

Consolidated budgets and implementation plans of the departments  
involved in the new system of child justice proposed by the Child Justice Bill - October 2002



# Child Justice Bill

## Budget and Implementation Plan

Department of Justice and Constitutional Development  
National Prosecuting Authority • Department of Social Development • Department of Correctional Service  
Department of Education • The South African Police Service • The Office on the Rights of the Child, the Presidency

This document is issued by the Inter-Sectoral Committee for Child Justice

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# Foreword

On behalf of the Cluster for Justice, Crime Prevention and Security, I am pleased to present this Budget and Implementation Plan for the Child Justice Bill. The process of planning for the implementation of the Child Justice Bill has been highly innovative and sets a good example for every piece of legislation that comes before Cabinet and Parliament. The planning and budgeting process started early in the process of law-making. Each decision made during the drafting and development phase was costed and weighed in terms of cost implication and cost benefit. The Bill was the first one ever to be costed whilst still in development at the South African Law Commission.

The Directorate of Children and Youth Affairs in my department has co-ordinated an inter-sectoral forum dealing with child justice issues, called the Inter-Sectoral Committee for Child Justice. This committee has done a great deal of integrated planning towards the effective implementation of the Child Justice Bill. When the Bill was placed before Cabinet it was accompanied by an implementation framework which contained a gap analysis, indicating what still needed to be put in place before departments would be able to fully implement the Bill.

This was followed by a planning process that looked at what the expected expenditure would be for the first three years of the Bill's operation. The relevant National and Provincial Departments have prepared this detailed implementation strategy and budget, linked to the Medium Term Expenditure Framework.

I would like to thank the Directors General and Chief Financial Officers of the various departments who have given of their time with regard to the development of this document, as well as the line function and project staff who have participated.

A handwritten signature in black ink, appearing to read 'V. Pikoli', is written over a light blue grid background.

Adv. V. Pikoli  
Director-General: Justice and Constitutional Development

## Acknowledgements

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# 1. Background

## A more efficient and effective child justice system

The Child Justice Bill proposes significant changes to the way children in conflict with the law are managed within the criminal justice system. The two most significant changes proposed are the introduction of the preliminary inquiry and the wider use of diversion and alternative sentencing. Other important elements seek to promote children's rights (whilst also ensuring the protection of society) by addressing issues relating to the arrest, assessment, detention, legal representation, trial and sentencing of children. The Bill also requires the setting up of procedures to monitor and assess the proper application of the legislation.

The Child Justice Bill, whilst still in development, was subjected to a cost-effectiveness analysis<sup>1</sup>. It explored and compared the cost-effectiveness of the way children are currently processed by the existing criminal justice system with the system described in the Child Justice Bill. A spreadsheet model, referred to as the CJ-model, was built to map the flow of children through the different stages of the current and new systems. The model calculated the cost associated with processing, transporting, and detaining children arriving at each of the stages in the system during the course of a

year, taking into consideration the different levels of criminality in metropolitan, urban and rural areas. To compare the cost of the current child justice system with that proposed by the Child Justice Bill, three scenarios were generated and run in the CJ-model. Comparing relevant information across the scenarios revealed that, overall, government was likely to realise significant savings from the full implementation of the Child Justice Bill, although the Department of Social Development and South African Police Service (SAPS) would need to spend more money than they are doing in the current system. The key to government realising these potential savings relates to how children in conflict with the law are processed in the new child justice system. If more time and money is spent in the early stages of the system on assessment, preliminary inquiry and diversion, then the savings with regard to trial and detention, but most importantly incarceration will be made.

It needs to be emphasised that the savings quantified in the cost effectiveness analysis related to only a small part of the overall benefits that will accrue from the implementation of the Child Justice Bill. The importance of keeping children out of pris-

ons so as to break the cycle of crime and violence cannot be overemphasised. Other research has shown that recidivism rates are lower for children that have participated in existing diversion programmes<sup>2</sup>. It is also likely that reducing the flow of cases involving children to criminal courts will significantly reduce the pressure on the criminal justice system. This will enable the courts to deal with existing backlogs and ensure a more efficient and effective service generally. The positive spin-off effects for the entire criminal justice system and for society as a whole will be very substantial. Probably the most outstanding aspect of the new child justice system proposed by the Child Justice Bill is that it will not only enable the government to realise substantial savings, but also ensure that the remaining expenditure is spent more effectively.

<sup>1</sup> Barberton, D., Stuart, J., Ajam T (1999) Costing the Implementation of the Child Justice Bill: and developing a strategy for implementation, Report for the South African Law Commission, AFRcC, University of Cape Town.  
See also Barberton, C., with Stuart J. (2001) "Re-costing the Child Justice Bill: updating the original costing taking into consideration changes made to the Bill" AFRcC, University of Cape Town.

<sup>2</sup> Muntingh, LM (2000), "The Effectiveness of Diversion Programmes: A longitudinal evaluation of cases", NICRO: Cape Town.

# 2. Developing integrated implementation plans and budgets

The Directorate of Children and Youth Affairs in the Department of Justice and Constitutional Development has co-ordinated an inter-sectoral forum dealing with child justice issues, called the Inter-Sectoral Committee for Child Justice<sup>3</sup>. The Inter-Sectoral Committee has, with the assistance of an economist, compiled this implementation strategy and budget.

An initial meeting with the Chief Financial Officers of the relevant national departments to discuss the development of an integrated budget and implementation strategy for the Child Justice Bill was held in Pretoria on 15 October 2001, and was chaired by the Chief Financial Officer for Justice and Constitutional Development. Each of the departments then worked on the budgets for their own departments, coming together regularly to discuss progress. National Treasury was kept abreast of these developments, and the Departments of Justice and Constitutional Development, Social Development and the Department of Safety and Security have all included allocations for the new funds required in relation to the Child Justice Bill in the budgets put forward to National Treasury for the MTEF years 2003-2005.

In order to establish both the existing costs of processing children through the current criminal justice system as well as determining any new costs that will be occasioned by the enactment of the Bill, certain baseline data had to be agreed upon by all the departments. For example, arrest figures underpin the number of children entering the system during the course of a year. The numbers of arrests have been obtained from the SAPS CAS system, and the numbers relating to children in detention (unsentenced and sentenced) are based on Department of Correctional Services verified statistics. The current overall number of diversions is known (based on data provided by the National Prosecuting Authority, the Department of Social Development and NICRO). The current number of trials of persons under the age of 18 years is not known, but has been estimated through an assumption formula agreed on by the departments, linked to verified information such as the number of arrests and the number of detentions.

Spreadsheet models have been prepared that reflect the current budgetary allocations relating to children who are moving through the criminal justice process. The models are then used to analyse the new

activities required by the Child Justice Bill and the budgets required for the first three-year cycle of the life of the new system. This allows for a phased and incremental approach to introducing the new requirements of the Child Justice Bill. Of great importance is to ensure proper sequencing in the implementation of different aspects of the new system. For instance it is imperative that diversion services are made available simultaneously to introducing the preliminary inquiry process. These issues are addressed in this implementation plan.

<sup>3</sup> The committee is made up of representatives from the Departments of Justice and Constitutional Development, Social Development, Correctional Services, Education, the South African Police Service, the National Prosecuting Authority and the Office on the rights of the child, the Presidency.

Section One: Overall implementation plans and budgets

3. Role of departments in the Child Justice Bill

The following table sets out briefly the responsibilities of the different national and provincial departments in the child justice system proposed by the Child Justice Bill. Note that in most instances the departments are already delivering services in these areas in terms of existing constitutional obligations and current legislation, but in many instances the level and quality of service delivery will need to be increased or improved to fulfil the requirements set out in the Child Justice Bill.

<b>South African Police Service</b>	<ul style="list-style-type: none"><li>• Transportation of children to homes/courts/detention facilities</li><li>• Detention of fewer children in police cells for first 48 hours</li><li>• Locating and notifying families</li><li>• Notification of probation officers</li><li>• Provision of training to police officers on the provisions of the Bill</li></ul>
<b>Provincial Social Development</b>	<ul style="list-style-type: none"><li>• Assessment of all arrested children by a probation officer</li><li>• Participation of probation officers in preliminary inquiries</li><li>• Management of children placed under pre-trial supervision orders</li><li>• Provision of residential care facilities (secure care and places of safety) for children awaiting trial</li><li>• Provision of pre-trial and pre-sentence reports</li><li>• Direct provision and funding of diversion services</li><li>• Participation in establishing One-Stop Child Justice Centres</li><li>• Management of the ‘supervision’ and community-based sentences</li></ul>
<b>National Social Development</b>	<ul style="list-style-type: none"><li>• Oversight and monitoring of the child justice system</li><li>• Registration system for programmes</li><li>• Minimum standards for programmes</li><li>• Provision of training</li></ul>
<b>Justice and Constitutional Development</b>	<ul style="list-style-type: none"><li>• Participation of magistrates and prosecutors in preliminary inquiries</li><li>• Proof of legal capacity of 10-14 yr olds (including expert witnesses)</li><li>• Provision by Legal Aid Board of legal representation for children accused of serious offences</li><li>• Provision of normal trial and sentencing processes</li><li>• Provision of normal review and appeal processes.</li></ul>

- Participation in establishing One-Stop Child Justice Centres
- Oversight and monitoring of the child justice system
- Provision training

**Provincial and National Education** • Provisions of residential programmes for sentenced children

**Correctional Services** • Detention of children accused of serious offences  
• Implementation of prison sentences  
• Implementation of correctional supervision sentences

## 4. Overall phasing of implementation

It is important to note that the Child Justice Bill is not being introduced into a vacuum. There is an existing process for taking children through the current system, so the basic framework for services already exists. In addition, the current system has been undergoing ad hoc reform through pilot projects and service delivery programmes. Arrested children are assessed by probation officers in many parts of the country and 15 000 diversions are already being undertaken on an annual basis. One Stop Child Justice Centres are already established in two metropolitan areas, whilst several towns have reception and referral centres currently in operation. A systemic approach is required in order to change the child justice system without compromising its current performance. The approach that has been used is to divide the actual implementation of the Bill over the three years of the MTEF cycle immediately following the passing of the legislation.

Assessment of each child by a probation officer prior to the preliminary inquiry is a requirement of the Child Justice Bill. When the Bill first comes into operation it is likely that some of the provincial departments of social development may not have enough

probation officers in their employ to cover every magisterial district. The capacity of the provincial departments to fulfil this requirement will be strengthened by the appointment of new probation officers during each year of the MTEF cycle. In the meanwhile, some of the assessments may be done by social workers working for non-governmental organisations. As a back up, the Child Justice Bill allows for the magistrate to dispense with the assessment if it would be in the best interests of the child to do so<sup>4</sup>. The availability of full time probation services for assessment will impact on SAPS, and in areas where this is to be phased in a plan will be developed between the local probation services and SAPS to ensure co-ordinated implementation. A process to identify these areas and to provide training and support is included in the SAPS implementation plan.

<sup>4</sup> See clause 20(2) of the Child Justice Bill.

### 4.1 Point of departure: children arrested

Table 1: Child arrests by province (1999 - 2005)

	Actual from SAPS				Calculated 7 months data from SAPS	Estimated using based on 6% annual growth	
Province	1999	2000	2001	2002	2003	2004	2005
Eastern Cape	10 290	11 290	12,270	13,010	13 790	14 620	15 500
Free State	8 210	8 640	9 260	9 820	10 410	11 030	11 690
Gauteng	19 890	23 210	31 020	32 880	34 850	36 940	39 160
KwaZulu Natal	21 650	24 240	27 280	28 920	30 660	32 500	34 450
Limpopo	3 280	4 500	5 860	6 210	6 580	6 970	7 390
Mpumulanga	4 550	5 370	6 610	7 010	7 430	7 880	8 350
Northern Cape	6 550	7 090	7 150	7 580	8 030	8 510	9 020
North West	3 590	4 120	5 460	5 790	6 140	6 510	6 900
Western Cape	36 770	31 110	32 950	34 930	37 030	39 250	41 610
Total	114 780	119 570	137 860	146 150	154 920	164 210	174 070

- Note: these figures are based on child arrest figures communicated by the National Commissioner of Police to the National Director-General: Social Development. The South African Police Service was unable to provide scientific projections relating to arrests of children. Therefore an estimate of a 6% increase in arrests per year has been used.



## 4.2 Developing capacity

Capacity is an important consideration in transformation (including human capacity, managerial capacity, information technology). But current capacity should not limit the scope of what can be achieved by the Child Justice Bill. In other words, the fact that certain competencies, facilities or resources are not currently available should not determine what is regarded to be achievable at some future date, since the necessary capacity can be developed over time. Current capacity does however influence the trajectory of the implementation strategy to achieve the specified objective. The strategy needs to synchronise capacity building and training in the transition from the current situation to the destination point. Therefore, while training and capacity building are important they must not be allowed to hold the implementation process hostage. Rather, the training process should be used to complement and strengthen changes that are being implemented. In other words the process of training has to respond to the needs of the system, rather than training being allowed to set the pace of change.

This approach to training and capacity-building is based on the view that people will seek to invest time ‘learning how the new system works’ only if that system is a reality in their lives. So long as the implementation of the system is being ‘planned’ so people will only ‘plan’ to learn how it works some time in the future. With this in mind, it is useful to set firm dates for the implementation of different components (such as the preliminary inquiry) and then to ensure that training is available in the period just prior to implementation<sup>5</sup>. This means that training must be co-ordinated with the overall implementation.

## 4.3 Ensuring effective monitoring

Putting in place an effective monitoring system is going to be crucial both for the successful implementation of the Child Justice Bill and the ongoing functioning of the child justice system more generally. A risk of monitoring exercises is that they can collect a wealth of information that does not inform management decisions and does not feed back into evaluation and planning processes. Setting up Key Perfor-

mance Indicators or measurable objectives<sup>6</sup> for each component or stage in the child justice system is integral to the development of the monitoring framework. The Inter-sectoral Committee on Child Justice has developed an outline for the monitoring structure, and will work further during 2002 to complete a monitoring framework including key performance indicators, and details relating to data collection and analysis.

## 4.4 Focussing on areas of maximum impact

At a more practical level, the cost effectiveness analysis carried out previously demonstrated that the Child Justice Bill is likely to have maximum impact on the functioning of the child justice system if implemented in metropolitan areas, where most of the crimes committed by children take place. It is therefore planned that the implementation process starts in metropolitan areas and then rolls out to large urban centres and later small towns/rural areas. It is expected that this sequencing will allow the savings that are generated in getting the system working in metropolitan areas

to finance the upgrading of the system in small towns/rural areas where more investment in infrastructure is likely to be required.

### 4.4.1 One-Stop Child Justice Centres

One of the ways of ensuring maximum impact is through the use of One-Stop Child Justice Centres, such as the Stepping Stones Centre in Port Elizabeth and the Mangaung Centre in Bloemfontein. A typical One-Stop Child Justice Centre will:

- Be the place to which the police deliver children they have arrested;
- Have facilities to accommodate children waiting for assessment, and the preliminary inquiry;
- Have probation officers on hand to carry out assessments;
- Have prosecutors and a child justice magistrate on hand so that cases can be referred to a preliminary inquiry as soon as is practical;
- House a child justice court so that cases can be heard as soon as possible.

This clustering of functions means that children in conflict with the law can be dealt with very rapidly, and in a way that

takes their best interests into consideration. These centres are cost effective once established, and can be particularly beneficial in reducing transportation costs incurred by SAPS. The Department of Justice has budgeted a total of R 31 million for the capital costs associated with the establishment of One Stop Child Justice Centres between 2003-2005. The provincial departments of social development have also set aside funding for the establishment of such centres.

### 4.4.2 Location of One-Stop Child Justice Centres and other facilities for maximum impact

In planning the location of One-Stop Child Justice Centres two issues are important. Firstly, there are definite scale advantages to operating such centres, especially if they are to function on a 24-hour basis. This means that centres should be located in areas where there are major concentrations of population (metropolitan areas) or in localities where they can service a number of magisterial districts (nodes of criminal activity).

A “blueprint” for One-Stop Child Justice Centres is currently being drawn up

through a process being overseen by the Inter-sectoral Committee for Child Justice. The blueprint will include matters such as what factors to take into consideration when selecting a suitable location for a One Stop Child Justice Centre.

The logic underlying One-Stop Child Justice Centres needs to be extended to include places of safety and secure care facilities. In other words, to gain maximum benefit from these respective facilities it is important that they be planned as operational clusters. Just as One-Stop Child Justice Centres provide services to the police, so do secure-care and places of safety provide services to One-Stop Child Justice Centres. For this reason their provision should be co-ordinated and these various facilities should be located in close proximity to each other. The new model being developed at Mangaung in Bloemfontein will actually have a secure care facility as part of the One-Stop Child Justice Centre.

### 4.4.3 Court jurisdictions

Generally speaking, courts in a particular magisterial district have been assigned exclusive jurisdiction over criminal offences occurring in that district. This has implica-

<sup>5</sup> To a large extent this has been the approach used in the implementation of the Public Finance Management Act, and very rapid changes are taking place as a result.

<sup>6</sup> See section 27(4) of the Public Finance Management Act.

tions for the efficacy of One-Stop Child Justice Centres and the way the remands are managed. As regards One-Stop Child Justice Centres it would make economic and practical sense for one of these centres to serve a number of adjoining magisterial districts. For instance, the Stepping Stones Centre in Port Elizabeth could service Uitenhage as well. Similar economies of scale apply in rural areas. A single centre servicing a number of rural magisterial districts is far more likely to achieve the threshold size required for cost-effectiveness. In order to implement this, the Child Justice Bill includes a clause that allows the Minister to determine the jurisdictional boundaries of a One Stop Child Justice Centre<sup>7</sup>.

4.5 Sequencing implementation

Certain basic capacity needs to be in place in order to make the new system operational. As has been mentioned, there are existing procedures for taking children through the criminal justice system. This means that many of the basic elements for service delivery are in place. There are, however, certain critical aspects of the system as set out in the Child Justice Bill that will

need to be in place to ensure that the system can function effectively, namely:

- Police prioritising the provision of transport to children in conflict with the law;
- Probation officers assessing children within 48 hours;
- Functioning of the preliminary inquiries;
- The provision of additional programmes for diversion and community-based sentences, and
- The provision of an increased number of alternatives to awaiting trial imprisonment such as supervision by probation officers as well as secure care facilities and places of safety.

These matters need to be in place from the outset (more or less) for the system to work effectively. However, capacity will be improved as the system gets underway, and provision has been made for this in the budget proposals put forward to National Treasury by the relevant departments.

<sup>7</sup> See Clause 51(5) of the Child Justice Bill.

5. Overall budget estimates - MTEF 2003-2005

The following tables show the additions to estimated expenditure in 2002 that departments have projected they require to implement the new child justice system proposed by the Child Justice Bill over the MTEF 2003-2005. The table 2 below provides an overall summary of these figures in 2002 Rands, while table 3 provides these same figures, but adjusts them for a 6% inflation rate.

Table 2: Additional funds required by departments to implement the Child Justice Bill (2002 prices)

Department (Rands thousands)	2003	2004	2005	Total for MTEF
Justice (1)	7 590	12 853	20 163	40 606
Safety & Security (2)	27 250	36 290	45 489	109 029
Correctional Services (3)	-2 337	-2 337	-2 337	-7 011
National Social Development (4)	1 758	2 766	1 810	6 334
National Education (5)	-	-	-	0
National Sphere subtotal	34 261	49 572	65 125	148 958
Provincial Social Development (6)	59 090	101 259	141 779	302 128
Provincial Education (7)	6 000	6 000	6 000	18 000
Provincial Sphere subtotal	65 090	107 259	147 779	320 128
Overall total	99 351	156 831	212 904	469 086

Notes to table:

- (1) These figures were presented by the Department of Justice in its MTEF proposal

(2) The Department of Safety and Security has indicated that it accepts these projections and will include them in its MTEF proposals .

(3) These figures are based on a 20% reduction in the number of children being given prison sentences and being held in detention. They reflect the real sav-
- ings the Department of Correctional Services expects to realise should the child justice system proposed by the Child Justice Bill get implemented effectively.

(4) Figures supplied by the national Department of Social Development.

(5) The national Department of Education plays a minor role in the child justice system. There may be some costs associated with developing new regulations but these are expected to be very minor.

- (6) Based on costings done by the provincial Social Development Departments.
- (7) The Child Justice Bill moves away from the terminology of “Reform Schools” to “Residential facility”. This will mean that existing schools of industry and secure care facilities will be able to be used for sentenced children. The expectation is, therefore, that the impact on provincial education department’s will be minimal.

Table 3: Additional funds required by departments to implement the Child Justice Bill (6% inflation)

Department (Rands thousands)	2003	2004	2005	Total for MTEF
Justice (1)	8 045	14 442	24 014	46 501
Safety & Security (2)	28 885	40 775	54 178	123 839
Correctional Services (3)	-2 477	-2 626	-2 783	-7 886
National Social Development (4)	1 863	3 108	2 156	7 127
National Education (5)	-	-	-	0
National Sphere subtotal	36 317	55 699	77 565	169 581
Provincial Social Development (6)	62 635	113 775	168 861	345 271
Provincial Education (7)	6 360	6 742	7 146	20 248
Provincial Sphere subtotal	68 995	120 516	176 007	365 519
Overall total	105 312	176 215	253 572	535 099

Section Two: Departmental plans and budgets

6. Department of Justice and Constitutional Development

6.1Existing activities and key changes required

(1) The cycle of events following arrest

In the current system, the general pattern is that children are arrested and then appear in court within 48 hours. The case is then often remanded again and again for “further investigation” and in many cases the child remains in custody either in a police cell or in prison.

(2) The practice as regards remands

The current practice regarding remands of cases involving children in the criminal justice system is inefficient. Statistics provided by Westville Prison during 2001 indicate that one case involving a 16 year old was remanded 72 times. A factor exacerbating the number of remands is the requirement in terms of section 29 of the Correctional Services Act no. 8 of 1959 that any child who is detained in prison awaiting trial must be brought back to court every 14 days. Although this provision was introduced in order to protect children in detention, the practical effect of it has been to choke the court rolls with remand appearances, few of which result in the release of

children. Children interviewed during prison visits describe court appearances as “going to court to get your new date”, a clear indication of the cyclical pattern of remands<sup>8</sup>. The fact that the case docket is constantly circulating between court and the investigating officer to meet the 14 day remand requirements cuts down on the time that investigating officers have to investigate cases involving children, and this leads to further delays.

(3) The court process

There are 472 magistrates’ courts in South Africa<sup>9</sup>. Children might be brought before any one of these courts, but the majority of children committing crimes are in metropolitan and urban areas. There is currently no official specialisation of courts for children accused of crimes. In some major urban areas there are sufficient numbers of children being charged with crimes to warrant the setting aside of a court or courts to deal with such matters. These are called “juvenile courts”. However, the staff in such courts are not specially selected or trained, although some staff members have gained considerable experience and expertise.

(4) Sentencing options

A range of non-custodial sentences are currently available to the courts for the sentencing of convicted children. It is possible to postpone the passing of sentence conditionally or unconditionally. In the case of unconditional postponement the court does not pass sentence but warns that the offender may have to appear again before the court if called upon to do so. The postponement may be made conditional to compensation, rendering of a benefit or service to the victim, community service, instruction or treatment, supervision or attendance at a centre for a specified purpose. Postponement of sentence is used regularly by the courts, particularly for non-violent offences.

(5) Judicial review

The South African legal system has an effective and reasonably prompt review system. The system is applicable to all convicted persons, not only children. The rule is that where the magistrate has held the substantive rank of a magistrate for less

<sup>8</sup> Information obtained during an investigation by Government into the reasons for the high number of children in prison awaiting trial, June 2000  
<sup>9</sup> This figure does not include periodical courts



than seven years, any sentence longer than three months imprisonment will automatically be reviewed by a High Court Judge, and where the magistrate has held the substantive rank of magistrate for longer than seven years then any sentence longer than 6 months imprisonment will go on automatic review. Sentences to Reform School are also automatically reviewed. In recent years there have been numerous review cases regarding children in the criminal justice system, and these have helped to set guidelines for good practice<sup>10</sup>.

(6) Legal representation

Children have a right to legal assistance in South Africa in cases where a substantial injustice would otherwise occur, and where a child or his or her family cannot afford to pay for the services of a lawyer, State funded legal representation can be obtained through the legal aid board. Although the percentage of children being legally represented has increased in recent years, it is still estimated to be below 50% of all cases appearing in court<sup>11</sup>. A large number of children who are offered state funded legal aid decline these services, which indicates a need for education of children who have come into contact with the criminal justice

system. There has previously been little or no specialisation amongst lawyers regarding legal representation of children.

In May 2001 the Directorate of Children and Youth Affairs (Department of Justice and Constitutional Development) embarked on a process in partnership with the Legal Aid Board of training legal representatives employed at Justice Centres around the country.

6.2 Phasing of implementation

6.2.1 Key processes

(1) Preliminary Inquiry

As can be seen from those aspects set out in 6.1, a basic framework for services already exists. A new feature proposed by the Child Justice Bill is the preliminary inquiry. This is a procedure which aims to interrupt the normal cycle of events described above. It takes the place of the first appearance of a child in court, and aims at look at each case in some detail, in order to determine if a child can be diverted away from the court process, and if not, where the child will be placed during the pre-trial and trial period.

(2) New procedure for remands

The Child Justice Bill proposes that a child awaiting trial in detention in prison should be brought back to court at least every 30 days, and a child in other forms of residential detention should be brought back to court at least every 60 days. There is added protection to ensure that children are not detained for too long during the trial period. The Bill provides, at clause 58(3) that where a child remains in detention and the trial is not concluded within 6 months from the day on which the plea was taken, the child must be released<sup>12</sup>. These measures should cause investigation to be more efficient and for trials to be completed more speedily, resulting in savings for all the departments concerned with the trial, transporting to court and pre-trial detention.

<sup>10</sup> S v J and others 2000 (2) SACR 310 (C), S v Z 1999 (10) SACR 427 (E), S v Mtshali and Mokgopadi (Case A 863/99 WLD), S v D 1999 (1) SACR 122 (NC).

<sup>11</sup> This is based on the sample of children interviewed during the investigation in 2000 see footnote 8 above.

<sup>12</sup> This does not apply in cases included in parts 1,2 and 3 of schedule 3 to the Bill, namely murder, rape and robbery.

(3) Child Justice Courts

The Child Justice Bill makes provision for Child Justice Courts. In terms of clause 50 (1) (a) “Any court to which proceedings against a child is postponed for plea and trial in terms of section 42 must be regarded as a child justice court”. Thus the setting up of new courts is not required.

(4) Sentencing options

The further use of community-based sentences is encouraged by the Child Justice Bill. The implementation of this aspect will be achieved though the departments of Social Development and Correctional Services making additional programmes available for such sentences to be carried out, and the Department of Justice and Constitutional Development ensuring that magistrates and prosecutors are aware of such programmes. Savings will be realised for the Department of Correctional Services if these alternatives can be used instead of sentences of imprisonment.

(5) Judicial Review

The Child Justice Bill proposes a slight expansion of the current automatic review,

in that all cases resulting in a sentence involving a residential element should go on automatic review, regardless of the length of the sentence. Sentences to any form of “residential facility” will also go on review.

This will not place an intolerable burden on the courts. A perusal of the figures of children serving sentences in November 2000 indicate that 11% of the total were serving sentences of less than six months. The total number of children serving sentences at that time was 1624, and 11% of this amounts to 178 children. This is the category of convicted children whose sentences do not currently go on review but will be reviewed in terms of the new law. This, in addition to the sentences to a “residential facility”, whilst representing a slight increase in the number of cases to review, make up a tiny percentage of the overall number of cases which go on review each year. It is likely, therefore that this small number of extra cases can be absorbed into the existing workload of the judges undertaking reviews.

(6) Legal representation

The Child Justice Bill provides for access to

state funded legal representation when the child is remanded in detention, when there is a likelihood that a sentence involving a residential requirement is to be imposed, and when the child is at least 10 years old but not yet 14 and the matter is to be tried in court. The children in these categories may not waive legal representation. The idea of non-waiver may appear to be a provision that will cause a large increase in the number of cases that will have to be taken on by the Legal Aid Board. The Legal Aid Board agrees, however, that these categories correspond with the constitutional test of where a substantial injustice would otherwise occur. It is also likely that the Child Justice Bill, with its focus on diversion of cases, will result in fewer cases going to trial overall, although the number of serious cases going to trial will probably remain much the same. These serious cases tend to be the ones in which children do have legal representation in the current system.

Planning for legal representation will be done primarily through making the legal aid officers as well as Justice Centre managers and staff aware of the requirements of the Bill, and through training of relevant Justice Centre staff and support for efforts

to provide some specialization in legal representation of children. Training on Child Justice for these personnel has already begun.

6.2.2 New personnel

The Preliminary Inquiry and the Child Justice Courts procedure will not require any new courts or personnel, but will require magistrates and prosecutors to spend more time on the first appearance than they would normally do, as the Preliminary Inquiry is held on the date of first appearance. This time should, however, be off-set by the amount of time that will be saved in relation to remands and trials. Concerns have been raised about the fact that in some cases magistrates may hear information during a preliminary inquiry which would cause them to recuse themselves from a resultant trial. In urban areas this does not pose a problem, but in rural areas where there may be only one magistrate, this will require them to enter into agreements with magistrates of neighbouring jurisdictions that they travel to each others courts to handle such matters from time to time, as is currently done in case relating to bail hearings or cases where magistrates have tried an accused

person previously. In order to deal with this eventuality, operational costs pertaining to travel and subsistence have been factored in to the budget of the Department of Justice.

6.2.3 New infrastructure

The Child Justice Bill empowers the Minister for Justice and Constitutional Development (in consultation with other relevant Ministers) to establish One Stop Child Justice Centres. An inter-sectoral process is underway to determine the most suitable places to situate such centres. The Justice budget reflects that money has been set aside for building or renovations for the establishment of such centres over the MTEF cycle 2003-2005.

6.2.4 Training

The development of training materials is already underway, and the plan is to undertake the training shortly before the new law comes into operation. General awareness-raising will be done prior to that time, and is in fact already underway. Ample donor funding is available for the development of training materials and the actual training process.

6.2.5 Monitoring

The Child Justice Bill provides, at clause 8o, for “regulations regarding procedures to be put in place to monitor and assess the proper application of and compliance with this Act”. The Department of Justice and Constitutional Development, together with the Inter-sectoral Committee on Child Justice, has already begun to plan for structures and procedures to effectively monitor the new legislation once it is in operation. Money has been allocated in the department’s budget to assist with this process, and there is also donor funding earmarked for this purpose.

6.3 Department of Justice and Constitutional Development MTEF Budgets - 2003-2005

The Department of Justice and Constitutional Development has calculated how much it costs to process children in conflict with the law through the existing criminal justice system. It has then estimated what it will cost the department to implement the Child Justice Bill over the up coming MTEF period 2003-2005. Table 3 presents this budget information by stage of the new child justice system. Note the extent

to which the cost associated with the introduction of the Preliminary Inquiry is off-set by savings in the Trial, Remand and Sentencing processes. Also note that the increase in current expenditures can be attributed almost entirely to the increasing number of children being arrested over the period, and to the increase in salaries of justice personnel, as opposed to the introduction of the Child Justice Bill.

Table 4: MTEF budget for the Department of Justice and Constitutional Development by stage of the Child Justice system (2002 prices)

(Rands thousands)	2002	2003	2004	2005
Preliminary Inquiries Total	0	23 629	25 622	27 492
Trials Total	114 169	91 458	98 155	105 431
Remands Total	6 125	1 488	1 620	1 765
Sentencing Total	15 471	10 609	12 247	14 318
Judicial Review Total	1 109	760	878	1 026
Monitoring	387	840	675	475
Training	0	1 067	917	917
Total Current Expenditure	137 261	129 851	140 114	151 424
Total Capital Expenditure	-	15 000	10 000	6 000
Total Budget	137 261	144 851	150 114	157 424
Total Budget including 6% inflation	137 261	153 542	168 668	187 495

6.3.1 Current Expenditure

The following two tables give a further breakdown of the current expenditures. Table 5 gives a breakdown of personnel expenditure by staff category. These personnel expenditure totals are calculated using the estimated number of hours spent on each case (per activity) multiplied by the average hourly rate for the relevant personnel category. These hourly rates are based on the full cost of employment in 2002 (including the 9% increase).

Table 5: Personnel expenditure by staff category (2002 prices)

Staff category (Rands thousands)	2002	2003	2004	2005
Judges Total	1 109	760	878	1 026
Magistrates Total	66 989	64 429	69 732	75 470
Prosecutors Total	45 120	43 396	46 967	50 832
Legal Representatives Total	3 300	2 513	2 722	2 957
Appropriate Adults Total	1 757	2 039	2 208	2 386
Interpreters Total	18 116	14 225	15 388	16 686
Other personnel Total	374	475	475	475
Personnel Total	136 765	127 837	138 370	149 833

Table 6 gives a breakdown of ‘other operational expenses’ such as telephone, faxes, travel, cost of forms etc. by stage in the criminal justice system.

Table 6: Other operational expenses by stage in the criminal justice system (2002 prices)

Expenses category (Rands thousands)	2002	2003	2004	2005
Preliminary Inquiries	0	263	279	294
Trials	299	239	257	276
Remands	104	25	28	30
Sentencing	81	55	64	75
Judicial Review	0	0	0	0
Monitoring	13	365	200	0
Training	0	1 067	917	917
Operational Costs Total	496	2 015	1 744	1 591

6.3.2 Capital Expenditure

The following table shows the commitments various provincial departments have made to the establishment of One Stop Justice Centres or reception and referral centres. Note that most of the provinces have not as yet set aside funding for such centres. The last line in the table shows what the Department of Justice and Constitutional Development has budgeted for the establishment One Stop Child Justice Centres. As noted above a process is currently underway to determine exactly where such centres should be established in order to maximise their benefit.

Table 7: Expenditure on One Stop Justice Centres (2002 prices)

(Rands thousands) Province	2002		2003		2004	
	Social Dev	Justice Dept	Social Dev	Justice Dept	Social Dev	Justice Dept
Eastern Cape	2 000		3 500		14 000	
Free State	0		4 000		5 000	
Gauteng	3 000		3 000		0	
KwaZulu Natal	0		0		0	
Limpopo	0		0		0	
Mpumulanga	0		0		0	
Northern Cape	0		0		0	
North West	0		0		0	
Western Cape	0		0		0	
Total Social Development	5 000		10 500		19 000	
Total Justice		15 000		10 000		6 000

6.3.3 Efficiency, effectiveness and economy considerations

There are at least three main areas in the proposed child justice system that have the potential to significantly improve efficiency for the Department of Justice and Constitutional Development, namely:

- Assessment linked to the preliminary inquiry - Probation officers from social development are required to assess all children arrested within 48 hours. The information so gathered is fed into a preliminary inquiry which is presided over by a magistrate and attended by the prosecutor and the probation officer. At the preliminary inquiry a decision is taken as to whether the case can be diverted or whether it should go to trial. Even though the preliminary inquiry is a new process it is expected to reduce the amount of time that magistrates and prosecutors spend working on cases involving children substantially by diverting significant numbers of cases away from the trial process.
- Diversion of children away from the trial process - provincial departments of Social Development are responsible for

providing diversion services. The provision of these services make it possible to avoid court proceedings. It is expected that this will reduce the number of trials involving children significantly, thus freeing up court time for other matters. This will also save significantly on the cost of legal representation of children.

- Reduced frequency of remand appearances - The Child Justice Bill reduces the time period between remand appearances from every 14 days to every 30 days if the child is detained in prison, or to every 60 days if the child is detained in a place of safety or secure care facility. This will significantly reduce the amount of court time spend on dealing with remand hearings.

7. Department of Safety and Security

7.1 Existing activities and key changes required

- (1) Procedure following arrest

The police have a duty to notify parents and guardians that a child has been arrested<sup>13</sup>. They also have a duty to notify a probation officer of every child’s arrest as soon as possible after the arrest has been effected. A child who has been arrested and charged with a crime may be released by a police official<sup>14</sup> on bail or into the care of the person whose custody he/she is<sup>15</sup> with a written warning. The police are also empowered to place a child in a place of safety or under the supervision of a probation officer or correctional official. If a child is not released by the police he or she can be held for 24 hours in police cells whereafter he or she should be released into the care of his or her parents or guardians, or should be taken to court. After arrest, children may by law be detained in a police cell before the first court appearance. After appearing in court the child may not be remanded back to police cells. If the child cannot be released to his or her parent or guardian, the child should be accommodated in a place of safety, or (in limited circumstances) in a prison. In practice the 24 hour period is

frequently extended to 48 hours. As a general rule all children do appear before a court within 48 hours of arrest. Although current law does not allow children to be remanded back to police cells, there are reports that children sometimes are detained back in the police cells after having appeared in court, on the order of a magistrate. These incidents tend to occur in rural areas where there is a lack of alternative facilities within a reasonable distance from the court. It is also likely to be in areas where the SAPS capacity to hold children separately and provide for their needs are most likely to be limited. The practice of remanding children back to police cells does therefore present problems for the SAPS. Giving priority to improving and providing additional facilities for this purpose presents its own dilemma as incidences are likely to be infrequent or for limited numbers and may not justify prioritising these needs above others.

- (2) Constitutional requirement that children be held separately

The Bill of Rights in the Constitution requires that children, when detained, should be held separately from adults. A survey undertaken by Police Legal Services

indicates that many police stations are not equipped to do this.

- (3) Transportation of detained children to and from court

The Police are required to transport children from police stations, prison and other detention facilities to and from the court during the awaiting trial and trial periods.

7.2 Phasing of implementation

7.2.1 Key processes

- (1) National Instructions

Many of the requirements existing in fragmented pieces of legislation and the Constitution pertaining to police duties *vis-à-vis* children in conflict with the law are brought into one legal document by the Child Justice Bill. National instructions will be issued to give police officials clear direc-

<sup>13</sup> Section 50(4) of the Criminal Procedure Act.

<sup>14</sup> The police official must be of or above the rank of non-commissioned officer.

<sup>15</sup> This relates to offences other than an offence referred to in Part II or Part III of the Criminal Procedure Act.

tion as to how they are to deal with arrested children in respect of the new legislation, and a large scale awareness raising campaign is planned.

(2) Alternatives to arrest

A new responsibility for the SAPS in terms of the Child Justice Bill is that a police official must not arrest a child unless there are compelling reasons to do so. The alternative to arrest provided by the Bill is the option of taking the child home and issuing a written warning to appear at the preliminary inquiry. This will obviously involve more time for the police official and additional transporting costs. It will however lead to a reduction in detention costs.

(3) New personnel

No new personnel are required, although police may expect to spend more time on a case in the period immediately after the apprehension or arrest of a child. This will however be off-set by time savings later in the system because fewer matters being set down for trial will cut down on the number of cases to be investigated and time spent at court giving evidence.

(4) One Stop Child Justice Centres

The location of One-Stop Child Justice Centres must give explicit recognition to the fact that the police are their most important ‘clients’. Individual members of the public are unlikely to come into regular contact with these centres. By contrast the police will have to utilise their services on a daily basis. It is therefore imperative that they are located where police have easy access to them, for instance close to important road interchanges. Every effort will be made to ensure that it is easier for the police to deliver an arrested child to these centres in the first instance, rather than place them in a police cell. This must of course be balanced with accessibility for parents who will need to get to the centre.

7.2.2 New infrastructure

The Child Justice Bill does not introduce the requirement of separate holding facilities for adults and children, as this is already provided for in the Constitution and in other existing legislation. However, the Bill once again emphasises the importance of this, and has provided an opportunity for the SAPS to consider the implementation of this constitutional requirement. The SAPS

has already embarked on a process of upgrading facilities, and this aspect will be integrated in that process. In the meanwhile, national instructions will guide the optimal use of existing facilities in such a way as to keep in line with the existing law.

7.2.3 Training

An inter-sectoral training process is planned, but SAPS will also provide training materials specifically relating to police matters.

7.2.4 Monitoring

The SAPS has been integrally involved in the inter-sectoral discussions regarding a monitoring structure and system to oversee the effective implementation of the Child Justice Bill. The SAPS CAS system will be able to provide valuable data for the monitoring system. Currently the SAPS youth co-ordinators are monitoring and collating information regarding children in police cells and using it for addressing problems in the system (in addition to information provided by the CAS). Recent changes to the CAS system means that more information is being made available from this system, hence it is expected that

the manual system will be replaced in the near future. SAPS youth co-ordinators at provincial, area and station level will continue to be involved in qualitative monitoring.

7.3 Department of Safety and Security MTEF Budgets - 2003-2005

The following budget only takes into account the variable cost of detaining children in police cells, and for transporting children in conflict with the law. It does not make any provision for the capital cost of building police cells or purchasing police vehicles.

Table 8: MTEF budget for the Department of Safety and Security by stage of the child justice system (2002 prices)

(Rands thousands)	2002	2003	2004	2005
Arrests	14 524	15 291	17 203	19 432
Assessments	7 752	16 273	18 937	21 206
Preliminary Inquiries	0	5 886	9 468	13 970
Trial and Sentencing	3 883	4 796	5 827	6 028
Monitoring	153	3 680	3 680	3 680
Training	0	7 636	7 486	7 486
Total	26 311	53 561	62 601	71 800
Total Budget including 6% inflation	26 311	56 775	70 338	85 515

7.3.1 Current Expenditure

The following tables set out the expected expenditure on the items that were costed. Note that personnel expenditure related to processes of arrest, charging, attending preliminary inquiry or court etc. have not been costed as these are routine police duties that the police would anyway have had to do irrespective of the provisions of the Child Justice Bill.

Table 9: Operational expenses (2002 prices, thousands of Rands)

Items costed (Rands thousands)	2002	2003	2004	2005
Detention in police cells	4 677	1 487	657	279
Parent finders	0	1 162	1 232	1 306
Transport-vehicle costs	9 051	17 424	21 140	24 715
Transport - personnel costs	11 883	21 360	27 216	33 074
Monitoring	153	3 680	3 680	3 680
Training	0	7 636	7 486	7 486
Forms and telephone	548	813	1 191	1 262
Total	26 311	53 561	62 601	71 800

Note that the budget for detaining children in police cells only covers the variable cost, namely R8 per day. The fixed cost component is estimated to be about R40 per day. If the fixed cost component is taken into account then the budget for this item looks as follows:

(Rands thousands)	2002	2003	2004	2005
Variable cost of detention in police cells	4 677	1 487	657	279
Fixed cost of detention in police cells	23 384	7 436	3 284	1 393
Overall cost	28 061	8 923	3 941	1 671

The ‘nominal saving’ arising from ensuring that children spend as little time as possible in police cells is about R20 million. What this amount in effect ‘purchases’ is less overcrowding in police cells and less risk to children as they are no longer being detained in police cells. Reducing overcrowding also means that the pressure to incur the capital cost of building new cells is less.

7.3.2 Capital Expenditure

The budget exercise did not cover capital expenditures as in most instances these are routine police expenditures (such as vehicles) and it would be exceptionally difficult to attribute a share of them to the Child Justice Bill.

In the case of the cost of police cells, it has already been noted that the requirement to hold children separately from adults is a Constitutional requirement and therefore any expenditure in this regard cannot be attributed to the Child Justice Bill. Secondly, it has been shown that in actual fact the Bill will reduce the pressure to build new police cells, although not remove it completely.

7.3.3 Efficiency, effectiveness and economy considerations

- (1) Reductions in the amount of times children are remanded as described in 6.2.1 - reduces demand for transport.
- (2) The reduction of the number of cases going to trial will also reduce demand for transport, and in addition will reduce the time spent on investigation of cases. This will lead to a reduction in case loads and a more efficient investigation process for those more serious matters remaining in the system.
- (3) There will be significant savings for SAPS to be derived from the establishment of these One Stop Child Justice Centres, mainly due to cutting down on transportation costs. Once children are arrested they can be taken to the Centre, and all further processes will take place there. This means children do not have to be taken to the police station, and from there to court.



## 8. Department of Correctional Services

### 8.1 Existing activities and key changes required

#### (1) Unsented children

Correctional Services may receive children to await trial if they are 14 years or older and are charged with offences listed in Schedule 2 to the Correctional Services Act no. 8 of 1959. A magistrate also has the discretion to send a child (of 14 years or older) to prison if the child is charged with any other offence, if the magistrate is of the view that the circumstances are so serious as to warrant such detention. In June 2002 there were 2162 children (under the age of 18 years) awaiting trial in prison.

#### (2) Sentenced children

Under the current law children can be sentenced to imprisonment. There is currently no statutory limit on the age of the child or on the length of the sentence. Case law has established age to be a mitigating factor, and that all children sentenced to imprisonment must have a probation officer's report presented at the court prior to sentencing<sup>16</sup>. In practice children under the age of 14 are not often sentenced to imprisonment - from the period Oct 1998 to

September 1999 a total of 66 children under 14 were sentenced to terms of imprisonment, compared with 4564 who were aged from 14 to 17 years. However the fact that any children under the age of 14 years are being sentenced to imprisonment is cause for concern, and the proposed new legislation seeks to remove the possibility of sentences to imprisonment for children under 14 years of age, although other forms of secure residential care will remain available.

During 1999, 2000 and 2001 an average of 427 sentenced children were admitted to South African prisons per month. When monthly averages are calculated for each year they are 390.8 for 1999, 438.5 for 2000 and 451.6 for 2001. This reflects an increase of nearly 16% in the monthly average number of sentenced children admitted to prison from 1999 to 2001<sup>17</sup>.

Most children serving sentences are sentenced to less than 5 years in prison. According to Correctional Services Statistics on 11 September 1999 there were 1375 children serving prison sentences, and of these 239 or 17% were serving terms of longer than 5 years. More recent statistics show that 46% of children admitted during

2001 had been sentenced to 12 months or less.

In June 2002 there was a total of 1798 children below the age 18 years serving sentences in prison.

#### (3) Community Corrections

Children can be released during the awaiting trial period under the supervision of a correctional official, but this option is rarely used. Correctional Supervision is currently a sentencing option available to children, but is it under-utilised. Community Corrections statistics indicate that during 2001 the average number of children in community corrections was 1481.

<sup>16</sup> See footnote 10 above.

<sup>17</sup> Muntingh LM, Sentenced children admitted to prison 1999-2001, NICRO (unpublished).

### 8.2 Phasing of implementation

#### 8.2.1 Key processes

##### (1) Reduction of children in prison

The new system should reduce the pressure on the prison system, by cutting down on the number of unsentenced children in prison, and shortening the period of time that they are detained. The number of children sentenced to imprisonment may also be reduced, particularly those children currently serving short sentences for whom community based sentences are a viable alternative.

##### (2) Increase in the demand for community corrections.

Both with regard to pre-trial supervision and community corrections as a sentence, the Department of Correctional Services plans to increase the number of placements in community corrections. This will be achieved by ensuring a wider availability of programmes and publicising the availability of these to the courts.

#### 8.2.2 Impact on demand for new infrastructure

The introduction of the new system should free up space in prisons, thereby reducing overcrowding and moderating the overall demand for new prisons.

#### 8.2.3 Training

The Department has committed itself to promoting restorative justice and to training personnel in this regard. The care and treatment of children in prison, although not covered by the Bill, is a further area where training needs have been established, and the department's training plan includes these matters.

#### 8.2.4 Monitoring

The Department already collects reliable statistics regarding children in prison which are provided to the other departments in order to promote monitoring of the system. The need for more specific data will be explored as the monitoring system for the Child Justice system is developed.

8.3 Department of Correctional Services MTEF Budgets - 2003-2005

The following table shows the amounts that the Department of Correctional Services expects to spend on providing the three services mentioned to children placed in its custody.

Table 10: MTEF budget for the Department of Correctional Services by type of service (2002 prices)

Services (Rands thousands)	2002	2003	2004	2005
Detention of unsentenced children	85 022	68 018	68 018	68 018
Children serving sentence	62 973	50 378	50 378	50 378
Correctional supervision	730	876	876	876
Total	148 725	119 272	119 272	119 272
Total Budget including 6% inflation	148 725	126 428	134 014	142 055

Note that the savings shown in this table are what the Department of Correctional Services describes as ‘nominal savings’, i.e. they include a substantial portion of fixed cost expenditure as explained in the sections below. The above table is based on a 20% reduction both the number of unsentenced children and sentenced children being held, taking into consideration the growth in the crime rate. It also provides for

a 20% increase in the use of the correctional supervision option. The following table sets out the actual budgetary savings the Department of Correctional Services expects to make with the implementation of the Child Justice Bill.

Table 11: Actual savings by the Department of Correctional Services arising from the implementation of the Child Justice Bill (2002

(Rands thousands)	2002	2003	2004	2005	Total over MTEF
Budgetary savings	0	2,337	2,337	2,337	7,011

8.3.1 Efficiency, effectiveness and economy considerations

The implementation of the child justice system proposed by the Child Justice Bill is expected to reduce the number of children detained in prison and sentenced to prison significantly. In both instances these reductions will be leveraged by interventions by the provincial departments of Social Development through the provision of alternative places of detention (places of safety and secure care facilities) and by the provision of diversion services. Community based sentences will be provided by both Community Corrections (Correctional Services) and the provincial departments of Social Development.

The following tables were developed by the Department of Correctional Services to illustrate the possible extent of the savings. Table 9 shows the nominal savings resulting from a reduction in the number of children detained or sentenced to prison. These savings reflect a ‘freeing up of space’ in prisons which is then available for adult prisoners.

Table 12: Nominal savings to the Department of Correctional Services (4% inflation)

Nominal Saving (Rands thousands)	Per Capita	Expected Reduction	Financial Implication	Year 0+1	Year 0+2	Year 0+3	Total over MTEF period
5% reduction in child prisoners	97.75	207	7 400	7 696	8 004	8 324	31 424
10% reduction in child prisoners	97.75	415	14 800	15 392	16 008	16 648	62 848
20% reduction in child prisoners	97.75	830	29 599	30 783	32 014	33 295	125 691
50% reduction in child prisoners	97.75	2 074	73 998	76 958	80 036	83 237	314 229

The following table shows the real saving that the Department of Correctional Services will realise due to fewer children being detained in prison or being given prison sentences.

Table 13: Real savings to the Department of Correctional Services (4% inflation)

Nominal Saving (Rands thousands)	Per Capita	Expected Reduction	Financial Implication	Year 0+1	Year 0+2	Year 0+3	Total over MTEF period
5% reduction in child prisoners	8.2	207	621	646	672	699	2 638
10% reduction in child prisoners	8.2	415	1 241	1 291	1 343	1 397	5 272
20% reduction in child prisoners	8.2	830	2 483	2 582	2 685	2 792	10 542
50% reduction in child prisoners	8.2	2074	6 207	6 455	6 713	6 982	26 357

It is very important to note that the nominal savings made within the Department of Correctional Services have the potential to off-set a very substantial proportion, if not all the extra expenditure required by other departments. Realising this efficiency depends however on the other departments ensuring that the proposed child justice system does indeed reduce the flow of children to prisons.

## 9. Department of Education

### 9.1 Existing activities and key changes required

The provincial education departments are responsible for the establishment and running of ‘reform schools’ that receive sentenced children. Nationally there are only 3 such facilities, namely, Ethokomala Reform School for boys in Mpumalanga , Faure Youth Centre (for boys and girls), Ottery Youth Center (for boys only) in the Western Cape, and a fourth, Denovo, which is still in development, also in the Western Cape. The total number of beds for sentenced children in these facilities is 300, and it will be increased to 420 when the Denovo facility in the Western Cape is complete.

The shortage of beds, and the fact that these facilities are not evenly spread across the country is causing numerous children who have already been sentenced to ‘reform school’ to await designation in prison. Faure Youth Centre is the only centre that receives sentenced girls, and the policy in the Western Cape is that as a general rule they do not receive children from other provinces. This is due to budgeting issues, as there is resistance in the provinces to take in children from other provinces.

### 9.2 Phasing implementation

#### 9.2.1 Key processes

The Child Justice Bill moves away from the terminology of ‘reform school’ and instead allows for children to be sentenced to a “residential facility” and the definition of this is broad enough to include facilities run by either the departments of Education or Social Development. This will mean that the Department of Education will be able to consider utilising ‘schools of industry’ for the accommodation of sentenced children. As it is the education departments themselves are moving away from the terminology of ‘reform schools’. They are now called Youth Centres in the Western Cape, or ‘specialised schools’ in Mpumalanga. The definition in the Child Justice Bill is also of such a nature that currently existing and planned secure care facilities will be able to be utilised for sentenced children and not just for awaiting trial children as is currently the case.

#### 9.2.2 New personnel

As indicated above, no new personnel will be required, except at the Denovo Youth Centre in the Western Cape, which has

already been budgeted for at a provincial level.

#### 9.2.3 New infrastructure

No new infrastructure is required due to the fact that the Bill’s definition of “residential care” means that other facilities can be used. Currently existing schools of industry are not fully utilised. The Department of Social Development plans secure care facilities which can be utilised for sentenced children in the future, and this will obviate the problem of children being placed far away from their homes.

#### 9.2.4 Training

As part of the transformation of the child and youth care facilities training in the secure care of children has been carried out at a number of Education facilities. With regard to the training of teachers at such facilities, this will continue to be carried out as part of the Department of Education’s broader process for the training of teachers.

9.2.5 Monitoring

The National Department will be part of an inter-sectoral monitoring structure and process at a national level, and work on this has already begun.

9.3 Department of Education budget for current Reform Schools

The following table sets out the budget for Ethokomala School in Mpumalanga. This school caters for 160 boys.

Line Item	Budget for 2002 (thousands of Rands)
Personnel	4 074
Administration	198
Stores and livestock	1 125
Equipment	255
Water electricity and taxes	650
Total	6 302

The Youth Centres in the Western Cape have budgets of the same order of magnitude. Therefore the combined annual cost of running the three ‘reform schools’ in the country is about R18 million. The Western Cape has recently completed the building of De Novo Youth Centre. The capital cost was about R17,5 million.

9.3.1 Efficiency, effectiveness and economy considerations

At this stage it is not envisaged that any of the provincial Departments of Education will need to build additional facilities. What is required is that existing facilities that are administered by the Departments of Education, namely the schools of industry, get more effectively used to service the needs of children in conflict with the law.

# 10. National Department of Social Development

10.1 Existing activities and key changes required

The National Department is currently responsible for the development of policy and minimum standards, as well as monitoring of the child justice system. The Department is required in terms of the Child Justice Bill to establish a system for registration of diversion programmes and a system for keeping records of children who are diverted. The Department will also be involved in the development of regulations and the establishment of monitoring structures and systems, some of which has already begun.

10.2 Phasing implementation

10.2.1 Key processes

The National Department will co-ordinate the implementation of the Child Justice Bill by working with their provincial departments and other government departments.

10.2.2 New personnel

Provision has been made in the MTEF allocation for the appointment of additional

personnel at the level of assistant director and chief social worker.

10.2.3 New infrastructure

No new infrastructure is required at a national level.

10.2.4 Training

The National Department will assist in the development of training materials and planning for inter-sectoral training processes, as well as giving direction on training for probation officers. There is donor funding available for this activity.

10.2.5 Monitoring

The National Department will be part of an inter-sectoral monitoring structure and process at a national level, and work on this has already begun.

10.3 Department of Social Development MTEF Budget - 2003-2005

The following table sets out the resources the National Department of Social Development requires in addition to its cur-

rent baseline in order to fulfil its responsibilities set out in the Child Justice Bill.

Table 14: MTEF budget for the Department of Social Development (2002 prices)

Items		2003	2004	2005
Additional Posts		207 985	415 970	210 000
Assistant directors	4	119 186	238 372	120 000
Chief Social Workers	4	88 799	177 598	90 000
Workshops		200 000	470 000	300 000
Data Base Development		200 000	180 000	200 000
Training		450 000	600 000	500 000
Monitoring		700 000	1 100 000	600 000
S & T		300 000	800 000	600 000
Protocol Development		400 000	300 000	
Total		1 757 985	2 765 970	1 810 000

# 11. Provincial Social Development Departments

## 11.1 Existing activities and key changes required

### (1) Assessment

The Department of Social Development is committed to the principle that every child who is arrested should be assessed by a probation officer within 48 hours after arrest. In some provinces, this is currently being done. In other areas it is not happening in all cases due to a lack of probation services. The aim is to move towards full compliance over a period of time.

### (2) Programmes to support diversion and community based sentencing

In 2001 diversion services were provided to approximately 15 000 children, through agreements between the National Prosecuting Authority, Probation Services and NGOs. The provincial departments of Social Development are responsible for the provision of programmes for diversion and community based sentencing. The provincial department, supported by the Child Justice Project<sup>18</sup> has, since May 2000, been working on an action plan to enhance the capacity and use of programmes for diversion and community based sentencing. This

work has included the identification of existing diversion programmes as well as programmes which have potential to be so used, facilitation of province to province learning, the holding of a national Indaba on programmes to support diversion and community based sentencing. The expected outcomes of this work are effective planning at provincial and local level for programmes to support diversion and community based sentencing, as well as a national database of programmes.

### (3) Pre-sentence reports

Pre-sentence reports are currently prepared by probation officers, usually at the request of the court. The Child Justice Bill will make pre-sentence reports compulsory except where a child is convicted for a petty offence or where requiring the report would cause undue delay, but no child may be sentenced to any form of sentence involving residence unless a pre-sentence report is available. This is unlikely to create a significant increase in the demand for pre-sentence reports, as the number of serious matters in the system is likely to stay much the same. An advantage of the new role for probation officers is that they will have been involved in the process from an

earlier stage, and will already have gathered information relevant to sentence, thus cutting down on the time required for preparation of the pre-sentence report. The Bill sets a time limit of one calendar month from the date that the pre-sentence report is requested.

### (4) Alternatives to imprisonment

Social Development departments are committed to the ideal of providing non-custodial alternatives to imprisonment, and a successful pilot project on community based supervision for children awaiting trial has been identified for rollout.

Under the current law, children may be held in places of safety or “secure” places of safety whilst they are awaiting trial. The provincial departments of Social Development have, over the past few years, increased their capacity to receive children awaiting trial to the point where there are now approximately the same number of children awaiting trial in facilities run by the Department of Social Development as there are awaiting trial in prison. In some provinces the number of children in alternative residential care facilities exceeds the number of children in prison.

<sup>18</sup> A United Nations technical assistance project of the Government of South Africa.

11.2 Phasing of implementation

11.2.1 Key processes

(1) Role of Probation officers

Probation Officers will be key role players in the new system, and they will have new functions in addition to what they already do. Their functions now include:

- Assessment of every child prior to Preliminary Inquiry
- Attendance at the Preliminary Inquiry
- Ensuring diversion services are in place
- Supervision of children - both pre-trial and sentenced children
- Pre-sentence reports to be completed on request with a month.

The ability of probation services to carry out all these functions depends on there being sufficient probation officers working with manageable case loads. Thus all the departments intend to appoint personnel to carry out probation services, spread out over the MTEF cycle. One of the ways in which probation services is planning to fulfil their service delivery responsibilities is by, in addition to appointing some full time probation officers, also appointing part

time probation officers (who will spend less than 50% of their time on probation work and the remainder on other social work activities) and assistant probation officers, to whom some of the work, such as supervision of children, can be delegated. Diversion services will be provided, at least in part, by the purchasing of services from non-governmental organisations, a practice already underway in some provinces.

(2) Alternatives to imprisonment

With regard to community based supervision programmes, a number of provincial departments are planning to set up services. Donor funding is available to support aspects of this work in the early phases.

With regard to residential facilities for children as alternatives to imprisonment, the provincial departments are planning to increase capacity from 2046 places for children to be accommodated in 2002 to 3145 places for children in 2005.

It is also envisaged that some of the secure care facilities may be able to receive sentenced children in the future.

(3) Planned improvement in service delivery

The following three tables show the improvements in service delivery that is being planned for, and which the increases in expenditure are in effect purchasing. In each instance the planned level of service delivery does not meet the expected demand for the service. The services are being phased in and in each case departments are only expected to be meeting the full demand for services in the fourth year after the commencement of implementation.

Table 15: Expected increase in assessments (2002-2005)

Province	2002	2003	2004	2005
Eastern Cape	5 286	8 874	10 855	13 043
Free State	1 850	7 729	10 374	11 573
Gauteng	5 823	29 623	31 399	33 286
KwaZulu Natal	6 000	19 730	24 131	28 990
Limpopo	3 800	4 234	5 175	6 219
Mpumulanga	2 000	5 517	7 411	8 267
Northern Cape	4 436	6 023	8 004	8 930
North West	5 247	4 559	4 834	5 806
Western Cape	17 040	19 256	25 022	30 063
Total	51 482	105 544q	127 205	146 177

Table 16: Estimated number of preliminary inquiries in which probation officers will participate

Province	2002	2003	2004	2005
Eastern Cape	0	6 485	8 938	11 662
Free State	0	6 364	8 818	10 994
Gauteng	0	23 698	25 119	26 629
KwaZulu Natal	0	14 418	19 868	25 920
Limpopo	0	3 094	4 261	5 560
Mpumulanga	0	4 542	6 299	7 853
Northern Cape	0	4 959	6 803	8 483
North West	0	2 887	3 980	5 192
Western Cape	0	11 109	17 349	24 051
Total	0	77 556	101 434	126 344



Table 17: Estimated increase in the number of diversions (2002-2005)

Province	2002	2003	2004	2005
Eastern Cape	2 508	5 188	6 188	7 289
Free State	1 075	3 916	4 668	5 497
Gauteng	8 970	11 371	13 558	15 977
KwaZulu Natal	3 250	12 464	13 761	16 200
Limpopo	2 100	2 476	2 950	3 475
Mpumulanga	1 394	2 795	3 328	3 926
Northern Cape	3 800	3 776	4 391	5 092
North West	1 340	2 309	2 755	3 244
Western Cape	6 500	9 329	11 497	13 528
Total	30 937	53 624	63 096	74 229

Note that these figures cover diversions provided by all role-players, including non governmental organisations.

The above tables only cover three aspects of service delivery by Social Development departments. Other aspects include the pre-trial reports, supervision and pre-sentence reports. Details for these services have also been worked out but are not included here.

11.2.2 New personnel

The following table shows the increase in the number of probation officers, assistant probation officers and part-time probation officers that it is estimated the provincial Social Development departments intend

appointing over the next three years. In nearly all instances the number of probation officers reflected below is less than what is actually required to fully implement the Child Justice Bill, but they reflect the phasing in of the Bill. Note that this table presents the number of ‘full-time equivalent’ posts required based on a workload for full-time probation officers of between 200 and 300 cases per year (depending on the province) and a ratio of 2:1 for probation officers to assistant probation officers, i.e. in each province about one third of all the posts noted below are for assistant probation officers.

Table 18: Estimate of the full-time equivalent posts required

Province	2002	2003	2004	2005
Eastern Cape	103	104	103	100
Free State	30	39	52	58
Gauteng	67	64	168	299
KwaZulu Natal	57	100	122	147
Limpopo	30	50	50	50
Mpumulanga	49	59	66	69
Northern Cape	35	35	41	45
North West	24	38	57	74
Western Cape	95	169	202	232
Total	490	656	859	1 072

Note: weighting is 1 for probation officers and assistant probation officers, and 0.75 for part-time probation officers that spend 50 to 100% of their time doing probation work, and 0.25 for part-time probation officers that spend 5 to 50% of their time doing probation work. Note that where provinces have more probation officers than they require based on the given workload ratios, the number of posts are kept constant at current levels or allowed to decline slightly.

11.2.3 New infrastructure

The following table sets out the number of places available in different residential facilities run by the provincial social development departments. Most provinces are planning new facilities. This is reflected by the increase in the number of places. More detailed information is available on where these new facilities are to be located, their size and expected cost.

Table 19: Estimated number of places in secure care and places of safety for accommodating children in conflict with the law

Province	2002	2003	2004	2005
Eastern Cape	225	275	275	375
Free State	88	88	88	138
Gauteng	923	977	1 036	1 085
KwaZulu Natal	225	265	265	265
Limpopo	80	80	80	120
Mpumulanga	30	35	40	50
Northern Cape	165	200	245	285
North West	71	223	553	703
Western Cape	464	544	544	544
Total	2 271	2 687	3 126	3 656

11.2.4 Training

Each of the provincial departments has a budget for training, and probation officers in all provinces have already received training.

11.2.5 Monitoring

The provincial departments of Social Development have been very involved in inter-sectoral monitoring forums that exist in the provinces. In a number of provinces the inter-sectoral forum is convened by the department. The monitoring role of the

provincial departments will be made clearer by the Child Justice Bill and the regulations. Monitoring and developmental quality assurance regarding programmes to support the child justice system (including residential care programmes) is already in progress, and will be further developed.

11.3 MTEF budget for the provincial departments of social development

Table 17 hereafter reflects the increases in expenditure that each of the provincial social development departments have estimated in the course of the budgeting exercise that is being conducted for the implementation of the Child Justice Bill.

Table 19: Estimated number of places in secure care and places of safety for accommodating children in conflict with the law

Province (Rands thousands)	2002 Baseline	MTEF increase over baseline			Cumulative increase over MTEF
		2003	2004	2005	
Eastern Cape	13 291	1 632	3 490	14 367	19 488
Free State	7 904	11 771	7 303	9 305	28 379
Gauteng	42 003	9 398	27 177	32 121	68 697
KwaZulu Natal	20 463	6 899	14 976	10 921	32 796
Limpopo	6 933	1 058	1 300	6 289	8 646
Mpumulanga	7 738	1 070	2 013	2 721	5 803
Northern Cape	4 770	6 312	12 349	17 729	36 390
North West	8 390	7 836	16 463	24 761	49 060
Western Cape	53 367	13 113	16 191	23 566	52 870
Total	164 858	59 090	101 259	141 779	302 128
Total Budget including 6% inflation	164 858	62 635	113 775	168 861	345 271

11.3.1 Current Expenditure

The following table presents the personnel costs associated with employing the extra staff required for the provision of probation and diversion services. This does not include the extra staff that may be required to run places of safety and secure care facilities. These latter personnel costs are included in the overall cost of running these facilities. Note that this table gives the total cost and not the increase over base-line.

Table 21: Personnel expenditure by provincial social development departments on probation and diversion services (2002 prices)

Province (Rands thousands)	2002	2003	2004	2005
Eastern Cape	8 745	8 633	8 370	7 954
Free State	2 379	3 009	3 942	4 420
Gauteng	6 077	8 835	10 715	12 733
KwaZulu Natal	5 746	8 771	10 558	12 182
Limpopo	2 692	2 692	2 735	2 735
Mpumulanga	3 544	4 164	4 637	7 785
Northern Cape	2 430	2 430	2 952	3 257
North West	2 038	2 318	2 469	2 642
Western Cape	13 147	15 128	16 072	16 566
Total	46 798	55 979	62 452	67 273

11.3.2 Capital Expenditure

The capital expenditure covered in the cost-  
ing exercise included the building of addi-  
tional places of safety, secure care facilities  
and One-Stop Child Justice Centres. In most  
instances the plans have been approved by  
the relevant departments, though in a  
number of instances the plans still need to  
be finalised.

11.3.3 Efficiency, effectiveness and economy  
considerations

- The key to reaping the efficiency and  
effectiveness advantages offered by the  
new system rests on the provision of  
early intervention services. The infor-  
mation gathered through the assess-  
ment process lays the basis for the pos-  
sible diversion of children away from  
the formal court system and ensures  
that children who do have to stand trial  
are placed appropriately. Assessment  
helps to

- The preliminary inquiry focuses atten-  
tion on “what is to be done about this  
child?” very early in the process, and  
aims to use the information gathered in  
the assessment process to make consid-  
ered decisions early in the process. This  
will ensure that children are pro-active-  
ly dealt with by the justice system from  
the outset and not simply “lost” in the  
system until a later date.

Table 22: Estimated planned capital expenditure by provincial social development departments

Province (Rands thousands)	2002	2003	2004	2005
Eastern Cape	2 500	2 000	3 500	14 000
Free State	0	10 000	4 000	5 000
Gauteng	2 000	3 000	8 160	0
KwaZulu Natal	0	0	6 000	0
Limpopo	0	0	0	4 000
Mpumulanga	0	0	0	0
Northern Cape	1 356	2 166	1 598	1 726
North West	0	1 200	3 550	2 000
Western Cape	0	0	0	0
Total	5 856	18 366	26 808	26 726

- The provision of sufficient programmes for diversion and community based sentencing is the basis on which the savings in relation to  
trial and detention can be made.
- It should be noted that the provision of residential alternatives to imprisonment, whilst important for the protection of children, is not  
cost-efficient, as keeping children in facilities run by Social Development is an expensive option. For this reason the Department will be  
actively promoting community based alternatives to imprisonment, such as home-based supervision, which are not only better for chil-  
dren but are also highly cost effective.
- The work undertaken in relation to diversion is of vital importance because is has the potential to break the cycle of crime, thereby reap-  
ing social and economic benefits way beyond the child justice system itself.

