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### JUSTICE AND CONSTITUTIONAL DEVELOPMENT PORTFOLIO COMMITTEE

21 February 2003

### CHILD JUSTICE BILL: PUBLIC HEARINGS

#### Documents handed out:

[Child Justice Bill \[B 49-2002\]](#)

[Joint Presentation by Department of Justice and National Prosecuting Authority](#)

[Presentation on Costing the Child Justice Bill by Mr Conrad Barberton](#)

[Presentation by Department of Correctional Services](#)

**Chairperson:** Adv JH de Lange (ANC)

#### SUMMARY

The Committee was briefed on the costing of the Child Justice Bill by Cornerstone Economic Research. According to the provisions of the Bill, the assessment capacity of children arrested would be increased year by year. However, the Department also intends appointing more probation officers. The presentation indicated the additional funds required by each Department for implementation of the Bill. The Justice Department would not require extensive new resources, since it was envisaged that there would be a reduced number of children going through to trials. The Department of Correctional Services expected to make substantial savings, as less children would be going to prison.

The Department highlighted a key feature of the Bill: the preliminary inquiry. It takes the place of the child's first appearance in court, and aims to determine if the child can be diverted. That decision will be made at the preliminary inquiry. There was some uncertainty over who has the final say over whether or not a child is diverted. The Department would provide an additional report on this aspect.

#### MINUTES

##### Costing the Child Justice Bill

Mr Conrad Barberton: Cornerstone Economic Research, said that he had been approached by the South African Law Commission in late 1998 to provide research necessary to determine the costing of policy outlined in the proposed Bill.

Policy development goes through a number of stages and costing should be built into every stage thereof. This was particularly imperative, as Section 35 of the Public Finance Management Act (PFMA) seeks to avoid situations where there is a lack of finances in provincial government to implement legislation passed by national government. He added that the financial implications for all nine provinces have been fully explored, should this Bill be passed, and the objective of this exercise was to get all the relevant Departments running with the Bill. Those relevant Departments are: Justice, Social Development, Safety and Security, Correctional Services, and Education.

In his presentation Mr Barberton referred to a slide headed "The Child Justice System Proposed in the Bill", which indicates eight successive stages that a child offender may experience within the Justice System. At any stage of the system, a child could leave the system to possibly be diverted

to a place of safety for secure care or into the supervision of a parent. Should they not comply with the conditions of diversion, they would then be brought back into the system, where more costs would be incurred.

The number of children arrested would determine how many children enter the system. He referred the Committee to a slide which showed child arrests by province for the years 1999 to 2005. In order to determine future projections, they worked on an annual increase in child crime of 6%, a figure which was used "just as a proxy". Hopefully over time, as the Bill takes effect, the figure would decrease.

Mr Barberton said that 99% of children who are arrested need to be assessed within 48 hours of their arrest. At present, actual figures are nowhere near this target, as there are insufficient probation officers to do the assessing. However, where this is a problem, social workers can be called in, as is already being done in the Orange Free State. According to the provisions of the Bill, assessment capacity of children arrested would be increased year by year. He informed the Committee of the Department's intentions to increase appointments of probation officers from the current number to one that is more acceptable, along with the projected financial outlay that would be required for their remuneration. His projections were for appointments that would be phased in by the year 2005. Cost variables provide the budgets required to deliver on the number of assessments envisaged.

### ***Discussion***

The Chairperson asked what percentage of the plan had been approved for the various sectors or provinces. He wanted to see the MTEF budget, as he was interested in seeing what had been requested for the first year.

Mr Barberton could not provide a concrete answer, as the Bill had not yet been passed. The initial cost-effectiveness analysis proved that the proposed system would be more cost effective than the existing one.

Mr Barberton said it was encouraging to note that this process had been the first of two processes that had been costed properly, the other being the National Language Policy.

Mr Jeffrey (ANC) said he could understand how difficult it must be to formally allocate money in the absence of the Bill having been passed already. However, the Committee needed to know what would happen should the Bill be passed in July. Would there be sufficient funds for its implementation for the rest of the year?

At this point, the Chairperson suggested that they hear the complete submission, and at the end ascertain what needed to be done.

Mr Barberton felt that ideal objectives should be determined, while at the same time planning realistically.

With regard to implementation planning, the Chairperson cautioned that budgetary requests set out must be adhered to. If certain amounts were requested for various phases of implementation, those phases had to be implemented, and the monies used accordingly, otherwise clauses would have to be written into the Bill.

Continuing with his presentation, and focusing on areas of maximum impact, Mr Barberton said that one-stop child justice centres were envisaged, for the purpose of having child-friendly courts and facilities. A pilot court of this nature is currently in operation in Port Elizabeth, and is running well. The jurisdiction which that court enjoys, is the same as for the normal courts. However, it would be useful if the magistrate there could deal with children from Uitenhage. This would be more cost-effective than setting up separate courts.

Adv Durandt (Department of Justice) said that the Department was attempting to phase in the one-

stop centres in various provinces.

The Chairperson remarked that the one-stop centres seemed like a nice idea, but had limited scope.

Mr Barberton felt the system could work if there were about two magistrates at the centres on a full-time basis, and added this would require an amalgamation of services.

The Chairperson stated the Committee would require more substantial input on how these courts would work.

Mr Jeffrey commented that in the chart showing figures of child arrests, there were dramatic drops and increases over the years. These figures would affect state departments across the board. Were there plans in place to move resources from any one particular area to another, as the need arose? He further noted that the occurrence of repeat offenders had not been factored into the projections, and therefore it was not shown how such children would be dealt with in the system. Could Mr Barberton provide figures on repeat offenders?

Mr Barberton acknowledged that some flexibility had been exercised in drafting the projections. In the light of the changing circumstances, it was possible to make adjustments and ask for the required funds. He added that he did not know the number of repeat offenders. Asked by the Chairperson if all children arrested would in the long term be sent to the one-stop child justice centres, Advocate Durandt replied in the negative.

The Chairperson asked if the Committee could henceforth receive more input on the one-stop centres. Advocate Durandt assured him that those submissions would be presented in the coming week.

Mr Barberton presented slides indicating additional funds required by each Department for implementation of the Bill. The Justice Department would not require extensive new resources, since it was envisaged that there would be a reduced number of children going through to trials. The Department of Correctional Services expected to make substantial savings, as less children would be going to prison.

The Chairperson commented that although there are 30 000 diversions, 120 000 are still going through the justice system. The projected increase in diversions will bring this figure to 54 000, which is approximately 50% of children being arrested at present. Mr Barberton responded that this was due to the capacity of Social Development to effect diversions, which is presently restricted. The idea is to allow for that figure to be substantially increased.

Ms Camerer (NNP) asked what capacity there was for assessing that the provisions of the Bill were being implemented.

The Chairperson agreed that monitoring was an important aspect of the Bill's implementation, and asked the Committee to make sure that this formed part of the Department's submission, along with assessment of the increase in diversions.

Speaking of the Bill's overall benefits, Mr Barberton stated this new system would be more efficient, because it deals with children within the first 48 hours of their arrest. Those who still need to be taken through the justice system afterwards will go through it. Considering that the PFMA insists on the proper handling of funds, he felt that this was an excellent proposal.

#### **Department of Justice and National Prosecuting Authority submission**

Adv Durandt presented this joint submission. He said that a key feature of the proposed Bill, is the preliminary inquiry. It takes the place of the child's first appearance in court, and aims to determine if the child can be diverted. That decision will be made at the preliminary inquiry.

The current practice regarding remands of cases has proven hugely inefficient. The law states that any child awaiting trial in detention must be brought to court every fourteen days. Whereas this provision was made to protect the child, it only serves to jam the court rolls with more remand appearances, and the children seldom get released.

The Child Justice Bill proposes that a child awaiting trial in detention be brought to court at least every thirty days. Where a child is held and the trial is not concluded within six months from the day of the plea, the child must be released.

Some discussion ensued around who has the final say over whether or not a child is diverted. The Chairperson was of the opinion that the prosecutor had the right to agree with the diversion or not, and that decision could not be overruled by the magistrate. However, for the sake of clarity, he asked Ms Anne Skelton (Department) to prepare a report on the issue.

He further requested to be supplied with statistics on diversions in the country, and a breakdown which would show information on where these 30 000 children had been diverted to.

In addition, Mr Jeffrey requested that the Committee be given figures on repeated child offenders, so the Committee could ascertain if the diversion process was working. Ms Skelton responded that NICRO had a breakdown of these figures available. The Committee further heard that the Department of Justice and Constitutional Development was involved in discussions with the Department of Social Services concerning the standards of diversions.

When the Chairperson questioned the occurrence of diversions without programmes, Ms Skelton said that in these cases, an agreement would normally be entered into with the family of the child, who would take responsibility, along with oversight from social workers, for that child. This takes place only if checks on the family have been made, to ensure that they can handle it. There are cases where this approach is working.

The Chairperson then requested statistics of children convicted of serious crimes, and what these crimes were.

Ms Camerer found the statement, about children declining legal representation, strange. Why were children, who were minors, allowed to make this kind of decision by themselves? Why does the state not make such representation compulsory?

The Child Justice Bill provides for access to state-funded legal representation for children in detention for whom there's a likelihood of a residential sentence being imposed.

Ms Skelton made the point that, representation for children will be mandatory, there will be less children going to trial. There would therefore be fewer cases. For this reason, the Legal Aid Board envisages that costs will remain the same, and not increase.

Ms Chohan-Khota (ANC) stated that legal representation would be required for the child from the outset, which starts with the preliminary inquiry. Only after that, is a decision made for or against diversion. The Bill makes it clear that legal representation will be provided. How was it possible, then, that the Legal Aid Board will not be requiring extra finances to represent children?

Ms Skelton responded that, for the purposes of ensuring the preliminary enquiry is child-friendly, and not inquisitorial, there was to be no legal representation at that stage. For that reason, there would be no added costs.

Ms Chohan-Khota felt the importance of the preliminary inquiry for the child necessitated the presence of legal representation.

The Chairperson rounded the meeting off by saying that the effects on the whole justice system of the proposed Bill would have to be assessed, and if necessary, more finances would have to be

requested.

Adv Durandt added that this would form part of the monitoring process

The Chairperson finally requested to see the various Departments' budgets, and how they arrived at their budgets.

The meeting was adjourned.

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