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JUSTICE AND CONSTITUTIONAL DEVELOPMENT PORTFOLIO COMMITTEE

12 March 2003

CHILD JUSTICE BILL: DELIBERATIONS

Chairperson: Adv J H de Lange (ANC)

Documents handed out:

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

[Summary of Submissions on the Child Justice Bill](#)

[Criminal Procedure Amendment Bill](#)

Section 49, Criminal Procedure Act: Use of Force in Effecting Arrest (Appendix 1)

SUMMARY

The Committee continued their informal deliberations on the Child Justice Bill. The Committee suggested changes to be effected by legislative drafters, particularly in the area of the assessment.

With regard to placement, the Committee noted that children who are to be detained should go either to a prison or to a secure care facility. They suggested that a proviso be added in the Bill, stipulating that the Committee will revisit the issue of detainment of children, particularly children under the age of fourteen. The present plan should be a transitional measure. The Committee would revisit the issue two years after the Bill is implemented.

The Bill has attached criminal responsibility to a child who fails to appear at an assessment. The Chairperson stated that there was no need to criminalise the absence. Failure to appear would mean that the child would not have the benefit of possibly being assessed for diversion. The Committee agreed that assessments should take place individually, even for co-accused children.

MINUTES

The Chairperson, Adv de Lange, reviewed the documents handed out. Section 49 of the Criminal Procedure Act, dealing with the use of force in arrest, would be added to the Child Justice Bill.

In the Criminal Procedure Amendment Bill, the Chairperson turned the Committee's attention to subsection 6(b)(i). The subsection detailed the procedure necessary for detaining a child under the age of fourteen. The stipulation that the prosecutor would have to confirm in writing that he would charge the child with a Schedule 8 offence "and state that there is sufficient evidence to institute a prosecution against the person" would act as a safeguard to protect the rights of the child.

The Chairperson stated with regard to placement, that children who are to be detained should go either to a prison or to a secure care facility. A proviso must be added in the Bill, stipulating that the Committee revisit the issue of detainment of children, particularly children under the age of fourteen. The present plan should be a transitional measure. Two years after the bill is implemented, the Committee will revisit the issue.

Adv de Lange stated that 8(a)(i) was a favourable provision because it would force the Department

of Social Development to pronounce where a child could be accommodated. 8(a)(ii) was unnecessary. Adv de Lange stated that subsection 8(c) should be taken out.

The wording of subsection 10, "The highest priority shall be given to the most expeditious processing of the trial of a person detained in terms of subsection (6)," was stronger than the wording in the Child Justice Bill. Perhaps the drafters should use this stronger wording in the Child Justice Bill.

Clause 18

Adv de Lange turned the Committee's attention to Chapter 4, Clause 18 of the Child Justice Bill, 'Assessment of the Child'. The Committee agreed with RAPCAN's submission that the purposes of assessment should be included in the Bill.

Ms Skelton pointed out the purposes of assessment were listed in Clause 38.

Adv de Lange asked why the consideration of previous convictions was not listed as a purpose of assessment.

Ms Skelton answered it was implied in 38(b), which read "establish the prospects for diversion of the case."

The Chairperson declared that it would be necessary to state specifically the expectations of the Probation Officer. Consideration of previous convictions should be included in the purposes of assessment.

Mr S Swart (ACDP) asked whether it would be possible for the assessment to be completed within 24 hours.

The Chairperson stated that it would be possible and if the information took longer to compile, the time limit could be extended with the permission of the child. It would be in the child's interests to wait.

Mr Swart stated that previous diversions should also be discovered during the assessment.

Adv de Lange agreed that previous diversions and the child's success or failure to complete those diversions should be discovered.

Ms Skelton noted that social development would have a record of a child's past diversions.

The Chairperson stated the wording of 38(d) was problematic because a child could not be placed in a residential facility without a decision for detainment.

Ms Skelton and Mr Bassett agreed.

Clause 19

Ms S Camerer (NNP) raised an issue with Clause 19, "Duty on Probation Officers to Assess a Child". The Bill stated that the Probation Officer must complete an assessment for every child referred to them by the police. The police need to be obligated to bring every child to a probation officer for assessment.

Adv de Lange announced that the police were obligated to bring every child for assessment and that obligation was stated clearly in a different part of the Bill.

Clause 21

The Chairperson asked, with regard to Clause 21(3)(e), why a researcher was specifically permitted to attend an assessment.

Ms Skelton answered that an assessment was often a private affair, so that provision was

necessary to inform probation officers to allow persons conducting appropriate research into the meeting.

Ms Camerer asked why the parents were not specifically enumerated under "Persons to Attend Assessment".

Ms Skelton stated that probation officers asked them to be left out because parents at times interfere with a child's ability to tell the truth.

The Committee discussed the provision calling for the child's legal representative to attend the assessment. Adv de Lange suggested that lawyers do not always do what is best for their clients. A lawyer may want to drag out a proceeding and that would have an adverse impact on the interests of the child.

Mr Swart pointed out that lawyers were accustomed to adversarial, not inquisitorial, processes.

Ms F Chohan-Kota (ANC) argued that the provision for lawyers was added because it would be necessary for them to explain to the child that accepting responsibility for the crime for the purposes of diversion was not the same as an admission of guilt.

The Chairperson stated that both arguments were valid and the issue should be flagged for the Committee to revisit later.

The Committee agreed with Clause 21(5), which stated that a probation officer may request a police official to be present at the assessment. It should state clearly, however, that the police official may be requested for the safety of anyone at the assessment.

The Chairperson noted that nothing a child says in the assessment can be used in later legal proceedings. This should be clarified in the Bill.

Clause 22

Clause 22(5) was problematic because it would be impossible for the police to perform every task outlined. Police should not be asked to provide documentation requested by a probation officer. Nor should the police official have to transport the child's parent(s) to the assessment.

The Committee agreed the police "must" locate parents and serve notice to the child. Beyond that, the Probation Officer "may" request police to perform other tasks outlined in the section.

The Chairperson stated that this should also be a transitional arrangement. The Committee must review this process in two years, at which time Social Development may be able to take some responsibility.

The Bill has attached criminal responsibility to a child who fails to appear at an assessment. The Chairperson stated that there was no need to criminalise the absence. If a child failed to appear, he or she would not have the benefit of possibly being assessed for diversion.

The Committee agreed that assessments should take place individually, even for co-accused children.

With respect to the estimation of a child's age, Adv de Lange stated that there should be no order of cogency prescribed in the Bill. A probation officer should use his or her own discretion as to the credibility of sources declaring a child's age.

The Chairperson stated that he agreed with SAYSTOP and Child Justice Alliance submissions that suggested all elements involving estimation of child's age should be in one area of the Bill. Clause 82, under the general provisions, was particularly misplaced, as it dealt specifically with the trial stage and should be in the trial section of the Bill.

He instructed the drafters to put a mechanism for the rectification of a false age estimation in the criminal capacity section of the Bill.

The meeting was adjourned.

Appendix 1:

Section 49 - Use of force in effecting arrest

(1) For the purposes of this section-

(a) arrestor means any person authorised under this Act to arrest or to assist in arresting a suspect; and

(h) 'suspect' means any person in respect of whom an arrestor has or had a reasonable suspicion that such person is committing or has committed an offence.

(2) If any arrestor attempts to arrest a suspect and the suspect resists the attempt, or flees, or resists the attempt and flees, when it is clear that an attempt to arrest him or her is being made, and the suspect cannot be arrested without the use of force, the arrestor may, in order to effect the arrest, use such force as may be reasonably necessary and proportional in the circumstances to overcome the resistance or to prevent the suspect from fleeing: Provided that the arrestor is justified in terms of this section in using deadly force that is intended or is likely to cause death or grievous bodily harm to a suspect, only if he or she believes on reasonable grounds-

(a) that the force is immediately necessary for the purposes of protecting the arrestor, any person lawfully assisting the arrestor or any other person from imminent or future death or grievous bodily harm;

(b) that there is a substantial risk that the suspect will cause imminent or future death or grievous bodily harm if the arrest is delayed; or

(c) that the offence for which the arrest is sought is in progress and is of a forcible and serious nature and involves the use of life threatening violence or a strong likelihood that it will cause grievous bodily harm.

Schedule 1 - heading

(Sections 40 and 42)

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