TABLE OF CONTENTS

CHAPTER 1				
INTROD	INTRODUCTION AND METHODOLOGICAL FOUNDATION			
1.1	Introduction	1		
1.2	Methodological Foundation	2		
1.2.1	Purpose of the Research Project	2		
1.2.2	Rationale	3		
1.2.3	Hypothesis	6		
1.2.4	Delimitation	8		
1.2.5	The Respondents	9		
1.2.6	Research Method	9		
1.2.7	Compilation of the Report	10		
1.3	Summary	11		
CHAPTER 2				
DDOTECTING THE DIGHTS OF CHILDDEN				

PROTECTING THE RIGHTS OF CHILDREN Introduction 12 2.1 **United Nations Convention on the Rights of the Child** 2.2 12 **African Charter** 2.3 15 2.4 **Beijing Rules** 17 **The South African Constitution, 1996** 2.5 18 2.6 Changes 23

2.7	Child Justice Bill, 49 of 2002	24
2.8	Forensic Application	26
2.9	Conclusion	27
CHAPTE	R 3	
CHILD DI	EVELOPMENT, CRIMINAL CAPACITY AND AGE	
3.1	Introduction	28
3.2	Grounding	28
3.3	Kohlberg's Exposition of the Six Moral Stages	31
3.3.1	The Place of Moral Judgment in the Total Personality	31
3.3.2	Theoretical Description of the Moral Stages	32
3.3.3	The Six Moral Stages	34
3.4	Child Development	36
3.4.1	Physical Development	36
3.4.2	Cognitive Development	37
Children from birth to 7 years		37
Children	from 7 to 12 years	38
Children from 13 years to early adulthood		38
Issues relating to memory		38
Concentration		40
3.4.3	Emotional Development	40
Children	from birth to 5 years	40
Children from 5 to 12 years		41

3.4.4	Language Development	41
Children	from birth to 5 years	41
Children	from 6 to 12 years	42
Children	from 13 years to early adulthood	42
3.4.5	Social Development	42
Children	from birth to 3 years	42
Children	from 3 to 12 years	43
Children	from 13 years to early adulthood	43
3.4.6	Sexual Development	43
Children	from birth to 5 years	44
Children	from 5 to 12 years	44
Children	in puberty	44
3.4.7	Moral Development	45
Note on \$	Social and Moral Development	46
3.4.8	Forensic Application	46
3.5	International Perspective	46
3.5.1	Criminal Capacity	46
3.6	Current Position in South Africa	47
3.6.1	Criminal Capacity	47
Excerpts from case law where criminal capacity of children where		
dealt witl	n by the Courts	51
3.6.2	Determination of Age	53

Excerpts from cases where the Courts dealt with age determination			
of accused			
3.7	Child Justice Bill, 49 of 2002	55	
3.7.1	Age and Criminal Responsibility	55	
3.7.2	Forensic Application	57	
3.7.3	Age Determination	60	
3.8	Conclusion	63	
CHAPTE	R 4		
DETENTI	ON OF CHILDREN		
4.1	Introduction	65	
4.2	International Perspective	65	
4.2.1	Limitations on Detention of Children	65	
4.2.2	The Rights of Children Deprived of their Liberty	67	
4.3	Current Position in South Africa	67	
4.3.1	The Constitution, 1996	68	
4.3.2	The Criminal Procedure Act, 1977	68	
4.3.3	Correctional Services Act, 1959	69	
4.4	Interim National Protocol for the Management of Children		
	Awaiting Trial	70	
4.4.1	The Objectives of the Interim Protocol	70	
4.4.2	Arrest	71	
4.4.3	Assessment	72	

4.4.4	After Assessment, Prior to Appearance in Court	74
4.4.5	First Appearance in Court	75
4.4.6	Remands	76
4.4.7	Requisitions	77
4.4.8	Age Assessment	78
4.4.9	Monitoring	78
4.5	General Comments on Current Position	79
4.6	The Child Justice Bill, 49 of 2002	81
4.6.1	The Provisions in the Child Justice Bill, 2002 regarding	
	Securing Attendance at the Preliminary Inquiry	81
4.6.2	Release from Detention	90
4.6.3	Schedules 1 – 3 of the Child Justice Bill, 2002	95
4.7	Forensic Application	100
4.8	Conclusion	100
CHAPTI	ER 5	
LEGAL	REPRESENTATION	
5.1	Introduction	102
5.2	Grounding	102
5.3	International Perspective	104
5.4	Current Position in South Africa	105
5.4.1	The Criminal Procedure Act, 1977	105
5.4.2	The Constitution, 1996	108

Correctional Services Act, 1959	108
Child Care Act, 1983	109
General Remarks regarding the Current Position of Legal	
Representation in South Africa	110
The Child Justice Bill, 49 of 2002	111
Summary of the Above Provisions	115
Forensic Application	118
Conclusion	118
R 6	
ON	
Introduction	120
Definition	120
Grounding	121
International Perspective	121
The Current Position in South Africa	121
Policy Directive on Diversion issued by the National	
Director of Public Prosecutions	121
The Aims and Purposes of Diversion	124
Diversion Programmes available in South Africa	125
mpowerment Scheme (YES)	125
Community Service (PTCS)	125
Victim Offender Mediation (VOM)	
	Child Care Act, 1983 General Remarks regarding the Current Position of Legal Representation in South Africa The Child Justice Bill, 49 of 2002 Summary of the Above Provisions Forensic Application Conclusion R 6 ON Introduction Definition Grounding International Perspective The Current Position in South Africa Policy Directive on Diversion issued by the National Director of Public Prosecutions The Aims and Purposes of Diversion Diversion Programmes available in South Africa Inpowerment Scheme (YES) Community Service (PTCS)

Family	Family Group Conference (FGC)	
The Jo	urney	126
6.5.4	Consequences for Non-Compliance with Diversion	126
6.5.5	General Remarks on the Current Position of Diversion	
	in South Africa	127
6.5.6	Case-law where reference were made to the Issues	
	regarding Diversion	130
6.5.7	Is Diversion Working	132
6.6	The Child Justice Bill, 49 of 2002	132
6.6.1	Diversion Options	143
6.7	Forensic Application	146
6.8	Conclusion	146
CHAPT	ER 7	
SENTE	NCING	
7.1	Introduction	148
7.2	International Perspective	149
7.3	The Current Position in South Africa	151
7.3.1	Sentencing Options for Juvenile Offenders available to	
	the Courts in terms of the Criminal Procedure Act, 1977	151
7.3.2	Criteria for a Balanced Sentence and the Aim of Punishme	nt
	as criterion of Sentencing	154
7.3.3	Pre-Sentence Reports	154

7.3.4	Various Case Law regarding Sentencing	157
Factors i	n Sentencing and Sentencing Principles	157
Importan	Importance of Pre-Sentence Reports	
Case Lav	v regarding various Sentence Options	161
7.4	Forensic Application	165
7.5	The Child Justice Bill, 49 of 2002	165
7.6	Conclusion	178
CHAPTE	R 8	
PRE-SEN	ITENCE REPORT	
8.1	Introduction	179
8.2	Definition	179
8.3	Necessity of Pre-Sentence Reports	179
8.4	The Purpose of a Pre-Sentence Report (Juvenile Offenders)	180
8.5	Reasons for Limited Use of Pre-Sentence Reports	180
8.5.1	Shortage	180
8.5.2	Time Consuming	181
8.5.3	Standard of Reports	181
8.6	Compiling and Contents of the Pre-Sentence Report	181
8.6.1	Overview of Initial Steps	181
8.6.2	Contents of the Pre-Sentence Report (Focusing on	
	Juvenile Offenders)	182

Biographical Details		182
Personal Background		183
Scholastic Background		183
Family Ba	ackground	183
Circumst	ances of the Offence	183
Analysis	and Evaluation of the Information	184
Recomme	endation	185
8.7	The Child Justice Bill, 49 of 2002	186
8.8	Conclusion	187
CHAPTER	₹ 9	
SPECIAL	CHILD JUSTICE COURTS AND CONFIDENTIALITY OF	
CHILDRE	N'S COURT HEARINGS	
9.1	Introduction	188
9.2	Special Child Justice Courts	188
9.2.1	International Perspective	188
9.3	Current Position in South Africa	197
9.3.1	Children's Court	197
9.3.2	Juvenile Courts	199
9.4	The Child Justice Bill, 49 of 2002	201
9.4.1	Sections 50 – 59 of the Child Justice Bill, 2002	201
9.4.2	Summary of the above provisions by the South African	
	Law Commission (2000:xxi)	209

9.5	Shortcoming in the Child Justice Bill, 2002	211
9.6	Confidentiality of Children's Hearings	212
9.6.1	International Perspective	212
9.6.2	Current Position in South Africa	212
9.6.3	The Child Justice Bill, 49 of 2002	213
9.7	Forensic Application	214
9.8	Conclusion	215
CHAPTER	R 10	
FINDING,	CONCLUSIONS AND RECOMMENDATIONS	
10.1	Introduction	216
10.2	Findings	216
10.3	Conclusions	222
10.4	Recommendations	223
BIBLIOGE	RAPY	225
ADDEND	JM	229
LIST OF 1	ABLES	
Table 1	Looked at the proposed Child Justice Bill, 2002	26
Table 2	Minimum age for criminal responsibility	59
Table 3	Juveniles offenders should be obtained	98
Table 4	The best method to ensure a juvenile's attendance at court	98

Table 5	Juvenile offenders should be released on bail	99
Table 6	Juvenile offenders should receive legal representation at the expense	ense
	of the State when parents cannot afford legal representation	116
Table 7	A child should be allowed to waive his/her legal representation in	
	some circumstances	117
Table 8	Legal representation for juveniles should be specifically trained	117
Table 9	Diversion is working	144
Table 10	Prosecutors consider diversion in all deserving cases	144
Table 11	Diversion should be considered in all cases involving juveniles	145
Table 12	Enough sentencing options are available in cases where juvenile	S
	are involved	175
Table 13	Pre-sentence reports should be compulsory before a juvenile is	
	sentenced to imprisonment	176
Table 14	Presiding officers receive enough training with regard to	
	sentencing	177