

## Parliamentary Monitoring Group



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### JUSTICE AND CONSTITUTIONAL DEVELOPMENT PORTFOLIO COMMITTEE

28 February 2003

### CHILD JUSTICE BILL: BRIEFING BY SOUTH AFRICAN POLICE SERVICES; CORRECTIONAL SERVICES; EDUCATION

**Chairperson:** Adv J H de Lange (ANC)

#### Documents Handed Out:

[Department of Correctional Services presentation](#)

[A Situational Analysis of Reform Schools and Schools of Industry in South Africa](#)

[Total Youths Detained/Arrested at Stepping Stones from 15 Aug 1997 - 31 Jan 2003](#)

[Implementation of the Child Justice Bill within the South African Police Services](#)

Department of Correctional Services: Statistics

#### SUMMARY

The Committee was briefed by Departments who would have a role to play in the implementation of the Bill. The South African Police Services discussed the steps that needed to be taken for the police force to fully comply with the Child Justice Bill. Full compliance should take one year to complete. The Department of Correctional Services outlined the budgetary implications of implementing the Child Justice Bill. The Department displayed statistics regarding the cost of imprisonment and the types of crimes children have committed. The Department of Education reported on the use of Reform Schools and Schools of Industry as possible methods of restorative justice. The Legal Aid Board briefly stated the potential impact the Child Justice Bill would have in providing representation to children. A magistrate from the Stepping Stones One-Stop Centre explained the role Stepping Stones played in child justice.

#### MINUTES

##### South African Police Services presentation

Dr Tertius Geldenhuys divided his presentation on the police's role in the implementation of the Child Justice Bill into three parts. He discussed the effect the Bill would have on the Department's budget, the difficulties the Department would have in implementing the bill, and statistics on the arrests of children.

Dr Geldenhuys stated that the Treasury did not give SAPS specific funds to implement the Child Justice Bill. SAPS had, however, worked out figures for the cost of the implementation of the Child Justice Bill. These figures do not include capital expenditure, such as the cost of refurbishing police stations, and the buying of new police vehicles.

The Chairperson asked why these costs were excluded.

Dr Geldenhuys answered that it would be impossible to determine these costs strictly with respect to the Child Justice Bill. When refurbishing police stations and detention facilities and when buying police vehicles, it is impossible to know how much of the money will go towards detaining and transporting children.

The Chairperson interrupted Dr Geldenhuys in order to deal with another matter. He stated that it had been brought to the Committee's attention during the hearings that children under the age of fourteen were being detained in prison illegally.

Dr Geldenhuys said that the Department of Correctional Services has located the five children who were in prison illegally and that they would be brought to court immediately for release.

The Chairperson thanked the Department of Correctional Services for their assistance in finding the children.

Mr J H Jeffery (ANC) was briefly assigned as temporary Chairperson.

Mr M A Mzizi (IFP) asked a representative from the Department of Correctional Services what would be done with these children. The representative replied that they would be brought to a magistrate who would rule accordingly.

Chairperson Jeffrey asked Dr Geldenhuys to continue with his presentation.

Dr Geldenhuys stated that police vehicles and facilities were not purchased specifically for children and therefore those capital expenditures were left out of the budget.

Dr Geldenhuys pronounced that detention facilities would have to be upgraded to implement the Bill fully. Police facilities will have to have four separate holding cells for men, women, boys, and girls. Presently police stations do not have this capacity, and it is unlikely that all police stations will ever have four holding cells. Having four cells in every prison would not be necessary as there would not be enough children to justify the building of four separate cells.

Dr Geldenhuys explained that SAPS was clustering stations together so that the necessary facilities will be nearby. There would be the odd case which would not be accommodated but by grouping the stations SAPS would maximise its resources and accomplish the goal of detaining children separately in the vast majority of cases.

Dr Geldenhuys stated that the police will have additional responsibilities with respect to providing services for arrested children. These new services would include the following:

- Transportation to the place of assessment.
- Transportation to the preliminary inquiry.
- Transportation of a parent or appropriate adult to the assessment.
- Obtaining documentation required for the completion of the assessment at the request of a Probation Officer.
- Locating the child's parent or an appropriate adult at the request of the Probation Officer.
- Transportation of a child to a place of safety and from such place of safety to an assessment and, later on, preliminary inquiry.
- Transportation of a child to court separately from adults.

Dr Geldenhuys stressed that if these responsibilities cannot be fulfilled, they will not, but the Department should strive towards complete compliance. There is presently a strain on the resources of the police and these obligations will cause additional strain. As such, Dr Geldenhuys asked that these responsibilities not be a legal obligation. The police should carry them out only when they get the opportunity.

Dr Geldenhuys reported that in 2003-2004, R565,000 000 is designated to upgrading the vehicle fleet. This should alleviate the current shortage of vehicles and help the police fulfil their obligations of increased transport, yet the fleet shall never be sufficient to have enough vehicles for proper implementation. This may result in the delay or even abrogation of transportation. The addition of 20 000 police personnel slated over the next three years will further strain the vehicle fleet.

Dr Geldenhuys questioned where the assessment of arrested children would take place. The Child

Justice Bill should give further guidance in this regard. He asked that the Bill provide that children be assessed in either the magistrate's court or the police station. He offered that the Probation Officers could use rooms at the police station for the assessment. That would minimise the cost of transportation for the police.

Dr Geldenhuys commented on the national instructions that are mandated by the Bill. A comprehensive document will be completed and distributed to all police. The development of this comprehensive document had to occur after Parliament had passed the Child Justice Bill. He warned that the police would require five months to finalise their national instructions after the act was finalised.

Dr Geldenhuys explained that the South African police have been trained under the old criminal justice system, which is not based on the concept of restorative justice. The entire force would require retraining in order to implement the Child Justice Bill correctly. There are 80 000 members of the police that would have to be retrained and as these members are employed on a 24-hour basis, the retraining will be a major exercise. The retraining should take seven months.

The SAPS would require one full year for the implementation of the Child Justice Bill.

Dr Geldenhuys shared statistics on the type of crimes committed by children. He warned the Committee that since 205 police stations across the country still compile statistics by hand, mistakes are made. The statistics cannot be relied on for specificity. The real numbers could deviate by up to 8%. That being said, 58,71% of children are arrested for property offenses, 27,39% of children are arrested for crimes of a violent nature, 3,2% of children are arrested for narcotics, and 10,64% of children are arrested for other crimes.

### **Discussion**

Acting Chairperson Mr Jeffery questioned Dr Geldenhuys as to the accuracy of his timetable for implementation.

Dr Geldenhuys stated that the year timetable had been well thought out and was the foreseeable time necessary in drafting the instructions and training.

Ms S Camerer (NNP) asked how realistic the national instructions would be. She brought up the trouble in drafting national instructions with the Domestic Violence Act.

Dr Geldenhuys replied that the reason there was trouble with the Domestic Violence Act was that they had only 2,5 months for implementation. He explained that is why SAPS is requesting a year. One year should be sufficient for implementation.

Ms F Chohan-Kota (ANC) asked why the SAPS needed to wait for the Bill to be passed before beginning implementation. If the SAPS agrees with the spirit of the Bill, could they not begin now?

Dr Geldenhuys responded that the SAPS could not carry out a change in policy until the law was passed. They would need to work with one-stop centres and other organisations that will not be set up until the Bill is passed.

Imam Solomon (ANC) stated that one of the main costs of implementation is the facilities. But how quickly can South Africa's 1 100 prisons be refurbished?

Dr Geldenhuys stated that the process was arduous, but they were in the process of identifying stations that were suitable and trying to group them with other nearby stations.

### **Department of Correctional Services presentation**

Mr Krier, Director General: Department of Correctional Services, stated that his presentation on behalf of DCS should be short because DCS's stance was simple: no children under fourteen are allowed in prison. He was accompanied by Ms Matshego and Ms Masango.

The DCS offered a statistical analysis on the present state of prisons. The total prison population at the end of December 2002 was 185 114 (56 459 unsentenced and 128 655 sentenced). The population of children totalled 4136 (2371 unsentenced and 1765 sentenced).

The average arrested child spent 126,33 days in prison before sentencing. Some spend more than one year awaiting trial.

The Department is presently implementing several restorative justice initiatives to encourage the reintegration of offenders. Most of these initiatives involve sending children to community corrections facilities.

A representative from the Department of Correctional Services reviewed the budgetary implications of implementing the Bill.

Currently incarceration of a prisoner amounts to R97, 75 per day, including personnel. Exclusive of personnel, incarcerations cost R8, 20 per day. The cost of sending children to community corrections, exclusive of personnel, amounts to R2, 75 per day.

The DCS estimated savings from the implementation of the Child Justice Bill since they expect fewer children in prisons.

### **Discussion**

Adv de Lange asked the DCS to comprise statistics as to what portion of the unsentenced children were offered bail but could not pay it.

Mr Mzizi asked how unsentenced children were being accommodated. Was there overcrowding?

The DCS answered that the prison population was 67% over capacity, but children were presently kept separate from the adult population. Eighteen to twenty-one year olds were also kept separate.

The Chairperson stated that he wanted the DCS to compile statistics concerning the capacity to accommodate children in every prison and how many children were actually imprisoned.

### **Department of Education presentation**

Dr S M Naicker, Director of Inclusive Education from the Department of Education, addressed the Committee about the use of reform schools and schools of industry as a restorative justice measure. The Department of Education was working with the Department of Justice on this matter. Presently there are four reform schools and seventeen schools of industry throughout South Africa. Magistrates may, under current law, order children to reform schools as an alternative to prison, but not to schools of industry. The Child Justice Bill would allow magistrates to send children to schools of industry, thereby greatly increasing capacity.

Dr Naicker stressed that the use of these schools for restorative justice required field testing and a determination of efficiency and cost. While the inclusion of schools of industry will greatly increase the capacity to educate arrested children, Dr Naicker warned that there is no reason to assume that the schools of industry can be used well in the education of convicted children.

Adv de Lange stated that the Department of Education needed to work closely with other Departments, specifically the Department of Justice, to make these schools suitable for convicted children. The Department of Education needed to communicate better with the Department of Justice and devise a feasible plan for education in prisons. This plan must adhere to national norms and standards. He alerted Dr Naicker to the fact that representatives from the Department of Justice were present, and that he should set up a meeting with them.

### **Legal Aid Board presentation**

Mr Peter J Brits, Legal Services Executive from the Legal Aid Board, briefly explained the possible

effect the Child Justice Bill would have on the Legal Aid Board. The diversion programs articulated in the Child Justice Bill would potentially save the Legal Aid Board money and resources by decreasing the number of court cases for children. While Legal Aid may have to be involved in the pre-trial process, it would be less of a strain than completing a trial.

The Chairperson announced that Legal Aid would have to look at different legal situations involving arrested children and determine in which of those situations will the children require representation.

### **Stepping Stones One-Stop Centre presentation**

The Magistrate at Stepping Stones in Port Elizabeth explained the workings of Stepping Stones as a restorative justice organisation. Stepping Stones is a secure care facility for children from the ages of seven to seventeen and is open every day of the year. The organisation works very closely with the police, Department of Justice, and Nicro in providing services for children.

Children are ordered to Stepping Stones from thirteen districts surrounding Port Elizabeth. The child is formally charged at Stepping Stones. The Magistrate said that he was aware of a child's previous convictions before he made an assessment of the child. The preliminary inquiries necessary for the assessment were all driven by the Magistrate.

Chairperson de Lange stated that in this process the child's interests seem to be looked out for. However, legally, it is the prosecutor who is supposed to look out for the state's interests and that does not appear to happen here. He also declared that the Constitution provides for every dispute to be adjudicated by a court. The Chairperson does not know how this Bill will get around that provision legally.

The Chairperson said that, while Stepping Stones was viable for the less serious crimes, it did not seem viable for the most serious crimes.

The Chairperson noted that the Committee had taken many positive steps in the last week, but he warned that many obstacles remained ahead. He declared that he was not prepared to release a bill that sounded good and contained good ideas but would then collapse on the public. Every provision the Committee asserts into the bill needs to be carried out by the various Departments. If the bill is not feasible enough to be fully implemented, then the Committee has failed to perform its job.

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