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JUSTICE AND CONSTITUTIONAL DEVELOPMENT PORTFOLIO COMMITTEE

27 February 2003

CHILD JUSTICE BILL: BRIEFING BY DEPARTMENTS OF JUSTICE, SOCIAL DEVELOPMENT & NATIONAL PROSECUTING AUTHORITY

Chairperson: Adv J H De Lange (ANC)

Documents handed out:

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

[National Prosecution Authority Diversion Statistics](#)

[Department of Social Development Presentation on the Implications of the Bill](#)

[Implementation of the Child Justice Bill Within the South African Police Service](#)

Department of Justice Plan for the Monitoring of the Child Justice Bill (Appendix)

SUMMARY

The Committee was briefed by the Departments of Justice and Constitutional Development, Social Development and the National Prosecution Authority. All the Departments expressed support for the Bill. The Chair acknowledged the Departments' plan to implement the Bill but requested presenters to comment honestly on their Departments' strong and weak points. This would assist the Committee in creating a workable system, which would not ultimately result in failure. This means that all those who are involved in the process should be obliged to follow certain norms that have been developed to apply nationally.

The Department of Social Development noted that there has been an immense increase in the number of probation officers. There is a plan to establish more Reception, Assessment and Referral Centres and another One-Stop Centre.

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The Chair requested government Departments to come together and sketch a plan which would ultimately result in the composition of a monitoring committee. He urged the Department to take into account the importance of the probation programme and also provide the Committee with a total number of facilities available to accommodate the child offenders.

Department of Social Development Presentation

Mr A Theron noted that in 1996 there were only 80 social workers that were involved in probation work. Since then there has been an immense increase in the number of probation officers from 80 to 525 practitioners. The probation services, which is now being done by a professional board, requires one to have certain specific tertiary qualifications in order to qualify as a probation officer and child/youth care worker. Amongst other things, probation services now include 48 hours assessment, age estimation, preliminary enquiry and diversion to different levels. There has also been a substantial increase in diversion programmes: currently there are about 53 Reception, Assessment and Referral Centres and three One-Stop Centres countrywide. However, there is a plan to establish 43 more Reception, Assessment and Referral Centres and one more One-Stop Centre. The Department believed that it would have more than 1072 Probation Officers and 389 Probation Officers Assistance by the year 2005.

Discussion

The Chair noted that the Committee required the Department to unpack what this new criminal justice system would mean for children. The Committee was not willing to accept a situation where every province has its own system. The Department should develop one system, which would be applicable to all provinces. He said that the Committee finds it absurd that a huge province such as KwaZulu-Natal, with the largest population in the country, has so few probation and diversion facilities. He asked whether the NGO's which would be involved in the diversion programme would be required to register.

Mr Theron responded that all the NGO's who would be directly involved in the process of diversion would be registered so that the magistrates will be aware of NGO's available that a child offender could be referred to. Above all the Department is planning to have equal and increased diversion programmes throughout the country, including both the rural and urban areas.

Ms M Tserere (National Prosecution Authority) noted that in the period between July 2000 and June 2001 about 13058 children were diverted and in the following year, between July 2001 and June 2002, there was an increase in the programme since about 16531 children were diverted.

The Chair noted it is not enough that government Departments are involved in the process but they should take charge throughout the process. This means that all those who are involved in the process should be obliged to follow certain norms that have been developed to apply nationally.

Ms S Camerer (NNP) asked how many facilities are available to accommodate child offenders and whether they are kept in the same place with hard-core criminals.

Mr Theron responded that presently there are 31 facilities comprising sixteen places of safety, eleven secure areas and four youth care centres. There are four further facilities that the Department intends to build in addition to these ones. Regarding the placement of children he said that all children, whether hard or "soft core" criminals, are currently accommodated together in the same place.

The Chair said that to accommodate these children together is unacceptable since older children, who are most likely to be hard-core criminals, would certainly have a bad influence to the young ones, who remain innocent but were just caught on the wrong side of the law. The Department should therefore see to it that each province has a secured area to accommodate the young offenders and ensuring that provinces have facilities in place to accommodate all kinds of child offenders.

Ms Camerer asked how many children are awaiting their trials still in prison.

Mr Theron responded that there are about 2300 children referred by magistrates to prison and those children are still in prison awaiting trial.

The Chair noted that the time has come for the Department to stop blaming the magistrates and to take charge of the situation. At present the magistrates have no option but are forced to award the children before them to the care of the only officers always present in court at the end of the day and those are the police officers. The Committee requires the Department to establish norms and standards that would be followed by the provinces in their day to day dealings with the process of probation and diversion. The Department should also state the number of secured centres that are available for each magisterial district and the budget available for the implementation of the whole processes. If all Departments responsible for the implementation of this Bill could come up with a sketch containing this information as well as the structuring of the monitoring group, the Committee would not have a problem in accepting this Bill. Until that has been done this Bill would not be passed, so this meant that all the government Departments involved in the implementation of this Bill should work hard and convince the Committee that they are ready to implement it and those centres are in place.

The meeting was adjourned.

Appendix:

Plan for the Monitoring of the Child Justice Bill compiled by the Department of Justice and Constitutional Development, on the basis of consultations with other relevant departments.

1. The specific structure for monitoring the Child Justice Bill at ground level is still in development and being negotiated with the relevant stakeholder. However, the information required for monitoring the system has been identified as follows:

- (a) the extent to which police officials use alternatives to arrest;
- (b) the extent to which procedures relating to release from police custody before assessment are used;
- (c) information from the police concerning the extent to which parents or appropriate adults were successfully notified by the police prior to assessment;
- (d) the situation of children in police custody pending the conclusion of the preliminary inquiry, including the conditions under which children are held in police custody, and the length of time that children spend in police custody prior to being brought for assessment;
- (e) reports from probation officers in relation to children below the age of ten years;
- (f) reports from probation officers on the holding of family group conferences where such conferences were held as a diversion option;
- (g) reports from probation officers on the extent to which recommendations for diversion have been made and the extent to which they were accepted by a court;
- (h) the diversion options and alternative sentencing opportunities available; the procedures for registering and recording diversion; and
- (i) reports from child justice magistrates on the extent to which children appearing in a court were legally represented.

It is envisaged that the ground level monitoring structures will have the following additional responsibilities:

- (a) promote local public awareness regarding the application of the Bill and issues involving children in conflict with the law in any manner that is feasible, including the issuing of media statements;
- (b) investigate and promote measures to reduce the involvement of children in criminal activities;
- (c) identify persons and places suitable for the temporary placement of children in conflict with the law as alternatives to detention;
- (d) identify persons, representatives from communities or organisations, or community police for who are not in the full-time employ of the State, who can act as independent observers during proceedings in terms of the Bill and maintain a roster of such persons;
- (e) receive complaints from any person or organisation involved in or affected by the administration of child justice within its area of jurisdiction, and attempt to resolve such complaints; and
- (f) notify the local or provincial division of the High Court having jurisdiction or any judge of such court that the proceedings in which a sentence was imposed by a court were not in accordance with justice as referred to in section 304(4) of the Criminal Procedure Act, 1977 (Act No.51 of 1977).

2. Establishment of the National Inter-sectoral Committee for Child Justice

A National Inter-sectoral Committee for Child Justice has been informally established. It is intended that this Committee and its powers and functions will be formalised through regulations to the Child Justice Bill. It is also intended that representatives of the State Departments involved will be appointed to the National Inter-sectoral Committee.

The National Inter-sectoral Committee for Child Justice will be required to collect and monitor the following statistical information on an ongoing basis:

- (i) the number of children arrested;
- (ii) the number of children in respect of whom alternatives to arrest were used;
- (iii) the number of children diverted, and to which programmes;
- (iv) the number of children assessed;
- (v) the number of children in respect of whom a preliminary inquiry has been held;
- (vi) the time duration of each preliminary inquiry;
- (vii) the number of children diverted at a preliminary inquiry;
- (viii) the number of children legally represented;
- (ix) convictions and sentences;
- (x) the number of warrants of arrest issued for children and their parents for not complying with the Bill;
- (xi) the number of children awaiting trial (broken down by offence and age and length of time); and
- (xii) the number of children sentenced to imprisonment (broken down by offence and age and length of sentence).

3. It is envisaged that the monitoring structures in the relevant State Departments will have the following responsibilities:

3.1 Justice and Constitutional Development

- (a) Monitor and assess the policies and practices of the Department of Justice and Constitutional Development regarding the implementation of this Bill;
- (b) inquire into, and report on, any matter, including any law or enactment or any procedure regarding child justice;
- (c) keep under review and make recommendations on the operation of the Bill;
- (d) assist with the implementation of training of personnel charged with the administration of child justice and police officials concerned with the application of the provisions of the Bill;
- (e) increase public awareness of matters relating to the administration of child justice;
- (f) encourage the development within the Department of policies and services designed to ensure the effective application of the Bill; and
- (g) on own initiative or at the request of the Minister, advise the Minister on any matter relating to the administration of the Bill.

3.2 Social Development

- (a) Monitor and assess the policies and practices of the Department of Social Development regarding the implementation of the Bill, and in particular, in relation to the development of probation services, diversion, and alternative sentencing programmes;
- (b) inquire into, and report on, any matter in which the Department of Social Development may have an interest, including any procedure regarding child justice;
- (c) keep under review and make recommendations on the operation of the Bill, particularly in relation to the development of diversion, victim satisfaction with the operation of the Bill, restorative justice and the development of probation services;
- (d) increase public awareness of matters relating to the administration of child justice;
- (e) encourage the development within the national Department of Social Development and provincial departments of policies and services designed to ensure the effective application of the Bill; and
- (f) on own initiative or at the request of the Minister of Social Development, advise the Minister on any matter relating to the administration of the Bill.

3.3 South African Police Services

- (a) Monitor and assess the policies and practices of the SAPS regarding the implementation of the

Bill, and in particular, in relation to the arrest procedure for children;

(b) inquire into and report on any matter in which the SAPS may have an interest including any procedure regarding child justice;

(c) make recommendations to the National Commissioner of the SAPS regarding police procedures as contemplated in the Bill, and the training of police officials on aspects of the Bill and the Child Care Act, 1983 (Act No.74 of 1983);

(d) on own initiative or at the request of the Minister of Safety and Security, liaise with the National and Provincial Commissioners of Police in respect of any police procedures as contemplated in the Bill

(e) visit police cells and promote the improvement of such cells where necessary to ensure the appropriate accommodation of children in police custody;

(f) on own initiative or at the request of the Minister of Safety and Security, advise the Minister and the National Commissioner of Police on any matter relating to the administration of the Bill; and

(g) collaborate with any relevant Government Department or nongovernmental organisation to promote the prevention of crime or to develop preventative programmes.

3.4 The Minister for Justice and Constitutional Development may, as and when necessary, commission research regarding the following matters

(a) any matter related to the administration of the Bill; and

(b) the collection of adequate statistical information, including -

(i) offences committed by children who are below the age of ten years;

(ii) the number of warrants of arrest issued for children and their parents for not complying with any of the provisions of the Bill;

(iii) offences committed by children between the ages of ten and 14 years in respect of whom a certificate by the Director of Public Prosecutions has not been issued;

(iv) the number of children diverted, and to which programmes;

(v) the number of children assessed;

(vi) the number of children in respect of whom a preliminary inquiry has been held;

the number of children diverted at a preliminary inquiry; the extent of legal representation of children subject to the provisions of the Bill; and (ix) convictions and sentences.

(vii)

(viii)

4. It is envisaged that the National Intersectoral Committee for Child Justice will be required to produce an annual report on the operation of the Bill, including qualitative and statistical information necessary for reviewing the progress made in implementation of the child justice system.

Disclaimer Every attempt is made to ensure that this information is accurate, but this minute is not an official record of the meeting and therefore should not

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