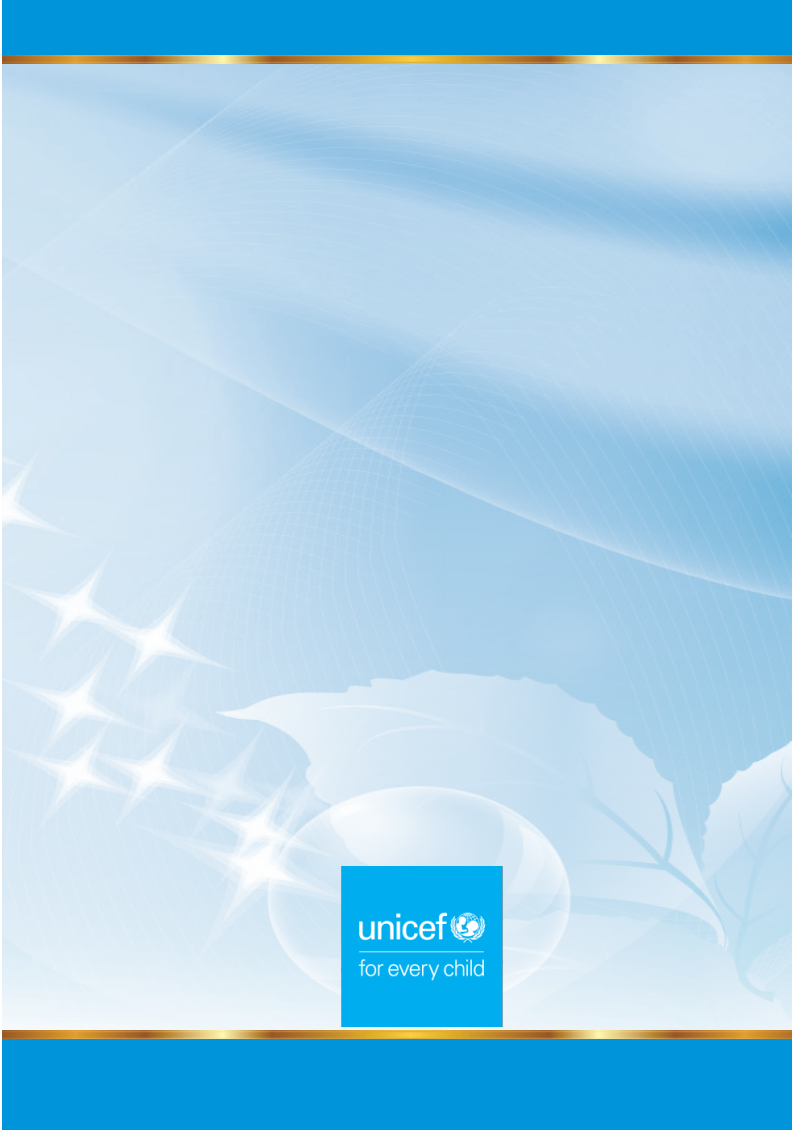
- ✧ Person
- ✧ Annuity
- ✧ Graduity
- ✧ Other allowances

S 221(6)



**Failure to pay maintenance
is an offence**

- ✧ First conviction - liable to pay
- ✧ Second conviction - liable to sentence to be determined by court. **S 227**



unicef 
for every child