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SUBMISSION TO THE JUSTICE PORTFOLIO COMMITTEE ON THE CHILD JUSTICE BILL.

Introduction

The Department of Social Development (University of Cape Town) has a particular interest in the matters relating to good probation practice which promotes proper management of children in conflict with the law and joins forces with advocacy and lobby groups such as the Child Justice Alliance in pursuit of this goal. We are pleased to note that the Bill recognizes and accords probation officers a central and prominent role in the proposed child justice system.

We would be grateful if we could be afforded an opportunity to make an oral submission on the 5th of February 2008.

Our submission focuses on the following aspects and sections of the Bill as pertaining to probation practice:

1) Assessment:

- a) Definition and Purpose of Assessment,
- b) Child offenders suitable for Assessment,
- c) Age factor in Assessment, and
- d) Assessment Procedures,

2) Pre-sentence investigation reports, and

3) Register in respect of children diverted.

Background

The Department of Social Development (University of Cape Town) has been involved in a period of over ten years in a number of important developments in the establishment of occupation specific research¹ and training programmes for probation practitioners which include the development and teaching of post-graduate qualifications (Honours and Masters) in probation and correctional practice, the establishment of the occupational category of Assistant Probation Officer (A. P. O.), and the development of a S. A. Q. A. approved training curriculum for A. P. Os. Our Department, tasked by the National Department of Social Development, provided training for probation officers in all provinces in South Africa in aspects relevant to their daily practice. Numerous workshops, on subjects ranging from the psychology of the criminal court, legislation relevant to probation practice, the probation officer as an expert witness and restorative justice, to developing and implementing crime prevention programmes in disadvantaged communities were presented.

Our submission takes cognisance of several other developments that have occurred in the field of probation practice since the original drafting of the Bill which include:

- The development of Practice Guidelines, such as those published by the Gauteng Department of Social Development in 2006;
- Minimum Norms and Standards for Diversion published by the National Department of Social Development in 2007.

Both these documents provide detailed procedures and tools for probation practice, including for assessment.

Comments and proposals in relation to specific aspects of the Bill

1. Assessment

a) Definition and purpose of assessment

The Bill provides a narrow definition and purpose of assessment. Assessment is an important and fundamental component of practice particularly in working with troubled children. We therefore propose an addition to the purpose of assessment to that provided in Chapter 5, section 36 of the Bill and submit that the definition as stipulated in the Probation Services Act No. 116 of 1991 be adopted which states that assessment is: “a process of developmental assessment or evaluation of a person, the family

¹ Graser, R. & de Smidt, S. (2007) Training needs of Probation Officers: Views of Selected Probation Officers in the Western Cape. Department of Social Development: Western Cape in association with the Department of Social Development: University of Cape Town; Shearer, A. (Ed.) (2005). Youth Justice Transformation in Practice Monograph 1-5, Department of Social Development, University of Cape Town.

circumstances of the person, the nature and circumstances surrounding the alleged commission of an offence, its impact on the victim, the attitude of the alleged offender in relation to the offence and any other relevant factor”.

Proper assessment is a complex process that can be very time-consuming, and this can create difficulties given the realities of court rolls. For this reason, in practice it is often necessary to distinguish several elements, such as pre-assessment, assessment of age, and a more comprehensive assessment of suitability for specific programmes. In light of the above proposal, the current shortage of social workers and probation officers in South Africa, and in the best interest of the child offenders we therefore support the Child Justice Alliance’s proposal that “other suitably qualified persons as prescribed” be considered for conducting initial assessments of child offenders prior to preliminary enquiry.

b) Child offenders suitable for Assessment

In section 35 of the Bill, a duty is placed on a probation officer to assess all children under 10, children who may be in need of care and children being considered for diversion directly by the prosecutor or by the preliminary enquiry due to the nature of the offence they have allegedly committed. However, children who are 14 years and older charged with crimes listed in Parts 1 of Schedule 3 and offences 2, 5 and 6 of Part 2 of Schedule 3 and who will be referred to the child justice court are excluded from assessment.

In our view this is not in the best interests of the child nor of society. While it is clear that diversion may not be appropriate in certain cases, there are other factors that need to be considered in the process of assessment. In view of the importance of these issues, it is our submission that all children must be assessed by a probation officer or “any other suitably qualified professionals”. No groups of children, based simply on the immediate nature of the offence or age, should be excluded from this. Section 35 should thus be amended to make provision for this.

c) Age factor in Assessment

We hereby wish to draw the attention of the Justice Portfolio committee to the danger of excluding certain child offenders from assessment based strictly on the chronological age of the child offender. Assessment of a child offender helps to pick up those children whose chronological age may not correspond with expected and normal appropriate psychological and cognitive human development. In other words a child may be 14 years in chronological age but may be functioning at a cognitive and psycho-social level of a 10 year old. It is these types of children who are often used by adults to commit crimes.

d) Assessment Procedures,

The whole notion of assessment must thus be viewed as a process, rather than as a single event. In our view, sections 39 and 40 do not fully reflect this perspective. Our proposal is that these sections be less prescriptive about who may attend assessment (39(3)), and that this matter be covered by the discretion already afforded to the probation officer in section 40(2). We endorse the changes proposed in the Child Justice Alliance submission on this matter.

2. Pre-sentence investigation reports

The purpose of pre-sentence investigations and reports is to provide the court with adequate information on the offender as a person, to enable it to pass an appropriate and effective sentence. A probation officer is a professional considered by the court of law as an ‘expert witness’. The key elements of expertise are skill, knowledge and experience. As pointed out by Graser,² pre-sentence investigations and report writing requires knowledge in theories and the objectives of punishment, knowledge on certain legislation such as the Criminal Procedures Act that guide sentencing particularly of convicted children, and a range of alternative sentencing options. Taking into account the shortage of probation officers in South Africa which often leads to unconstitutional delays in the sentencing of convicted child offenders, we therefore support the extension of pre-sentence investigations duties to “other suitable person” as prescribed.

Section 74 deals with all matters relating to pre-sentence reports. Section 74(2) sets one calendar month as the maximum time allowed for the provision of a report. While we accept the importance of completing such reports as urgently as possible, it is our contention that this formulation is inadequate. Our proposal is that 4 weeks should remain in respect of children who are in detention or secure care, and that 8 weeks be allowed in all other cases.

3. Register in respect of children diverted

Section 54 (5)(b) makes provision for a register to be kept in respect of all children diverted, as well as for access to this register by probation officers, police officials and court officials. In the light of our foregoing argument about the importance of assessment of all children, as well privacy considerations, it is our view that access to the register should be limited to probation officers only.

² Graser, R. (2006). Probation Practice in South Africa. (Chapter in a forthcoming book to be published in S.A.).