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Child Justice Bill; Second Hand Goods Bill; Reform of Customary Law of Succession & Regulation of related Matters Bill

Security & Constitutional Affairs

[Meeting Report Information](#)

Date of Meeting: 04 Sep, 2008

Chairperson: Kgoshi L Mokoena (ANC, Limpopo)

Documents handed out:

[Child Justice Bill](#) [1]

[Second Hand Goods Bill](#) [2]

[Reform of Customary Law of Succession and Regulation of Related Matters Bill \[B10-2008\]](#) [3]

[Note on Customary Law of Succession Bill](#) [4]

[Briefing Note: Reform of Customary Law of Succession and Regulation of Related Matters Bill \[B10-2008\]](#) [5]

[Proposed amendments by SAPS to the Second-Hand Goods Bill](#) [6]

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Summary:

The Committee first accepted the Motion of Desirability for the Child Justice Bill, and then proceeded to go through the Bill, clause by clause. The Chairperson asked that a separate definition of “guardian” be included in this Bill. He also asked that the word “guardian” be inserted into the phrase “parent or appropriate adult” wherever it appeared in the Bill, although it was already included in the definition of “appropriate adult” for clearer reading. The Department was also asked to try to find a more suitable term for the “family group conferences”, as the term “conference” had a particular connotation in South Africa. Questions were raised under clause 3 in regard to availability of interpreters, and to clarify the reference to “cultural values”. A general question was asked in relation to children who might fall into the 10 to 14 age group when committing the offence, but be 17 at the time of trial, and it was explained that the time of commission of the offence would be the deciding factor, and that in addition there were systems to try to ensure that all cases involving children received priority. The review of the age of criminal capacity after five years was questioned in relation to clause 8 and clause 96(4). Under clause 9, the Chairperson said that he was not sure that the age of a child should determine that his name not be published, particularly in the case of very serious offences. Members also questioned what would happen if, under clause 13, a child were to deliberately hide his real age. The practicalities of clause 20 were discussed, particularly in relation to the police informing probation officers of the arrest of children, and the release of children where there was no parent or guardian under clause 21 was also discussed. Members noted that there was no specific reference being made to chiefs or ward councillors also being considered “appropriate adults”. Under clause 21 the term “released on own recognisances” was also questioned and the drafters agreed to check on this and revert.

Under clause 28 it was suggested that there be consideration of a special category of particularly vulnerable children, that could include gay and lesbian, or mentally or physically challenged children. Under clause 33 some Members were concerned that placements awaiting trial might not assist children in being rehabilitated and the issue would be raised for further discussion. In respect of clause 34, the implementation was called into question and it was stressed that the numbers of children in conflict with the law represented only a small percentage of the child population. The diversion options under clause 53 were discussed and clarified in depth. Under clause 70 questions were asked about the possibility of

a person who had been injured by a child instituting a claim for damages against the parents. The drafters were asked to consider clauses 80 again to deal with the liability and the possibility of dealing with independent advocates not belonging to a professional body. The Chairperson also wished to have the matter of a child giving independent instructions to be considered. The drafters were also asked to address the Committee again on expungement of criminal records, and how this would be done. The situation concerning child justice centres was explained. Clause 94(2)(d) would be amended to reflect the National Commissioner of Correctional Services.

During the afternoon session, the Committee was briefed by South African Police Services (SAPS) and the State Law Advisers on the proposed amendments to the Second-Hand Goods Bill. The drafters presented the amendments that they had made in line with the Committee's instructions. Members cautioned against over-legislating, and discussed at some length whether "books" should be included specifically in the Bill. The Second Hand Book Dealers Association noted that they were opposed to this as they feared that their members would find themselves unable to operate if they could not conform to the provisions of the Act, and pleaded for exemption. They would be satisfied if reference to second hand books were to be removed from the Schedule to the Bill. The legal advisers also raised the submissions of the Scrap Metal Dealers, and noted that their objections had been addressed through amendment of the phrase "temporary resident" to "work permit" in Clause 39. The wording had been aligned with the Private Security Regulations Act, and a person who was an unrehabilitated insolvent or foreigner could seek the condonation of the National Commissioner of Police from complying with all provisions of the Bill. The word "limit" in the Long Title of the Bill would be substituted to give a more correct meaning to the intention. The words "irrigation equipment" would be inserted after the word "harvesters" to address concerns raised by the agricultural sector. It was noted that a legal adviser from the Kwazulu Natal provincial legislature had proposed another subclause be added to clause 32, to deal with continuing contraventions. The Committee would finalise the Bill at a future meeting.

The Committee then received a further briefing from the Department of Justice, explaining the position in relation to succession, the differences between testate and intestate succession, and the position that this Bill sought to address. The Department explained that where a deceased had not made a will, where his family was formulated along customary law principles, the position both of the traditional customary law, as later enshrined in the Black Administration Act, was that primogeniture rules would be applied, where the eldest male descendant would inherit, failing whom there would be inheritance through the deceased's male family line, which led to many female spouses, girl children and younger sons being deprived of their inheritance. This had been ruled to be unconstitutional by the Constitutional Court, and the Bill aimed to change the position. It would apply to all those to whom customary law applied. Similar situations would apply in respect of Islamic intestate succession. Members asked the Department to consider and report back on the position of children brought into a marriage, and whether they stood to inherit from their step-parents, and would discuss the matter further at its next meeting.

Minutes:

Child Justice Bill

Dr F van Heerden (FF+) noted that all his questions had now either been answered in previous meetings, or that he had been able to find out the answers from studying the Criminal Procedure Act (CPA) further.

The Chairperson asked why "guardian" was not being separately defined in this Bill.

Mr Lawrence Bassett, Chief Director: Legislative Drafting, Department of Justice, said that it was defined in the Children's Act but that could be incorporated by reference into this Bill.

Ms Thandazile Skhosana, Senior State Law Adviser, Department of Justice, noted that a question had been asked on the words "family group conferences". This term had originated from New Zealand, based on Maori culture, and had been adopted in England, Wales, Canada, USA, Israel and Lesotho. The South African Law Reform Commission (SALRC) indicated that the term might not carry quite the same meaning in South Africa, but at the end the SALRC had preferred to retain the description "family group conference" as it was well known and understood. Other possible terms considered for use included "restorative justice conference", or "conferencing accountability", or "community accountability" or "victim / offender conference". The term "family group conference" had been used in the Children's Act.

Adv Shireen Said, Chief Director: Vulnerable Groups, Department of Justice, said that there did not

seem to be any concern with the principle, but the term was not Afro-centric. She thought that the term did not always appeal to every community because "conference" had different connotations in South Africa. It was an internationally used term. She asked for any other suggestions.

The Chairperson was not sure; he thought that some options could be suggested by the Department. He agreed it was simply a question of terminology.

Mr Z Ntuli (ANC, Kwazulu Natal) suggested the term "imbizo".

The Chairperson thought this might be stretching it too far. He suggested that perhaps some sort of mention of "integration" or "peace" could be used.

Ms F Nyanda (ANC, Mpumalanga) suggested removing the word "conference" and leaving the words "family group".

The Chairperson thought that this might not convey the idea of all groups coming together. He suggested that this be left for the moment and that members should brainstorm it later.

Motion of Desirability

The Chairperson noted that the Motion of Desirability should be passed. This Bill had some urgency as the Departments would have to put matters in place to prepare for implementation in 2010.

Members accepted the Motion of Desirability.

The Chairperson moved on to deal with the Bill clause by clause.

Clause 1

The Chairperson noted that apart from "family group conference" there was nothing further to be raised.

Clause 2

Nothing was raised by the Members.

Clause 3

The Chairperson noted, in relation to (d) that there were not sufficient interpreters, and he asked the Department of Justice (DOJ) if this had been properly addressed, including those languages not listed as the 11 official languages, particularly for French or sign language.

Adv Said responded that all "foreign languages" were catered for but there might be a slight delay in getting an interpreter. If there was an undue delay, the presiding officer had the ability to rule on the point. The DOJ had increased capacity for interpreters, both in main language groups, and dialects, particularly in preparation for 2010. There were some challenges but these would be addressed as they arose. As part of the training for Court personnel, there was also training on simplifying language to be appropriate for the age of the child.

The Chairperson asked for further clarification of (e), asking for an explanation of what was meant by "cultural values".

Adv Said noted that all value systems must be taken into account. This would include how the family lived in its culture; so for instance a child living in an urban area would not be asked to do something that was foreign to him yet might be appropriate for a rural area. It would also include not asking a child to do something that may conflict with his religious convictions. Some questions may not be commonly understood by all cultures or environments, so the same formula must not be applied to all children without taking into account their background. Although no special preferences would be given, special considerations would be paid to the differences.

Mr Z Ntuli (ANC, Kwazulu Natal) said by way of illustration that in the Zulu culture, a person could not come before elders with his cap on his head, although this would not be taken amiss in other cultures.

General comment

The Chairperson asked what would happen if a child was between 10 and 14 at the time of commission of the offence, but, due to delays, might be well over that age when the matter came to trial.

Mr Bassett said that Clause 11 dealt with children of between 10 and 14, where the State must prove if a

child had the necessary criminal capacity during the course of the trial.

Adv Said added that the time of commission of the offence was relevant. If a child committed a crime at age 14 but was only tried at age 17, he would be judged on the basis of a 14-year old. However, all matters would be processed without delay, so she was very concerned to hear of the Chairperson's example of a child who had been in the system for six years. Some instances did occur where there were delays, but if these became unreasonable, then the presiding officer must make a decision and the delays would be subject to review. If they were unreasonable, then they must be challenged. Children's matters were being processed as a priority, and case law management strategies were in place. The Intersectoral committee on Child Justice also dealt with this case-tracking.. Most would be finalised within the year, unless there were specific reasons. The Child Justice Alliance would also challenge the Department when it became aware of such matters.

Clause 4

Members did not raise any questions.

Clause 5

Mr Ntuli noted that the Departments of Justice and Social Development had assured the Committee that sufficient probation officers would be in place.

Clauses 6, 7

Members did not raise questions on these clauses

Clause 8

Mr N Mack (ANC, Western Cape) asked if the age of criminal capacity would be reviewed, as he felt that children were becoming increasingly advanced. In future he would foresee the need to drop the age of criminal capacity.

Adv Said noted that this clause must be read with Clause 96(4). The current situation was that children under 7 had no criminal capacity. This Bill was raising this minimum age of capacity to 10. Clause 96(4) (f) said that a recommendation must be made, based on an analysis of the other sub-clauses, whether that should remain at 10, or whether it be raised. As society evolved, so would children. Statistics must be collected of the ages of children when they committed offences. The Bill was very specific as to what information must be tabled to Cabinet and Parliament, in order for it to consider whether that minimum age of 10 must be raised. Over and above the five year report there was the National Policy Framework, with other matters being listed specifically. Five years was considered sufficient time for the Departments to gather statistics that would allow for a full assessment.

Clause 9

The Chairperson said that the law would not publish the name of a child committing an offence, regardless of that offence. He wanted to be convinced that this was correct. He pointed out that there were some children committing very serious offences.

Mr Bassett said that this had been in the law for numerous years, and was now entrenched in the CPA. It was intended to protect children. This was also done internationally. The Portfolio Committee had raised, in its report, section 154(3) of the CPA, which prohibited publication of an accused's name if he or she was under 18. In practice, once the child had turned 18, that information often did become public.

The Chairperson was not sure that the age alone would be sufficient reason for the protection. He suggested that perhaps the Departments should sometimes accompany the Committee, so that they could hear of the offences being committed. Many of these children were carrying firearms and would use them in the commission of offence.

Mr Ntuli pointed out that these children were members of a particularly vulnerable group. Many may be used by adults to commit crimes.

Adv Said agreed that children were a vulnerable category. When South Africa was ratifying the Convention on the Rights of the Child, and drafting Section 28 of the Constitution, it actually went quite far. The plight of the children who had been involved in the armed struggle, and the dysfunctional past were taken into consideration, and the drafters were particularly keen to ensure that all rights and responsibilities were taken into account. Section 28 said the best interests of the child were the paramount consideration. Furthermore, the general preamble of this Bill and the Objects of the Act referred to fostering a sense of dignity and worth in the child. Criminology studies had shown that if a

system treated children in a violent manner, they would do the same to others. The Objects clause also pointed to the need for special treatment of children designed to break the cycle of crime, and encouraging them to become law-abiding and productive adults. This Bill also recognised those children who had been criminalised. She added that although the particular members of the various Departments here today had not accompanied the Committee on any of its oversight visits, they would be happy to do so.

The Chairperson thought that if the guardian was to be defined, a new subclause (c) should be added to include 'guardian'.

Mr Bassett noted that the child must be handed over to a parent or appropriate adult. An "appropriate adult" was already defined as including a guardian.

Adv Said noted that guardianship was a legal process. When there was a formal legal process the parent or legal guardian would receive the child into his custody.

The Chairperson still felt that a guardian should be specifically included in this clause, as it must be reader-friendly.

Clause 10, 11, 12

Members raised no questions on these clauses.

Clause 13

The Chairperson asked what the situation would be if it was discovered that a child was deliberately hiding his or her real age.

Mr Bassett said that if it was thought that a child did not in fact qualify as a child under this Bill, then the proceedings would continue, but the CPA would be applied.

The Chairperson asked what could happen if this was only discovered after the matter was concluded, and perhaps was sent to a child care centre.

Adv Said noted that the matter could be reviewed. It might even be possible to have the matter re-tried, depending on the gravity of the matter. The presiding officer would determine how grave the matter was, or certain other remedies could be suggested. She noted that clause 16(2) and (3) would cater for the situation where there had been prejudice. The presiding officer would have to transmit the evidence to the Registrar. Subsection (3) referred to prejudice to "any person". The matter might also be considered as defeating the ends of justice, or contempt of court.

The Chairperson noted that a number of people could determine the age of the child.

Mr Bassett said the probation officer could only make an age estimation. That would then be taken to Court, in the Assessment report. The inquiry magistrate (at a preliminary inquiry) or the presiding officer (at a Children's Court) would use that information to do a determination on age. That was a more binding decision. Clause 15 would also deal with determination, but not at a child justice court or preliminary inquiry.

Clause 14, 15, 16

Members raised no queries.

Clause 18

The Chairperson said that, while he was not wanting to levy criticism at everyone, it was true that some police officers' conduct when dealing with children left much to be desired. He asked if the requirements of subclause (4) were being complied with.

Ms Susan Pienaar, Head: Crime Prevention, SAPS, said that most of this was being done, and the training would be tightened up. Disciplinary measures would also be included in the orders and instructions to deal with any police officers who did not act correctly.

Mr A Manyosi (ANC, Eastern Cape) noted that once again there was reference to a parent or appropriate adult. If the same principles were to be applied, then "guardian" should appear here as well.

Mr Bassett confirmed that it would be possible to word-search the document and change this phrase

wherever it appeared.

Clause 19

Members did not raise any queries.

Clause 20

Mr Mack noted that he would not raise any further queries on this clause. He was not totally happy but some of his concerns had been answered and he thought that attention must be paid to the practical implementation, particularly in the smaller areas, so that other methods were found to ensure the safety of those children.

Ms Nyanda raised a query on clause 20(3). She said that a period of 24 hours had been mentioned. A probation officer might not be aware of the fact that a child was arrested, particularly if the arrest happened late in the evening.

Ms Pienaar responded that if the probation officer could not be informed within 24 hours, then the magistrate must get a written report as to why that was not done. In practice, if a child was arrested in the middle of the night, the probation officer would be advised early the next morning. The parent and probation officer must be informed within 24 hours, and if not, then the Magistrate must be informed in writing, and in the rare cases where no magistrate could be found, then the State would then have to make a ruling on the responsibility.

Adv Said noted that the report on non-compliance must be submitted at the preliminary inquiry. Sometimes probation officers would complain that they could only respond when they were notified of the arrest. To prevent each department blaming each other, sub-clause (4)(b) was created, so that where problems were being identified, there could be intervention at a system level. Each department must be accountable. The prescribed form would contain the name of the official and other details, so that it could be followed through. Depending upon what was happening in the police station, the reasons may or may not be accepted as reasonable.

Clause 21

The Chairperson asked what would happen in the case of a child who deserved to be released, but where no appropriate adult, parent or guardian could be found. Although there were secure care centres, they were not in every area.

Mr Bassett said that this clause really only covered the first 48 hours after the arrest. The police official would either put the child into a child and youth care centre or even in a police cell, but this would be limited to the first 48 hours. After the child went to court, the Court would make a determination. The Bill would encourage the child to be detained in a child and youth care centre wherever possible, with the police cell being a last resort.

Ms Corlia Kok, Deputy Director: Child Justice and Child Law, DOJ, said that there was also provision in clause 66(6) to cater for cases where a child was not assisted by a parent or appropriate adult. An independent observer could be appointed in a prescribed manner to assist the Court. Those adults would be likely to be drawn from civil society partners and local communities.

Mr Bassett added that in terms of clause 21 a prosecutor could also authorise the release of the child on bail for schedule 1 or 2 offences, so that was a further option.

The Chairperson asked where that child could land up

Mr Mthetho Mgonci, Social Work Manager, Department of Social Development responded that if there were no civil society partners, then the case must be converted to a Children's Court inquiry, and that would determine whether the child would need to go to foster parents.

Mr Bassett reiterated that this clause was really only dealing with the first 46 hours

Mr Manyosi asked why the child was not put in the custody of the chief of the area.

The Chairperson said that in traditional communities, orphans would often be placed in the homes of the traditional leaders, yet they were not named in the Bill.

Ms Nyanda asked what would happen if there were no foster care parents.

Mr Mgonci said that the "appropriate adult" could cover a wide range of people. The primary consideration was whether those people could look after the child – and so it could include a Kgosi in a rural area or a ward councillor.

Adv Said reminded the Committee that every child must be treated in a manner that took into account particular values and systems. The appropriate adult did not refer to categories of people in terms. The concept of restorative justice came from traditional practices, so although Kgosi was not included, the principles would certainly be included. She added that the types of appropriate adults could be included in the training, so that presiding officers would be sensitised to who was likely to be the most appropriate person.

Mr Mgonci referred to the practical example of street children who could be placed in a haven for street children. Thereafter they could be placed under the care of an appropriate adult.

Mr Steven Maselesela, Director: Department of Social Development, said that in terms of the Children's Act there was a list of safe places. The police station might be the last resort.

The Chairperson said that if it could be categorised that Kgosi could play a role, that would be appreciated.

Dr van Heerden asked what was being meant by "own recognisances" and whether this should not be "responsibilities".

Mr Bassett responded that it was a legal term used in certain circumstances, but perhaps the use of the word "responsibility" might be more appropriate. He would look at that and revert to the Committee.

Mr S Dzingwa, Language Practitioner, Dual Drafts, Office of the Chief State Law Adviser, said that the usual word was "cognisance" and he thought that this was used in the CPA.

It was agreed that the drafters would check on the issue.

Clause 22, 23, 24, 25, 26, 27
Members raised no queries on these clauses.

Clause 28
The chairperson asked how safe the children were in the custody of SAPS.

Ms Pienaar said that current standing orders made provision for everything and added that there would be provision for sanctions. SAPS was already busy with the electronic attention management systems, that were part of the integrated justice system technology improvement, and there were early warning systems. If a child was detained there would be provision to look into their position at an early stage and act if something went wrong.

Mr Mack said that he had thought about this issue again. He suggested that perhaps something else could be included in the clauses to accommodate gay and lesbian children, particularly since a gay boy child could be at risk if put into a cell with other boys.

Adv Said suggested that perhaps there could be a special category not just for these children, but for all those who could be identified as having "special vulnerability", including those with mental or physical disabilities. Not everything could be captured in the legislation, but it could perhaps be included in the regulations or the directives.

The Chairperson asked that a new formulation be drawn.

The Chairperson did not like the formulation "any person" in relation to those who could visit prisons.

Mr Bassett said that the law would take care of this by ensuring that only certain people who were entitled to be in the prison would attend - such as the Inspecting Judge of Prisons, the Gender Commission, or the Human Rights Commission.

Adv Said added that groups doing spot checks were authorised to go into police cells or correctional facilities. Until now, the Inspecting Judge was only qualified to enter prisons, but this had been changed

so that they could now visit police cells.

Mr Herman Smuts, Principal State Law Adviser, Office of the Chief State Law Adviser, noted that this clause would be interpreted for the protection of the child. Anyone entitled to legally visit that child could lay a claim.

Mr Mgonci said that Assistant Probation Officers were doing spot checks in police cells but they were not included here. He thought that they should be included.

Clauses 29, 30

Mr Maselesele said that there was provision being made for all nine provinces.

Clauses 31, 32

Members did not raise any points on these clauses.

Clause 33

Ms Nyanda asked what could be done about the risks of a child absconding from a child and youth care centre.

Mr Bassett said that this clause was concerned not with a child absconding, but was rather listing the factors to be taken into account when considering whether to place a child in a prison.

Adv Said noted that where children did abscond, this was usually as a result of an incorrect placement. A place of safety should be used for children in need of care, who had nothing to do with the criminal justice system, so it would not necessarily need to be secure. A child who, for instance, was charged with rape, would not be put in such a centre but should be placed where he could be guarded against themselves and other children. She suggested that the Committee should visit some of those secure care facilities, as also the one-stop centres, as this would give the Committee some assurance as to what was being taken into account. Clause 92 was drafted as a result of Committee members having seen what was in the one-stop centres, and coming up with the necessary provision.

Mr Mack said that he did not find the clauses dealing with placement to be entirely consistent with the restorative justice aims. Nowhere was it said that the sentence must be aligned to rehabilitation, in order to get the child out and back into the community. He noted that at the previous meeting it was noted that most facilities were in the Western Cape, and very few in other provinces. If a child from Mpumalanga was placed in the Western Cape he could not engage continuously with his family. The question was whether too much emphasis was being placed on safety and security and too little on rehabilitation.

Mr Mgonci pointed out that this clause referred to children awaiting trial, and the rehabilitation was a longer term process applying to sentenced children. The Department of Social Development (DSD) did not think that the children should be removed from their parents, and that was why it was concentrating on building more facilities. Awaiting trial children would be placed closer to their families.

The Chairperson suggested that Members should think about this and raise the points again for discussion at a later meeting.

Clause 34

The Chairperson pointed out that there had been complaints that there were so few probation officers. He asked again if clause 34 was practically implementable. He had heard the undertaking that the assessments would take place in time, but he still wondered if this could be done.

Mr Maselesele said that the DSD was increasing the number of probation officers, and they were clustered. The DSD had already planned for another 484 probation officers, and 772 Assistant Probation Officers to carry out the mandate given to DSD under this Bill, once passed.

Adv Said noted that the number of children entering into the criminal justice system was about 1% of the entire child population. Very few of those currently were in the 7 to 10 age range. The numbers tended to increase around the age of 14, with most falling into the 16 to 18 year category. Therefore there were not many that would need to be assessed. The children in need of care would go through a different process. It was unfortunate that for many children who were in need of care, their first point of entry for services came about when they were arrested. However, within 48 hours those children would then be referred elsewhere. Only about 50% of those arrested would end up going through the criminal justice system, and the numbers who went to trial were considerably less again. The Bill did contain a provision

to require information to be captured as to what was happening to children who were arrested but not finally detained.

Clause 35, 36, 37

Members agreed to these clauses

Clause 38

The Chairperson noted that the word "guardian" would be added.

Clause 39

The Chairperson raised again that probation officers would be entitled to enter houses to assess whether quality time was being spend with the families. No other Members indicated that they had a problem with this clause.

Clause 40

Members raised no questions on this clause

Clauses 41, 42, 43, 44

Members raised no questions, but the Chairperson noted that the word "guardian" must again be added into clause 44

Clauses 45, 46,47,48, 49, 50, 51, 52

Members did not raise any queries.

Clause 53

The Chairperson asked about clause 53(3) and wished to take issue with some of the orders that could be given as diversion options.

He asked how the orders that a child report to someone would be dealt with.

Mr Mgonci said that in correctional supervision, an individual would have to report to an individual at certain times. This was similar; a child would have to report as determined by the family.

The Chairperson said that this might be an 11-year old, and he doubted whether such a child would be willing to report.

Mr Mgonci said that a child who had committed an offence often did so because he had not been staying at home enough. Home-based supervision would require a child to be supervised by the family, but would also say that a child had to report to a probation officer at certain times and so forth.

The Chairperson noted that there was already a shortage of probation officers. He hoped that this situation would be manageable.

Adv Said responded that the probation officer, in making the recommendation, would determine if the child could come and report or if the probation officers were equipped to monitor the child. At the moment there were "unregulated" diversion services in place, in the sense that they were not written into the legislation. The DSD had policies and were implementing them, and a number of diversion programmes could have existed in the past. The Bill, recognising this, was trying to create some uniformity. The diversion options must be seen as options only, to be determined against the background of the nature of the offence, the family and the services that could be offered in remote provinces. For instance, a probation officer from Upington would not be asked to monitor a child living in Kimberley. The monitoring would only be ordered where it was suitable. Clause 56 said that the appropriate policy framework must be made, and it would itemise what was appropriate or not. Where it found that an order was not suitable, then the DOJ would intervene to ask why that was being ordered.

Clauses 54, 55, 56,

Members did not question these clauses.

Clause 57

The Chairperson asked what would happen if a probation officer did not do his job.

Mr Bassett said that this was covered in clause 57(3). This must be brought to the attention of the appropriate authority (the State, if the officer was a public official, or the Director General of Social

Development, where the person was an independent officer)

Clause 58

Mr Mack raised a query about clause 58(3), asking what would happen if the failure to comply was not that of the child, but of the family, and if it was deliberately done. He asked if criminal steps could be taken against the adults.

Mr Bassett said that the Bill did not answer that, but the parent or adult could be charged for contempt of court. There was no need to regulate this in the Bill.

Clauses 59, 60, 61

Members raised no queries, except to remind the Departments that they must still come up with an alternative for the