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## Child Justice Bill: deliberations

### Justice and Constitutional Development

[Meeting Report Information](#)

**Date of Meeting:** 19 Jun, 2008

**Chairperson:** Mr J Jeffery (ANC) and Mr Y Carrim (ANC)

[Child Justice Bill: working draft](#) <sup>[1]</sup>

**Audio recording of the meeting:**

[Child Justice Bill: deliberations](#) <sup>[2]</sup>

#### Summary:

The Committee considered the latest draft of the Bill, going through it clause by clause and noting the changes, as highlighted on the attached document. It was noted that the term “as a central feature of the process” had been included in the title of the Bill and it was suggested that the title and preamble should be linked and both should reflect the idea of diversion and restorative justice. The preamble had inserted a clause reflecting the dysfunctionality of society. The term “recidivism” had been replaced by the term “re-offending”.

Many of the changes to the Bill were stylistic or grammatical, or had corrected references. The wording of clause 3 was changed to reflect the wording of the international treaties. A point was raised as to what would happen to a child whose mental capacity was lower than the real age, but other commentators thought that this was sufficiently covered by the Criminal Procedure Act. There would be further and more detailed discussion around clause 10. In clause 12 it was requested that the drafters make it quite clear that police officials did not have prosecuting authority as currently stated in the Bill. It was noted, in respect of clause 24, that it was most unusual that no adult would attend the hearings, but that in any event it was the duty of the social worker to ensure that a child did not attend the hearings alone. In clause 51 it was noted that references to “ubuntu” values had been deleted as this was too vague. Concerns were noted as to whether diversion programmes were not too soft an option, but the National Prosecuting Authority said that there had been effective diversion programmes. Those Committee members present reiterated that the intention of the Bill was to ensure that no children under the age of 14 were sent to jail. More clarity was needed on the position of a child who, at the time of commission of an offence, was under 14 or 18, but who was only brought into the criminal justice system when over 18. The Chairperson would be redrafting clause 75.

#### Minutes:

##### **Child Justice Bill (the Bill): Deliberations**

The Committee proceeded through the Bill, clause by clause.

##### Long Title

Mr Lawrence Bassett, Chief Director: Legislation, Department of Justice noted that “*as a central feature of the process ...*” had been included in the title of the Bill.

##### Preamble

Mr S Swart (ACDP) said that the title and preamble of the Bill should be linked and reflect the core of the Bill.

Mr Bassett said that two new words had been inserted, namely “*and*” and “*their*”.

He added that a new clause that focussed on the dysfunctionality of society had been inserted.

“Recidivism” had also been replaced by “*re-offending*”.

Mr Swart said that one of the “victims” on page 3 had to be removed, as it did not sound logical.

The Committee agreed on this.

He added that the Bill should be clear on the fact that it did not aim to create new courts, but that existing courts would be utilised as Child Justice Courts.

#### Definitions

Ms Bronwyn Pithey, Deputy Director of Public Prosecutions: Western Cape, National Prosecuting Authority (NPA), asked whether a nurse was included under the term “medical practitioner”.

Mr J Jeffery (ANC) replied that a medical practitioner referred only to a doctor as mentioned in the Children’s Act, as he/she would be the only health professional that would be able to determine the age of a child.

Ms Pithey said that she was worried about the “treatment” function as signalled by the Bill.

Mr Jeffery replied that if a child were hurt in custody then any medical practitioner or health professional, including a nurse, would be able to treat such a child.

#### Clause 3

In relation to clause 3(h), Mr Jeffery said that the word “should” had to be kept, and “must” omitted. This was because international treaties on children rights used “should”.

Ms Pithey asked what would happen to a child that was 17 years old, but had the mental capacity of a 10 year old.

Mr Jeffery replied that it would boil down to rebuttal of the presumption as to the age of criminal capacity, as well as the Criminal Procedure Act.

He added that the point raised by Ms Pithey was valid one, as the Committee had not considered such an eventuality, but that the NCOP might address this concern.

Adv Shireen Said, Chief Director: Promotion of the rights of Vulnerable Groups, Department of Justice, noted that this was sufficiently covered in the Criminal Procedure Act.

Mr Bassett noted that in light of the importance of the issue raised by Ms Pithey it would be prudent to ask the South African Law Reform Commission for an opinion.

Ms Daksha Kassan, Senior Researcher, Community Law Centre, UWC, asked what would happen to an offender who was now an adult, but had been a child at the commission of the offence.

Adv Said replied that such an offender had to be treated in accordance with the directives of this Bill.

#### Clause 5

Mr Bassett pointed out that some stylistic changes had been made to clause 5(2)(3). The old subclause (b) became (c).

Ms Pithey said that either “below” or “under” had to be chosen as the Bill currently made reference to both.

The Committee agreed that “under” would be used.

#### Clause 7

Mr Bassett indicated that in Clause 7(2) new words had been added.

#### Clause 8

Mr Bassett pointed out that words had been changed.

Clause 9

Mr Bassett indicated that the word "*appropriate*" had been added in Clause 9(1)(b).

The number "50" had been deleted in clause 9(3)(a)(i).

Clause 10

Clause 10(1)(b) had been flagged for the next meeting.

Clause 10(1)(g) had been flagged with regard to the "appropriateness of diversion".

Clause 11

In Clause 11 (2) the section number had been corrected to 40, instead of 41.

Clause 12

Mr Bassett noted that in Clause 12 (b) "*or*" and "*after which*" had been included.

Ms Pithey said that the Bill had to make it clear that police officials did not have prosecuting authority as currently stated in the Bill.

Clause 13

The word "*made*" had been deleted from clause 13(2)(e).

A new sentence had been added to clause 13(4)

Clause 15

In Clause 15(b) the section number had been corrected to "16" instead of "15".

Clause 17

A technical addition was made to Clause 17(2).

Clause 18

In Clause 18(1) "*Act*" had been added.

In Clause 18(3)(b) "*must acknowledge*" had been added to the sentence.

In Clause 18(4)(a) (iv), "*and*" had been deleted.

Clause 19

Mr Bassett indicated that in Clause 19(1) the format had been changed to read "*date, time and place*"

In Clause 19(2)(a) "*thereof*" had been deleted and in Clause 19 (2)(b) "*a, or mark*" had been added to the sentence.

In Clause 19(3)(a)(iii) "*and*" had been deleted at the end of the subclause.

Clause 20

In Clause 20(3)(b) "*and*" had been deleted at the end of the subclause.

Clause 21

In Clause 21(2)(a) "*read with section 22*" had been added.

Clause 23

A new heading was formulated for Clause 23.

Clause 24

The word "*any*" had been added in clause 24(1) and the word "*for*" had been added to clause 24(7)(a)

In Clause 24(7)(c) "*and, iii and if necessary*" had been added.

A new clause, Clause 24(7)(e) had been added.

Ms Pithey asked what would happen to a child if there were no parent or an adult present at the hearing.

Mr Bassett replied that it was unusual to issue harsh penalties to parents who did not attend hearings and that normally an adult would show up.

Ms Jacqui Gallinetti, Senior Researcher, Community Law Centre, UWC, said that in most cases parents had attended, or could nominate another adult like an aunt or a grandmother to attend the proceedings in their place.

Mr Jeffery added that it was the duty of the social worker to ensure that the child did not attend the hearings alone.

Ms Pithey noted that it was also important for probation officers to check thoroughly for any vacancies in places of safety, as they did not normally do this.

#### Clause 25

In relation to Clause 25(1) and 25(2) stylistic changes had been made.

In relation to Clause 25 (3) (i) and (ii) the words "*the and presiding officers*" had been inserted.

#### Clause 26

In Clause 26(1) "*give preference to the lease restrictive option*" had been included.

In Clause 26(2)(a) "*alleged*" had been added.

In relation to Clause 26(3) "*order the detention of a child*" had been added and in Clauses 26(3)(a) and (b) "*29*" and "*30*" had been added, respectively.

#### Clause 28

In Clause 28(3) "*therein*" had been deleted.

#### Clause 30

Stylistic changes had been made, with Clause 30(5)(a) being reworded.

#### Clause 31

Stylistic Changes were made to this clause

#### Clause 32

In Clause 32 (e) the sentence was reformulated.

#### Clause 33

A new clause, Clause 33(2)(d) had been added.

#### Clause 34

In Clause 34(1) a new paragraph had been added.

In Clause 34(2) the correct reference had been inserted.

#### Clause 35

Stylistic changes were made to this clause.

#### Clause 36

A new clause, Clause 36(1)(b) had been added.

#### Clause 37

In Clause 37 "*is*" was deleted.

#### Clause 38

In Clause 38 (2) the wording had been changed.

#### Clause 40

Stylistic Changes had been made.

## Clause 41

The word *control* had been deleted.

## Clause 43

Stylistic changes had been made.

## Clause 44

This section was flagged by the Committee as requiring further discussion.

## Clause 45

In Clause 45 (2) the sentence was reformulated.

## Clause 46

In Clause 46(c) cross-references had been corrected.

## Clause 48

In Clause 48 new wording had been inserted.

## Clause 49

Stylistic changes had been made to this clause

## Clause 50

The heading of Clause 50 had been changed as well as new words added to Clause 50(i).

## Clause 51

In relation to clause 51(k) any reference made to "*ubuntu values*" had been deleted.

Mr Y Carrim (ANC) said that it was important for magistrates to have access to the records of the child as the child might have gone on previous diversion programmes. He said that it was important that the fundamental principles of the criminal justice system should not be abused.

Mr Jeffery replied that there had been no legal framework that governed restorative justice or diversion.

Ms Pithey said that diversion operated on the premise that the child would not get a criminal record if he/she underwent diversion.

Mr Carrim noted that the diversion "sanctions" had been very weak and that this had to be addressed.

Ms Pithey replied that children should not think of diversion as a nice idea, as it was not.

Ms Gallinetti noted that National Institute for Crime and Rehabilitation of Offenders (NICRO) had run successful diversion programmes for years that worked effectively.

## Clause 52

A new paragraph had been added to clause 52(1)(e) and other stylistic changes had also been made.

A new clause had also been added.

## Clause 53

Stylistic changes had been made.

## Clause 54

Stylistic changes had been made.

## Clause 55

In Clause 55(1)(f) the word '*such*' had been deleted.

In Clause 55(2)(h) new wording had been inserted.

## Clause 56

In Clause 56(2)(b)(i), deletions had been made.

Clause 56(2)(b)(ii) would be redrafted by Mr Carrim.

Clause 57

In Clause 57(3)(b) new wording had been added.

In Clause 57(5) a new paragraph had been added.

Clause 58

In Clause 58(3)(c) “ *or added*” had been deleted.

All other changes made had been stylistic.

Clause 59

A new paragraph was added.

Clause 60

In Clause 60(2) a new paragraph had been added.

Clause 61

In Clause 61(1)(a) “*thereof*” had been deleted, with other stylistic changes made to the rest of Clause 61.

Clause 63

In Clause 63(5) the word order had been reshuffled.

The former 63 (5) became 63(6) and some words had been deleted.

Mr Jeffery said that the intention of the Bill was to ensure that no children under the age of 14 years were sent to jail.

Mr Carrim understood the rationale behind the Bill, but said that more Committee members had to be consulted before the Bill was voted on, as there were political consequences.

He said that at the moment more clarity was needed on what would happen to someone that was now an adult, but had been a child at the time of an alleged offence.

Clause 69

In Clause 69(1)(e) and 69(3)(b) new paragraphs had been formulated.

Clause 70

Stylistic changes had been made.

Clause 71

In Clause 71(2) and (3) the words “*such*” and “*accurate*” had been deleted, respectively.

Clause 72

In Clause 72(2)(a) the word “*such*” had been deleted.

Clause 74

Stylistic changes had been made.

Clause 76

New words had been added to this clause, as highlighted.

Clause 76(3) had been changed.

Clause 77

In Clause 77(3) a new sentence had been added.

Other stylistic changes had been made to the rest of Clause 77.

Clause 85

In Clause 85(1) the word “*contemplated*” had been deleted.

Clause 87

In Clause 87(3) the sentence had been reformulated.

Clause 88

In Clause 88(3) a clause had been inserted.

Clause 89

Stylistic changes had been made.

Clause 90

Stylistic changes had been made.

Clause 92

In clause 92 a new word had been added.

Clause 94

It was noted that the old subsection 94(5) had been deleted.

Clause 96

In Clause 96(3) the word “*health*” had been added.

Clause 97

In relation to Clause 97(1) an insertion had been made.

The rest of Clause 97 had stylistic changes, with a new Clause 97(5)(a)(ix) being added.

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