

Appeals and children

When it comes to appealing a sentence or conviction from a lower court the Criminal Procedure Act 51 of 1977 (CPA) allows for different procedures to be followed in the case of young appellants. Generally, an application for leave to appeal must first be made when an appellant wishes to appeal a lower (or superior) court decision. However, in terms of section 309 (1)(a) of the CPA an appeal against a lower court order can be noted without needing to apply for leave to appeal in the following instances:

1. where the appellant was below the age of 16 years at the time of the offence or;
2. if he/she was 16 years and older but younger than 18 years at the time of the offence and he/she had no legal representation at the time of conviction and furthermore; he/she was sentenced to any form of imprisonment as set out in section 276(1) of the Act which was not wholly suspended.
3. Such an automatic appeal can also be noted where the appellant was sentenced to life imprisonment in terms of section 51 of the Criminal Law Amendment Act of 1997. As indicated in Issue 8 of the child law updates, section 51 allows for the imposition of a sentence of life imprisonment to convicted children who were 16 or 17 years of age at the time of the offence.

The age of 16 applicable to appeals as set out above came as a result of amendments by the Criminal Law (Sentencing) Amendment Act 38 of 2007. Before this, the age applicable to the automatic appeal provisions was set at 14 years. It must also be noted that reviews of certain sentences imposed by magistrate courts must be suspended if an appeal has been noted in terms of section 309(1)(a).

Different appeal procedures also apply for young appellants appealing a sentence or conviction from superior courts. In the case of certain young offenders an appeal from a High Court need only be noted and it is not necessary to apply for leave to appeal. This applies in the following circumstances set out in section 316 of the CPA:

1. If an accused was below the age of 14 at the time of the offence; or
2. he or she was 14 or 15 years old at the time of the offence, was unrepresented at the time of conviction and was sentenced to any form of imprisonment as set out in section 276(1) of the Act which was not wholly suspended

Practically section 309(1)(a) entails filing a notice of appeal on the lower court with all the necessary attachments, and waiting for the court to allocate a date on which the matter would be heard. In the case of section 319 the procedure will be the same. The only difference is that the procedures apply to children in different age groups in the different courts.

This procedure provides for a speedy way to deal with appeals with regards to convicted children as it eliminates the procedure of first having to obtain leave to appeal, which applies to all other persons.