



SUBMISSION ON THE CHILD JUSTICE BILL

TO: THE PORTFOLIO COMMITTEE ON JUSTICE AND CONSTITUTIONAL DEVELOPMENT

BY: The CSIR CRIME PREVENTION RESEARCH GROUP

AUTHOR: BARBARA HOLTSMANN

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1. Introduction:

The CSIR Crime Prevention Research Group (CPRG) is a member of and part of the Driver Group of the Child Justice Alliance and supports the submission of the CJB to this committee.

We commend government for bringing this Bill back to Parliament as it is an essential tool in enabling the rights of children in conflict with the law and therefore had the potential to contribute significantly to a safer South Africa for all.

We will try not to duplicate what is contained in that submission, save to emphasise:

- 1.1 The need for the Bill to be underpinned by four guiding principles:
 - 1.1.1 All children will be assessed
 - 1.1.2 All children can be diverted
 - 1.1.3 All children will have a preliminary enquiry
 - 1.1.4 No child can be subject to minimum sentencing

- 1.2 The need for the Bill to return wherever possible to the simplicity of previous drafts, as in its current form it is felt to be overly complicated and thus difficult to implement.

2. The substance of this submission focuses on three aspects:

2.1 Crime Prevention; an essential principle of the CJB

Criminal justice cannot properly be examined in isolation from crime prevention strategies and models. Confusion about what is crime combating and what is crime prevention is common in SA, not least because responsibility for all matters regarding crime is often placed at the door of the Criminal Justice System and even more specifically at the door of the police. It is important therefore to be explicit about crime prevention as distinct from crime combating, to ensure that crime prevention objectives are met wherever possible in criminal justice policies and strategies.

According to (Lab, 2004:23) *"...crime prevention entails any action designed to reduce the actual level of crime and/or the perceived fear of crime"*. Further to this *"these actions are not restricted to the efforts of the criminal justice system and include activities by individuals or groups, both public and private. Although definitions for crime prevention differ, most definitions integrate the idea of lessening actual crime levels whilst preventing further increase in crime"* (Council for Scientific and Industrial Research, 2004a:7).

Over the past 10 years, South Africa has recorded on average an approximate 2 million serious crimes per annum. Given on the one hand the assumption that over this period many victims have suffered repeat victimisation and on the other the assumption that this statistic represents significant under-recording, it is safe to suggest that at least 1 out of every 5 South Africans, but probably closer to half of all South Africans have directly experienced serious crime over this period.

The impact on our society of the sustained and widespread criminality that we have experienced, should neither be ignored nor under-estimated as a factor in developing, promulgating and implementing criminal justice policies. Typical responses to victimisation are a sense of loss, anger, sadness, anxiety, depression

the need for revenge, an inability to look forward with optimism or to commit to long term plans and of course, increased levels of fear. These responses, while legitimate are not conducive to making or supporting policy that promotes restorative rather than purely punitive justice. The effects are seen rather in an increased demand for more punitive justice approaches, harsher sentencing and even the death penalty. Restorative justice is sometimes mistaken for a “soft” response to crime – it is vital that it is properly understood and valued as a tool that promotes accountability and consequence for the offender at the same time as creating the space for a positive future.

Crime prevention is not explicitly recognised as being an objective or outcome of the Child Justice Bill, in either the preamble or the body of the Bill and this is seen as an omission. While the focus is on the role of the Child Justice in terms of entrenching

- “...democratic values, social and economic justice, equality and fundamental human rights and to improve the quality of life of all its peoples and to free the potential of all persons by every means possible; ...”

and

- “...emphasises the best interests of children, and singles them out for special protection, affording children in trouble with the law specific safeguards.....”

and in so doing aims to establish a special criminal justice system for children in conflict with the law, the Bill is not framed in the context of contributing to a safer South Africa through crime prevention. We argue that this is a missed opportunity.

We submit that there should be an additional paragraph that articulates:

- “...promotes a safe South Africa for all, by intervening to break the cycle of crime and violence, preventing further criminal activity and victimisation through mechanisms that simultaneously reduce the pressure on the Criminal Justice System”

2.1.2 Breaking the cycle of violence

“Sometimes as I listen to people talk about violent youth, I doubt that they really want to understand the dangers that our boys face and to make sense of how their violent acts flow from their experiences in our society. Sometimes it seems that few people really care about hurt little boys who

have grown up to be violent teenagers, except as potential threats to the community' (Garbarino 1999:20).

It is recognised that in many cases the victim and the offender are the same person at a different point in a lifecycle. While all victims and bystanders to violence will not go on to offend, research reveals that the overwhelming majority of violent offenders first experience violence as victims or witnesses of violence. (Friedman 1998: 25; Fraser-Moleketi 1998: 7; Nel 1999: 11).

The concept of our society as trapped in a cycle of violence is widely acknowledged. There are two distinct cycles of violence: the first is an immediate cycle where the victim commits a violent offence in response to being the victim of violence. The second is a longer-term cycle that involves more than one generation in violence, where children who are exposed to violence grow up to perpetuate violence.

In intervening for the whole child and not just in response to the behaviour of the child in conflict with the law, the CJB provides an opportunity to address the problem rather than to problematise the child. In so doing it breaks the cycle of crime and violence and initiates a new and more constructive cycle.

2.1.3 Increasing faith in the Criminal Justice System (CJS)

Approaches to the reduction of crime and victimisation tend to fall within three broad focus areas. These are typically:

- The reduction of criminal events,
- The reduction of the number of criminal offenders, and
- The reduction of vulnerability of potential victims of crimes.

The Child Justice Bill promotes the concept of Restorative Justice¹ in which young offenders are offered the opportunity to take responsibility for the offence, take steps to rectify their anti-social and criminal behaviour and where possible and appropriate, make amends to the victim of the crime.

¹ “Restorative justice is a healing process for both victim and offender that allows offenders to make amends for what they have done and to rejoin the law-abiding community, thereby preventing re-offending. The process relies more on reconciliation than punishment, with the underlying theory based on the idea that a well-functioning society is grounded in rights and responsibilities” (Restorative Justice, n.d.)

Incarceration and punishment of offenders is however a key resource in the reduction of active criminal offences and the Child Justice Bill makes provision for proper and timeous investigation, arrest, prosecution and conviction of offenders where necessary. The CJS is overloaded and under capacitated and often contributes to victimisation, treating victims of crime in an insensitive and often harmful way. It also results in a lowering of public expectations, with a consequent lessening of the level of cooperation between communities and the CJS. The CJB, in diverting children in conflict with the law away from the CJS at the earliest possible point of intervention, reduces the pressure on the CJS to deal with such cases and provides an opportunity for effective alternative delivery mechanisms.

2.1.4 Diversion: reducing the likelihood of a “life of crime and violence”

Incarcerating children is undesirable for a range of reasons, many outlined in other submissions on this Bill. This submission deals with the reasons related to crime prevention. While imprisonment is often quoted as a deterrent to future criminal behaviour, it comes with risks that far outweigh any positive impact. Overcrowding and lack of resources in prisons lead to victimisation of offenders while incarcerated in correctional facilities and present a massive obstacle to reintegration programmes. The incidence of male rape, of gang activity, bullying and corrupt practices in prisons is believed to be high (Dissel, 2001:5) and too little is done to reduce victimisation and entrench human rights in the prison environment. Such violations are believed to contribute to increased criminality, where time spent in prison is often referred to as time spent in a “university of crime” (Dissel, 2001:5).

Keeping children out of incarceration should always be regarded as the solution of choice if we are to discourage future criminal activity through alternative positive intervention.

2.2 Training and evaluation of service provision

While we gratefully acknowledge that there are pockets of good performance where children in conflict with the law are already handled according to the principles of this Bill, for most managers and service providers, it will require a significant mind shift and training. We submit that a political head within the cluster be tasked with the

responsibility to ensure that all managers and services providers are enabled to fully implement all aspects of the Bill. All service providers should understand the role of the CJB in preventing crime and in making South Africa a safer place for all. There should also be the expeditious development of training materials and delivery of training, as well as monitoring and evaluation of such training.

2.3 Evaluating the contribution of the CJB to a safer South Africa

It is also vital that where policies or strategies have the potential to prevent or reduce crime, indicators for this contribution should be identified and progress should be measured. We do not advocate that these indicators be restricted to a drop in recorded crimes, since crime statistics are typically not accurate and it is unlikely that a policy of this nature will quickly show significant differences in recorded figures. Indicators should relate to both quantitative and qualitative data and should be developed in consultation with communities and the full range of service providers, so that results are commonly understood and valued. Evaluation reports should be presented to Parliament on at least an annual basis.

3. Conclusion:

Criminal justice strategies will not alone address the problem of crime and violence but it is vital that all criminal justice policies and strategies be scrutinised through and presented within a crime prevention or crime reduction lens, as these objectives are compelling and urgent and every opportunity to achieve them should be seized. Crime prevention opportunities should be highlighted, particularly where restorative justice approaches are promoted, to encourage essential support for policies that will contribute to increased safety for all South Africans in the future.

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