



## **What are the different types of sentences envisaged by the Child Justice Bill?**

The Child Justice Bill provides for a wide range of custodial and non-custodial options sentencing options. The overall purposes of sentencing described in the Bill are:

- To encourage the child to understand the implications of and hold him/her be accountable for the harm caused;
- To promote an individualised response which is appropriate to the child's circumstances and proportionate to the circumstances surrounding the offence;
- To promote the reintegration of the child into the family and community;
- To ensure that the necessary supervision, guidance, treatment or services form part of the sentence to assist the child in the process of reintegration; and
- To use imprisonment only as a measure of last resort.

The Bill also provides for the combination of sentences to give effect to the above objectives and also to promote restorative justice. All the diversion options are also available as sentencing options.

The Bill sets additional requirements when the court is contemplating a custodial sentence (either in a residential facility or in a prison). In such instances the court must take the following into account:

- the seriousness of the offence;
- the protection of the community;
- the severity of the impact of the offence on the victim (the Bill provides for the use of victim-impact statements);
- the previous failure of the child to respond to non-residential alternatives; and
- the desirability of keeping the child out of prison.

An important structural change to the Bill is the use of a complicated set of Schedules, five in total, to which presiding officers need to refer to in sentencing. References in the Bill cross refer to these schedules with numerous exclusions, especially with regard to sentencing.

The Bill provides that a court must, after convicting a child, pass sentence in accordance with the Bill. The types of sentence provided for in the Bill are:

- Community-based sentences, including level one and two diversion options.
- Restorative justice sentences, such as family group conferences and victim-offender mediation, which result in a recommendation which may be confirmed or altered by the court.
- Fines can be considered as a sentencing option if the court has considered the ability of the child or his/her parent to afford the fine and whether failure to the fine may result in imprisonment. The court may also consider a range of alternatives to fines such as symbolic restitution, payment of compensation, or community service.
- Correctional supervision (as provided for in the Correctional Services Act) as provided for under the Criminal Procedure Act.
- Residential facility sentences. A residential facility is any residential facility designated to receive sentenced children. Sentences with a residential element may not be for more than 5 years or until the child reaches the age of 21 years.

- Prison sentences may only be imposed on children as a measure of last resort and no sentence of imprisonment, including life imprisonment, may be construed as limiting the possibility of early release.
  - There is no lower age limit on the imposition of a prison sentence.
  - No offences are excluded from imprisonment, but the court must in certain instances (for less serious offences) provide substantial and compelling reasons for imposing a sentence of imprisonment.
  - Children, aged 16 years or older, convicted of an offence listed in Schedule 2 of the Criminal Law Amendment (minimum sentences legislation) will be sentenced in accordance with that legislation.
  - A child who is convicted of an offence to whom the Criminal Law Amendment Act (minimum sentences legislation) does not apply, may be sentenced to imprisonment for a maximum term of 25 years under the Child Justice Bill.
  - Children convicted of Schedule 1 and 2 offences may only be sentenced to imprisonment if there are substantial and compelling reasons for imprisonment..
- Postponed sentences, with or without conditions, for a period not exceeding five years if the child is younger than 14 years.
- Suspended sentences, with or without conditions, for a period not exceeding five years, subject to the Criminal Law Amendment Act
- Penalties in lieu of fine or imprisonment, such as symbolic restitution or the payment of compensation

The courts have consistently held that probation officer reports are necessary for sentencing purposes. The Bill confirms this by requiring a child justice court to request a pre-sentence report from the probation officer before imposing a custodial sentence. The report must be completed within one month of being requested. Should the court decide to impose a sentence different from the one recommended in the pre-sentence report, the Bill provides that the reasons for doing so must be recorded. The court can dispense with a pre-sentence report if the child is convicted of a minor (Schedule 1) offence, and delay would cause undue delay, but may not impose a custodial sentence without a pre-sentence report.

Where a child has been sentenced to attend a residential facility, he or she may not be held in a police cell pending the designation of that facility.

If it is reported to the court by the probation officer that the child has failed to comply with the conditions set out in a postponed or suspended sentence, the child justice court may hold an inquiry to investigate the issue. If failure is indeed established, the child justice court may confirm, amend or substitute the sentence.