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### JUSTICE AND CONSTITUTIONAL DEVELOPMENT PORTFOLIO COMMITTEE

5 September 2003

### CHILD JUSTICE BILL: DELIBERATIONS

**Chairperson:** Mr J De Lange (ANC)

**Documents handed out:**

[Child Justice Bill \[B49-2002\]](#)

Working draft of Child Justice Bill (not available electronically)

[Amendments to Clause XX, 78, 79](#)

#### SUMMARY

The Committee continued with its deliberations on the Child Justice Bill. The Committee is of the view that matters that have already been covered in the Criminal Procedure Act should not be repeated in the Bill.

#### MINUTES

The Chair made reference to Clause 54, which deals with postponement of sentence, and asked whether there were any provisions for non-compliance.

Mr Bassett said that conditions have already been set in the Criminal Procedure Act for such an eventuality.

The Chair referred to Clause 77 and wondered whether in fact the Committee had added something to do with sentencing option.

Ms Kota (ANC) said that what the Chair is seeking is already provided for under Clause 79 of the draft Bill.

The Chair insisted that the Committee had proposed that re-monitoring be added to Clauses 71 and 72.

Mr Basset said that the matter is amply provided for under Section 297 of the Criminal Procedure Act.

Ms Kota asked the Department to explain to what Section 297 of the Criminal Procedure Act was all about.

Mr Basset explained that the section deals with suspended sentences and that there are whole multitudes of conditions that apply.

The Chair asked that a reference to Section 297 of the Criminal Procedure Act it be made clear.

#### Clause: 76

The Chair observed that provisions on sentencing are fine but that the only outstanding issue is to make provision for minimum sentence.

Mr Basset said that his team has not dealt with this yet and that the Committee would be advised accordingly once the Department tackled the matter.

### **Clauses 78**

Mr Basset noted that his drafting team has attempted to make provision for Clauses 78 (see Appendix).

The Chair said that the redrafted version is not good enough and asked the drafters to state the relevant chapter and clearly state what would and would not apply in this case.

Mr Bassett explained that the term 'person' would be substituted for 'child' throughout the Bill.

The Chair asked the drafters to remove the clause under review from the Criminal Procedure Act schedule to ensure that this provision applies to all levels of the court hierarchy noting that it is government policy to remove all aspects of child justice from the criminal procedure processes.

The Chair asked the drafters to add to the automatic review a provision that imprisonment of a child under 16 years must be subject to a review in the district court. He explained that any unrepresented child should be entitled to an automatic review or appeal and that, where one appeals, then the review option falls away. He added that there was need to safeguard children that are unrepresented noting that imprisonment is only an option of last resort in the new child justice dispensation.

Ms Camerer (DA) said that she was not clear on the implication of what the Chair was proposing to the option of an automatic review.

The Chair explained that the rider would only apply to those who are unrepresented and that it is not meant to duplicate the process but rather ensure that that segment of children are adequately covered.

### **Clause 79**

Mr Bassett said that he would check and explore the possibility of adapting the provisions under this section in the Criminal Procedure Act.

### **Clause 73**

The Chair asked the drafters to strike out the requirement for the attorney to be admitted under 73 (d)(2) which requirement he said was an unnecessary impediment in the scope of child representation.

### **Clause 74**

The Chair wondered who would pay for the interpreter in 74(1) and what happens when a child appoints an attorney of his/her own choice under 74(2).

Ms Kota offered that a child has no capacity in law to appoint an attorney of his/her choice.

The Chair noted that since that area is already covered by the relevant law it was unnecessary to make provision for it in the manner it has been done and asked the drafters to take it out.

### **Clause 75**

Ms Kota observed that it is envisioned that at this stage most children are already diverted hence it is important to establish whether there was need for a preliminary inquiry at this point.

Ms Camerer pointed out that her main concern was to avoid creating a clogging in the system that would result in delays when processing children through the justice system.

The Chair suggested that 75(1) be removed since it is already covered elsewhere.

Ms Skelton suggested that 75(1) be rephrased to provide for a "may" to which the Chair objected, noting that going that route amounts to nothing since it would only be repeating what is already stated elsewhere.

Just then the division bell rang and the meeting was hastily adjourned.

## **Appendix:**

### **CHAPTER 10**

#### **APPEALS AND AUTOMATIC REVIEW OF CERTAIN CONVICTIONS AND SENTENCES**

##### **Appeals**

**XX. An appeal by a child against a conviction, sentence or order as contemplated in this Act must be noted and dealt with in terms of the provisions of the Criminal Procedure Act dealing with appeals: Provided that if that person was, at the time of the commission of the offence -**

**(i) below the age of 14 years: or**

**(ii) at least 14 years of age but below the age of 16 years and was not assisted by a legal representative at the time of conviction in a regional court: and**

**(iii) was sentenced to any form of imprisonment as contemplated in section 276(1) that was not wholly suspended,**

**he or she may note such an appeal without having to apply for leave in terms of section 309 B: Provided further that the provisions of section 302(1)(a) shall apply in respect of a person who duly notes an appeal against a conviction, Sentence or order as contemplated in section 302(1)(a).**

##### **Automatic review in certain cases**

78. Any sentence by a magistrate's court, as defined in the Criminal Procedure Act and sitting as a child justice court, involving correctional supervision imposed in terms of section 66 and any sentence with a residential requirement imposed in terms of section 67, whether wholly or partially suspended, [are] **is** subject to review in terms of section 302 of the Criminal Procedure Act.

##### **Suspension of execution of sentence**

79. The sentence of any child is suspended pending review or appeal and a child sentenced to imprisonment or sentenced to a penalty with a residential requirement must be released on any condition contemplated in section 33(3) pending review or appeal.

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