



LEGAL NOTICE NO....

THE CHILDREN ACT, 2022
(No. 29 of 2022)

THE CHILDREN (FOSTER CARE) (PROCEDURE AND PRACTICE) RULES, 2023

Arrangement of Rules

PART I - PRELIMINARY

- 1- Citation.
- 2- Interpretation.
- 3- Purpose of these Rules.

**PART II – APPLICATIONS RELATING TO FOSTER CARE
PLACEMENT**

- 4- Application for extension of foster care placement.
- 5- Form of Application.
- 6- Service of Court documents.
- 7- Persons appearing may reply to application
- 8- Determination of applications.
- 9- Amendment of Pleadings.

PART III – HEARING AND ORDERS

- 10- Attendance at hearing.
- 11- Consequences of non-attendance.
- 12- Procedure at hearing.
- 13- Procedure at hearing where the child is participating.
- 14- Orders of the Court.
- 15- Power of Court to set aside, amend or vary orders.

PART IV – MISCELLANEOUS PROVISIONS

- 16- Time.
- 17- Procedure for execution of Orders and Decrees.
- 18- Appeal or review against decision of the Court.
- 19- Forms.
- 20- Costs of applications.

SCHEDULE: Forms

DRAFT FOR PUBLIC CONSULTATION



THE CHILDREN ACT, 2022
(No. 29 of 2022)

IN EXERCISE of the powers conferred by section 243 of the Children Act, 2022, the Chief Justice makes the following Rules—

THE CHILDREN (CHILDREN IN CONFLICT WITH THE LAW) (PROCEDURE AND PRACTICE) RULES, 2023

PART I—PRELIMINARY

- Citation. **1.** These Rules may be cited as the Children (Children in Conflict with the Law) (Procedure and Practice) Rules, 2023.
- Interpretation. **2.** In these Rules unless the context otherwise requires—
- No. 29 of 2022. “Act” means the Children Act, 2022;
- “child” has the meaning assigned to it under section 2 of the Act;
- “Court” has the meaning assigned to it under section 2 of the Act;
- “preliminary Inquiry” means a preliminary Inquiry conducted in accordance with rule....;
- “Secretary” has the meaning assigned to it under section 2 of the Act;
- Objective. **3.** The objective of these Rules is to enable the Court to justly and expeditiously deal with matters relating to children in conflict with the law and promote the best interest of the child.

PART II – ARREST AND ASSESSMENT OF CHILDREN

- Charges and Information **4.** The provisions of section 137 of the Criminal Procedure Code relating to the form and contents of charges and information apply, with necessary modifications, to the framing of charges and information under these Rules.

PART III – PRELIMINARY INQUIRY

Persons to attend preliminary inquiry.

5. (1) A preliminary inquiry shall be held in respect of every child arrested and presented to court prior to plea taking in accordance with section 228 (1) of the Act:

Provided that the preliminary inquiry shall not be held where the child is below the age of twelve years or where the matter has been diverted.

(2) A child's appearance at a preliminary inquiry shall be regarded as his or her first appearance in a Court.

(3) The following persons may attend a preliminary inquiry—

- (a) the child;
- (b) a parent or guardian of the child offender;
- (c) a children officer;
- (d) a probation officer;
- (e) the victim or their legal representative;
- (f) a legal representative of the child offender;
- (g) investigation officer; and
- (h) the Director of Public Prosecutions.

(2) The Court conducting the preliminary inquiry may exclude any of the persons mentioned in sub-rule (1) from attending the preliminary inquiry if the person's presence—

- (a) is not in the best interest of the child; or
- (b) undermines the objectives of a preliminary inquiry specified in section 228(3) of the Act.

Procedure at preliminary inquiry.

6. (1) At the commencement of the preliminary inquiry, the Court shall—

- (a) explain the purpose and the nature of the preliminary inquiry to everyone in attendance;
- (b) inform the child of the nature of the allegations made against the child;

(c) inform the child of his or her rights.

(2) At the preliminary inquiry, the Court shall consider the following information—

- (a) report of the children officer of an assessment undertaken in accordance with the Fifth Schedule to the Act;
- (b) report of the Director of Public Prosecutions, relating to a pending charge, previous conviction, diversion or any relevant matter in Form No XXX set out in the Schedule;
- (c) any one or more of the documents referred to in section 229 of the Act relating to the determination of the child's age;
- (d) any other information that may be relevant to the proceedings.

(3) In considering the information referred to in sub-rule (2), the Court may—

- (a) require that further documentation relevant to the proceedings be submitted by any of the persons specified in rule 9;
- (b) obtain further information from any of the persons specified in rule 9 to clarify any of the information given at the preliminary inquiry; and
- (c) take such steps as may be necessary to establish the accuracy or truth of any submission or statement made at the preliminary inquiry.

(4) The Court shall keep a record of the outcome of the preliminary inquiry.

(5) The outcome of a preliminary inquiry may include—

- (a) an order for diversion;
- (b) an order that the case be transferred to a children's Court for plea taking;

(6) The magistrate who has presided over a preliminary inquiry shall not preside over subsequent proceedings in a trial relating to the same matter.

Joint preliminary inquiry.

7. (1) Where a child is accused together with another child, a joint preliminary inquiry may be held if the Court is satisfied that it is in the best interest of all the children concerned.

(2) Where a joint preliminary inquiry is held in accordance with sub-rule (1), different outcomes may be reached in respect of each child.

Adjournment of preliminary inquiry proceeding.

8. (1) During a preliminary Inquiry, the Court may adjourn the proceedings where—

(a) it is necessary to—

- (i) secure the attendance of a person specified under Rule 9;
- (ii) obtain information essential for the conclusion of the preliminary inquiry;
- (iii) make arrangements in respect of a suitable diversion option;
- (iv) make arrangements in respect of a suitable diversion option;

(b) for the purposes of further investigations on the matter;

(c) For purposes of a further or more detailed assessment of the child is required, and the Magistrate is satisfied that there are sufficient reasons to justify further assessment

(d) the child is in need of medical assessment or treatment;

(e) for purposes of addressing any other special interest concerns that may impact on the preliminary inquiry;

(f) for any other justifiable reason.

(2) The proceedings in a preliminary inquiry may be adjourned for a period not exceeding forty-eight hours, and not more than three adjournments may be issued in the proceeding:

Provided that the magistrate may adjourn the proceedings in a preliminary inquiry for such longer periods in the case of medical assessments and medical treatments.

Release on preliminary inquiry.

9. (1) where a preliminary inquiry is adjourned under rule 11, the magistrate shall make orders as—

- (a) to the release of the child—
 - (i) into the care of a parent or guardian;
 - (ii) on the child's own recognizance; or
- (b) to the placement of the child to a suitable institution or alternative care.

(2) In considering whether to release a child in accordance with sub-rule (1), the Magistrate shall have regard to the assessment report on the child, and to all relevant factors, including—

- (a) the best interest of the child;
- (b) the family and social background, and the character of the child;
- (c) whether the child attends school or is undergoing training;
- (d) whether the child has any special needs by reason of the child's health status or disability;
- (e) the relationship between the child and potential witnesses;
- (f) whether the child is a flight risk, or has previously failed to observe bail terms;
- (g) whether there has been previous findings of guilt on the part of the child;
- (h) the interests and safety of the community in which the child resides; and
- (i) the seriousness of the offence with which the child is charged.

(3) On releasing a child in accordance with this rule, the Magistrate may order the child to—

- (a) report periodically to a specified person or at a specified place;
- (b) reside at a specified address;
- (c) be placed under the supervision of a specified person;

- (d) refrain from interfering with witnesses, tampering with evidence, and from associating with any specified person or group of persons; or
- (e) comply with such other conditions as the Magistrate considers appropriate in the circumstances.

(4) Where a child is released into the care of a parent or guardian, the Magistrate shall direct the parent or guardian to—

- (a) appear before the Court, at such time and place as the Magistrate directs;
- (b) ensure that the child appears on a specified date and at a specified time and place; and
- (c) ensure that the child complies with such conditions as the Magistrate may impose in accordance with sub-rule (3).

(5) Where a child is released on his or her own recognizance, the Magistrate shall direct the child to—

- (a) appear on a specified date and at a specified time and place; and
- (b) comply with such conditions as may be imposed under sub-rule (3).

Procedure where a child fails to appear or comply with conditions.

10. (1) Where a child fails to appear on the date and at the time and place specified in accordance with rule 12, or to comply with a condition imposed pursuant with that rule, the Magistrate may—

- (a) issue a warrant for the arrest of the child; or
- (b) issue a summons for the child to appear before the Court.

(2) Where a child appears before a Magistrate under arrest or in answer to summons issued under sub-rule (1), the Magistrate shall inquire into the reasons for the child's failure to appear or to comply with conditions imposed under rule 11.

(3) Where it is shown to the satisfaction of the Magistrate that the child's failure to appear or to comply with any of the conditions attaching to his or her release is not due to the fault of the child, the Magistrate may—

- (a) order the child's release such conditions that the Magistrate considers appropriate in the circumstances; and
- (b) if necessary, make such orders as would assist the child and their family to comply with the conditions previously imposed for their release.

(4) If failure to appear or comply with conditions set under rule 12 is due to the child's fault, the Magistrate may—

- (a) order the release of the child on different or further conditions; or
- (b) make an order that the child be placed at a children's remand home.

Placement in a children's remand home

11. (1) Where a child is placed in an institution under rule 12, the child shall be hosted in a place of safe custody in accordance with PART VII of the Act.

PART IV – DIVERSION PROCEDURE

Diversion.

12. (1) An order for diversion can only be issued where a child admits responsibility for the alleged offence.

(2) A child offender shall be eligible for the types and levels of diversion options set out in Section 230 of the Act.

(3) In selecting the appropriate level of diversion pursuant to section 230 of the Act, the Magistrate shall consider—

- (a) the child's age and developmental needs;
- (b) the suitability of the level of diversion in the circumstances of the case;
- (c) the child's family, social-cultural, religious and linguistic background;
- (d) the child's level of education, cognitive ability, domestic and environmental circumstances; and
- (e) the proportionality of the option recommended or selected, having regard to the circumstances of the child, the nature of the offence and the interests of society.

(4) The magistrate who has presided over the diversion proceeding shall not preside over subsequent proceedings in a trial relating to the same matter.

Monitoring compliance with diversion order.

13. (1) Upon ordering diversion, the magistrate shall identify a children's officer, probation officer or any other suitable person to monitor the child's compliance with the identified diversion options.

(2) A person identified under sub-rule (1) shall—

- (a) inquire whether the terms on which the diversion was ordered have been complied with; and
- (b) prepare and submit to the Court a report of their findings specifying—
 - (i) whether the child has successfully complied with the diversion order;
 - (ii) what remains to be done to ensure successful compliance with the diversion order; or
 - (iii) whether the child has altogether failed to comply with the diversion order, and the reasons for their non-compliance.

Procedure on non-compliance.

14. (1) Where a child fails to comply with a diversion order, the Magistrate may issue a warrant for the arrest of the child, or a summons requiring the child to appear before the Magistrate and give reasons for non-compliance with the diversion order.

(2) Where it is shown to the satisfaction of the Magistrate that failure to comply with the diversion order was due to no fault on the part of the child, the Magistrate may—

- (a) direct that the diversion option continues, and that the diversion order remains in force on the same terms;
- (b) apply any other diversion option on such terms as the Magistrate thinks fit; or
- (c) make such further or other orders, on such terms as the Magistrate thinks fit, to assist the child and the child's family to comply with the diversion option initially applied.

(3) Where failure to comply with the diversion order is due to the child's fault—

- (a) the Court may order an alternative diversion option or a different level of diversion; or
- (b) terminate the diversion process and refer the file to the children Court for plea.

PART V – PROCEDURE AT TRIAL

Without prejudice proceeding.

15. Where the case proceeds to trial, any information provided during the preliminary inquiry or diversion process, shall not be used to prejudice the fair trial of the child.

Bail or bond.

16. (1) Where a child is brought before the Court and charged with an offence, the Court shall inquire into the case and—

- (a) release the child on bail or bond with or without a surety, or on such terms as the Court deems appropriate; or
- (b) decline to grant bail or bond.

(2) Where the Court declines to grant bail or bond, the Court shall—

- (a) record its reasons for refusal;
- (b) order that the child be placed in a children’s remand home;
- (c) inform the parties of the right to apply for a review to the High Court.

(3) Where the Court declines to grant bail or bond, the Court shall mention the matter every fourteen days.

Removal order

17. Where a child is placed in remand pending hearing and determination of the charge, the Court may issue a removal order in Form No. CCR5, set out in the Schedule, for the purpose of—

- (a) directing the removal of the child from the children’s remand home to attend court at such times and for such reasons as the Court may direct; and
- (b) protecting the child’s right to fair trial by affording them the opportunity to attend court in person at all stages of the proceedings.

Commencement of proceedings.

18. (1) On the day set for the trial, the Court shall, in addition to the matters specified in section 233 of the Act—

- (a) verify the identity and address of the child, and of their parents or guardian, or of other person for the time being having parental responsibility over the child;
- (b) inform the child of their rights under section 96(1) of the Act;
- (c) read the charge to the child; and
- (d) explain to the child in a language they understand or, where necessary, with the assistance of an intermediary or an interpreter—
 - (i) the allegation made against the child;
 - (ii) that the offence charged is a criminal offence;
 - (iii) how the trial will proceed;
 - (iv) the meaning of a plea;
 - (v) that the child shall be required to answer the question of how they wishes to plead;
 - (vi) that acknowledging responsibility for the offence charged means that the child admits that they committed the offence;
 - (vii) that if the child acknowledges responsibility, the Court shall proceed to direct that the child be dealt with in accordance with section 239(1) of the Act;
 - (viii) that if the child denies responsibility, the Court shall proceed to hear the matter; and
 - (ix) that the child has the right to remain silent, in which case the Court shall presume that the child denies responsibility and proceed to hear the matter.

(2) If the child's response under this rule does not amount to an unequivocal plea, the Court shall make a record that the child denies responsibility.

(3) Where a child is charged jointly with an adult in the same case, and in respect of the same set of facts, the Court shall apply—

- (a) these Rules in respect of the child; and
- (b) the Criminal Procedure Code in respect of the adult.

(4) During the proceedings, the Court shall ensure that the best interests of the child are of paramount consideration and, to this end—

- (a) may require any person to provide information on any matter relating to the charge; and
- (b) at all stages of the trial, ensure that—
 - (i) the proceedings are fair and appropriate to the age and understanding of the child;
 - (ii) the proceedings are held in camera; and
 - (iii) cross-examination is not unduly hostile.

(5) No person other than a parent or guardian of the child may be present at any sitting of the Court, unless—

- (a) the person's presence is necessary in connection with the proceedings; or
- (b) the person is permitted by the Court to be present.

Parental assistance.

19. (1) A parent or guardian of a child shall attend and be present during all proceedings before the Court for the purpose of assisting the child, unless—

- (a) the Court, of its own motion or on application by the parent or guardian of the child, exempts the parent or guardian from attendance during the proceedings; or
- (b) the parent or guardian of the child cannot be traced, in which case the Court shall appoint a guardian *ad litem* in accordance with section 98 of the Act.

(2) Notwithstanding anything contained in this rule, the Court shall not permit a parent or guardian to assist a child in the conduct of the case where the Court is satisfied that—

- (a) the parent or guardian is charged with an offence based on the same facts;
- (b) the parent or guardian has been convicted of an offence against the child;
- (c) it is not in the child's best interests to be so assisted; or
- (d) where the parent is the complainant in the same matter.

Limitation on adjournments.

20. (1) A case involving a child shall be dealt with expeditiously and without undue delay.

(2) Where during trial, a child has been remanded for a continuous period of three months, the Court shall admit the child to favourable bond terms.

Diversion before close of case for the prosecution.

21. (1) The Court may, at any time before the conclusion of the case for the prosecution, make an order for diversion in respect of a child pursuant to section 230 of the Act and—

- (a) postpone the proceedings pending the child's compliance with the diversion order; and
- (b) inform the child that failure to comply with the diversion order may result in the child's acknowledgment of responsibility being recorded as an admission in the event that the trial proceeds to hearing and determination.

(2) Where the Court receives a report from the probation officer to the effect that a child has successfully complied with the diversion order, and the Court is satisfied that the child has complied, the Court shall make an order to terminate the proceedings.

assessment on remand finding of guilt.

22. (1) Where, at the close of the prosecution and defence cases, the Court is satisfied on evidence that the offence with which the child is charged is proved beyond reasonable doubt, the Court shall find the child guilty of the offence as charged.

(2) Upon the finding of guilt, the Court shall require a probation officer to submit a social inquiry report on the child within seven days of the finding.

(3) the social inquiry report shall include—

- (a) the child's social background and other material facts and circumstances likely to be of assistance to the Court in determining what orders to make in respect of the child;
- (b) recommendations on the appropriate rehabilitative programmes, availability and suitability to the child in question;
- (c) any other relevant information that may assist the Court in determining what orders to make in respect of the child.

PART VI – ORDERS UPON FINDING OF GUILT

Orders the court can make.

23. (1) The court may issue any of the orders under section 239 of the Act.

(2) Where there is a breach of any of the orders in sub-rule (1), the court may require the file to be placed before it and give further orders depending on the circumstances of the case.

(3) A committal order shall be in Form No. CCR3, set out in the schedule.

Considerations on making committal orders

24. (1) In considering the imposition of an order involving institutionalization and detention of the child, the Court shall have regard to—

- (a) the social inquiry report;
- (b) the submissions made by the child, or on behalf of the child, in mitigation;
- (c) the seriousness of the offence, having regard to—
 - (i) the extent of the harm done or risked in consequence of the offence; and
 - (ii) the degree of responsibility of the child in causing or risking the harm;
- (d) the protection of the community;
- (e) the severity of the impact of the offence on the victim;
- (f) previous failure (if any) of the child to respond to alternatives to institutionalization or detention; and

- (g) the desirability of keeping the child out of institutionalization or detention.

Appeals and review. **25.** A party aggrieved by an order of the Court made under the Act in accordance with these Rules may apply for appeal or revision in accordance with Part XI of the Criminal Procedure Code.

PART IV—MISCELLANEOUS PROVISIONS

Time **26.** The provisions of Order 50 of the Civil Procedure Rules, 2010 shall apply to time prescribed for the doing of any act or taking any proceedings under these Rules.

Procedure for execution of orders and decrees. **27.** Any judgment or order given under these Rules shall be executed and enforced in accordance with the provisions of the Civil Procedure Rules, 2010.

Costs of applications. **28.** The Court may make such orders as to costs as it deems just.

Ongoing proceedings. **29.** Any proceedings relating to children in conflict with the law pending in court before the coming into effect of these Rules shall be finalised in accordance with these Rules.

DRAFT FOR PUBLIC CONSULTATION

Form No. CCR 1

THE REPUBLIC OF KENYA
IN THE CHILDREN'S COURT AT.....

Criminal Case

No.....of.....

.....

The Republic

Versus

.....

(Accused)

REMAND ORDER

To the Manager of

.....

Whereas.....

Has this day been charged before me with.....and has been
remanded till the..... day of.....20.....

This is to order and authorize you to receive the said..... and to
produce him before this court ata.m. on the day
stated.

Dated this

.....day.....20.....

GIVEN under my hand and SEAL of the Court this.....day of20.....

.....

MAGISTRATE

DRAFT FOR PUBLIC CONSULTATION

PROBATION ORDER

In the Children’s Court at.....

The.....day of
.....20.....

WHEREAS.....of.....is charged before
this court with the offence of.....contrary
to.....and the Court satisfied that the offence is proved, but is of the opinion
that, having regard to the

[specify. child’s social background, current family circumstances, education, health status], or to

- a)
-
-
-
-
-

Detail any extenuating circumstances in which the offence was

It is expedient to release the offender on probation:
AND-

- a) (the child having been found guilty of the said offence):
- b) (without proceeding to the finding of guilt):

THE COURT HEREBY ORDERS that the child shall be released subject to the following conditions:

(a) That during the period of the order the child shall submit himself/herself to the supervision of.....[Specify the person(s) who will supervise the child - parent. guardian. relative or Children’s Officer and their name]

(b) That for the purpose of securing the supervision of the child:

(i) the child shall receive at his or her home or place of residence visits from the Children’s Officer weekly, or at such other intervals as the Children’s Officer may think fit, and shall truly all questions put to him or her by the Children’s Officer with regard to his conduct or residence. and

- (ii) The change of residence shall be reported forthwith to the Children’s Officer
- (c) The child shall report to the Children’s Officer as directed by the Court.

List all additional conditions as to residence and other Matters as the court having regard to circumstances of the Case consider necessary for Securing the good conduct of the child or of prevention of the same offence of the commission of other offences

1.
.....
.....
.....
.....
.....
.....
.....
.....
.....
.....

2. This order shall have effect for a period of..... from the date hereof.

Dated this.....day of.....20.....

.....
MAGISTRATE

Rule 31(1)
Form No. CCR 3
(Heading as in Form No CCR 1)

COMMITTAL ORDER

To the
Manager.....
WHEREAS on the.....day of.....20...
the above named.....was charged
before me and was found guilty of the offence of..... punishable under
section.....of
the.....

IT IS HEREBY ORDERED that the
said.....
Shall be committed to custody to the Rehabilitation School.
AND IT IS FURTHER ORDERED that the
said.....
shall be conveyed as soon as possible to the said school by
and there handed over to the custody of the Manager of the Rehabilitation School together with a
certified copy of this order.

GIVEN under my hand and SEAL of the Court, this.....day of.....20.....

.....
MAGISTRATE

Rule 31(2)

Form No. CCR 4

(Heading as in Form No CCR 1)

MATERIAL INFORMATION OF A CHILD FOR COMMITTAL ORDER TO
A REHABILITATION SCHOOL

A. GENERAL AND SPECIAL PARTICULARS:

- (1)
Name.....
.....
- (2) Sex.....
- (3) Date of Birth.....
- (4) Religion.....
- (5)
Residence.....
.....
- (6) Substance of the offence.....
.....
- (7) Particulars of previous convictions (if
any).....
- (8) School last attended (if
any).....
- (9) Employment (if any) with respective
dates.....
- (10) Undesirable associations (if known)
.....

B. HOME SURROUNDINGS:

- (11) Name and address of parents or guardian.....
- (12) Their
religion.....
.....

- (13) Their occupation.....
-
- (14) Name and address of any person interested in the child.....
- (15) Any other relevant information.....

I certify that the above particulars are accurate and complete to the best of my knowledge and belief.

.....
MAGISTRATE

Rule 32
 Form No. CCR 5
 (Heading as in Form No CCR 1)

REMOVAL ORDER

The Manager

The above named was remanded into custody until the..... day
 of.....20.....

You are hereby ordered to produce him/her before this Court on the..... day of
 at..... 20..... at

GIVEN under my hand and SEAL OF THE COURT thisday of.....20.....

.....
MAGISTRATE

Made on the....., 2023.

MARTHA KOOME,
Chief Justice.