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From the Editor

At long last the Child Justice Bill seems set to enter the Parliamentary domain in 2002, Cabinet having received the Bill in November. Amidst this development, we are delighted to be able to bring news of a number of new projects, initiatives and practice developments which are already taking place to further the process of implementation. In this edition of ARTICLE 40, we feature research on the pilot projects involving assistant probation officers, which concludes that such persons can play a valuable role in furthering assessment, diversion and reintegration of children. Again, we profile a community-based initiative to launch child justice services in Kwakwatsi in the Free State, and showcase various new publications which can be of assistance to professionals in the child justice field. Miche Sepeng, Rashi Moonilal and ex- deputy Director Mampsie Mothobi of the North West Provincial Department of Social Services have taken the lead in organising an extensive intersectoral training programme for all regions in the province aimed at improving service delivery in the child justice sphere, which will be completed by March 2002. Finally we report briefly on the launch of a new diversion programme being conducted in Khayalitsha, Cape Town. DIME (Diversion Into Music Education) equips children with the skills to perform as marimba players, and is being twinned with a similar project with African-American children in a detention facility in Tampa, Florida. A full evaluation is the efficacy of the programme will be conducted in 2002. The Editors ask all readers to let us know of exciting innovations in child justice in their own regions, so that information can be shared and best practices profiled.

Assistant Probation Officers - a desperate and definite need

By Daksha Kassan

Introduction and Purpose of Study

The long awaited amendment to the Probation Services Act (116 0f 1991) which makes provision for "assistant probation officers" has still, to date, not been passed. However, many of you working within Probation Services might be aware that Assistant Probation Officers have been appointed as pilot projects in Provinces. The first group was appointed in the Western Cape in September 1998.

A recent study embarked upon by the Community Law Centre specifically looked at the role and functions performed by the Assistant Probation Officers. The study sought to establish whether the purpose for which assistant probation officers were appointed was being met. Two provinces, namely Mpumalanga and the

Western Cape, were targeted for purposes of the study. The Western Cape was the first province that had appointed assistant probation officers and was also chosen for its urban setting. On the other hand, Mpumalanga was the province that had the most assistant probation officers - a total of 21 who were appointed for a period of 9 months (their contracts having terminated on 31 August 2001). This province was also chosen for its widespread rural setting.

The research methodology consisted of semi-structured interviews with assistant probation officers, their supervisors and probation officers. In total, 33 interviews were conducted wherein views, opinions and comments were sought.

This article will briefly look at the reasons why assistant probation officers were deemed necessary, the tasks they performed and the views of probation officers and their supervisors towards this new category of employees.

Why were Assistant Probation Officers Appointed?

Assistant probation officers were basically appointed to assist probation officers carry out the probation services and functions as provided for in the Probation Services Act 116 of 1991. Due to a huge workload and also as a result of the lack of capacity, probation officers were not able to render supervision services to probationers nor were they able to deliver crime prevention and awareness programmes to the communities and public at large. A countrywide advisory group comprising of members from the Department of Social Development and other key role-players saw the need to appoint assistant probation officers. Their main focus was to render probation services to children who came into conflict with the law. The formal qualifications held by those who were appointed as assistant probation officers ranged from senior certificates to diplomas in teaching, human resource management, information technology, marketing and tourism. Within a month of their appointments, they attended formal and informal training, which included Developmental Assessment Training, Criminal Justice Legislation and Legislation Relating to Children, Understanding the Criminal Justice System and Government Structure, Interviewing Skills and Diversion. The training received was indeed beneficial to the new appointees and sufficiently equipped them to carry out their tasks.

What are the tasks performed by the assistant probation officers daily?

The study revealed that the tasks performed by the assistant probation officers generally include the following:

- monitoring and supervision of children serving sentences of community service,
- running crime prevention and awareness programmes at schools and within the communities,
- tracing family members,
- visiting homes to establish the family circumstances and to gather information required by the probation officers for pre-sentence reports.

In the Western Cape, assistant probation officers also have the duty to supervise those youth who are placed under house arrest while awaiting trial. In Mpumalanga, the assistant probation officers had the responsibility of visiting police cells on a regular basis to establish whether any youth had been arrested and also to perform the basic assessment within 48 hours after the arrest of the child. Further, they ran diversion programmes with groups and had facilitated

victim-offender mediation meetings where minor crimes such as theft, had been committed. Any recommendations made by the assistant probation officer regarding the placement of the child while awaiting trial were discussed with the probation officer or supervisor. These added responsibilities for assistant probation officers in Mpumalanga may be attributed to the fact that probation officers in Mpumalanga also have the responsibility of performing generic social work and do not only perform probation services. In the Western Cape, probation officers only carry out duties related to probation services and these include visiting police cells, performing the assessments of children who are arrested and making recommendations to court regarding the placement of a child or possible diversion option.

View of Supervisors and Probation Officers

The feedback received from both supervisors and probation officers regarding the appointment of assistant probation officers and their quality of work was very positive. Probation officers were better able to manage their workload and could concentrate on their other duties relating to probation services. In the Western Cape, probation officers now had the time to visit police cells and perform assessments on arrested children within 48 hours and to also prepare pre-sentence reports. In Mpumalanga, probation officers were always kept informed of children who were arrested or in custody due to the regular visits to police cells by the assistant probation officers. The communities and schools were also informed of the probation services offered within their area and children were informed of issues relating to drugs, alcohol and crime.

Conclusion

In conclusion, the preliminary research findings indicate that there is a definite need for the further appointment of assistant probation officers to assist in the delivery of probation services, and also to meet the obligations placed on various role-players, especially the Department of Social Development, in terms of the Child Justice Bill. As one of the supervisors stated, "with the appointment of assistant probation officers, probation services was given new meaning and was made visible within the communities".

The general feeling was that assistant probation officers should be re-appointed in Mpumalanga and more assistant probation officers should be appointed in the various offices within the Western Cape where the need for such services is greater. The Department of Social Services can surely look forward to assistant probation officers becoming permanent staff members in view of the obligations placed on the Department in the Child Justice Bill. The further appointments of assistant probation officers will also be more cost effective and will certainly enhance the capacity to deliver probation services to both the urban and rural communities.

A copy of the full research report will be available by 31 January 2002. The researcher can be contacted at:

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Sentencing Children Convicted of Serious Crimes

Dirk van Zyl Smit
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Cases of children who commit horrific crimes pose some of the most difficult sentencing challenges to the judiciary. *S v Nkosi (Case A727/00 Unreported WLD)* was such a case. The sentence was the only matter in dispute at the initial trial, as Nkosi, who was 16 years old at the time of the commission of the offences, had pleaded guilty to murder and two counts of housebreaking. The murder, committed by Nkosi together with a 21-year-old accomplice, was of a defenceless and "slightly mentally retarded" woman. The housebreaking could have been committed without killing her. Nkosi himself took an active part in stabbing to death the woman at a stage when she was already wounded and lying on her stomach. At the time of committing these offences Nkosi had no recorded previous convictions but was subsequently found to have committed a housebreaking only three days earlier. His conviction for this housebreaking took place only after the commission of the murder and the two related offences, so Nkosi was technically treated as a first offender.

When Nkosi was first sentenced, his guilty plea, lack of previous convictions and youth did not assist him. The court ruled that the murder he had committed fell into a category for which the Criminal Law Amendment Act, 105 of 1997, prescribed a life sentence unless there were "substantial and compelling circumstances" justifying a lesser sentence. The court did not find such circumstances and imposed the life sentence that in its judgment was mandatory. It was this sentence that was taken on appeal to a Full Bench of the Witwatersrand Division of the High Court.

For the appellant to succeed on appeal he had to persuade the Full Bench that it was not bound to impose the prescribed sentence. The primary ground on which he did so was to argue that a close reading of the provisions of s 51 of the 1997 Criminal Law Amendment Act meant that courts were not compelled to pass sentences on offenders between the age of 16 and 18 years in the absence of "substantial and compelling circumstances". The only reference in s 51 relating directly to children between the age of 16 to 18 years is s 51(3)(b). It is cryptic in the extreme, providing only that if a court "decides" to impose a punishment in terms of the section on such children, "it shall enter the reason for its decision on the record of the proceedings". Fortunately for Nkosi, there is by now an impressive body of precedent for the proposition that the history of the subsection, as well as constitutional and international obligations to consider the best interests of the child and to imprison children only as a last resort, support an interpretation that a sentencing court is not obliged to impose mandatory sentences in the same way as it would for adults (see *S v Mofokeng 1999 (1) SACR 502 (W)* and the unreported decisions in *S v Daniels and S v Blaauw*, discussed in (June 2001) 3(2) Article 40 1-2). In its judgment in the appeal in Nkosi's case the Full Bench followed this line of reasoning and precedent and ruled that the sentencing court had wrongly held itself bound to impose the mandatory sentence.

With this ruling the Full Bench found itself at large to impose a sentence that the sentencing court could have handed down. What was it to be? On the basis of the offence that Nkosi had committed a life sentence was a serious possibility as a proportionate punishment. Yet the crime is not the only factor to be considered in the search for a proportionate sentence. The Court ruled that the same general

constitutional and international law elements that had encouraged the liberal interpretation of s 51(3)(b) applied at the stage when the Court had to exercise its discretion on an appropriate sentence. A proper understanding of the nature of childhood required that particular attention be paid to whether the culpability of a child might be less than that of an adult who had committed the same offence. The enquiry went further. In the case of a child offender the best interests of the child required that the sentence be one which would allow for rehabilitation.

All of this was not enough, in the view of the Full Bench, to exclude completely consideration of a sentence of life imprisonment. It ruled, however, that the special status of children required that life imprisonment for children be considered only in exceptional cases where the child offender is a danger to society and there is no prospect of the child's rehabilitation. It found that in this case there were no such exceptional circumstances and imposed a sentence of 18 years for the murder, with which sentences for the lesser crimes of housebreaking would run concurrently.

No fault can be found either with the outcome or with the overall conclusion of the Full Bench, that life imprisonment is a competent sentence for children in current South African law, but that it should only be imposed in exceptional circumstances. At the level of positive law, this conclusion is supported not only by the common law but also by recent legislation, for s 51(3)(b) of the Criminal Law Amendment Act certainly contemplates that life sentences, that would otherwise be mandatory, may be imposed on children who are at least 16 years old. More attention should, however, be paid to how children who are sentenced to long terms of imprisonment, including life sentences, are considered for release, as this will cast a somewhat different light on long sentences for serious offences for children.

Although the Constitutional Court has not yet given a definitive judgment on life imprisonment, we may assume that life imprisonment will be found to be constitutional as the ultimate penalty for very serious crime in South Africa. However, it is equally likely that it will only be constitutional if it is applied in a way that allows offenders a reasonable prospect of release, if they rehabilitate themselves. This is the essence of the judgment of Chief Justice Mahomed delivered in his capacity as Chief Justice of Namibia in the case of S v Tcoeib 1996 (1) SACR 390 and enthusiastically endorsed in S v De Kock 1997 (2) SACR 171 (T) at 209.

At first glance, this approach to life imprisonment appears to lend itself to support for the imposition of life imprisonment on children who commit horrific crimes. The sentence would ostensibly fit the crime, but in their case the prospect of rehabilitation must always be contemplated more readily than in the case of adults, whose personalities are more completely formed. (The suggestion of the Full Bench in Nkosi that there might be children for whom there is no reasonable prospect of rehabilitation is without foundation.) This first impression fades though, when one examines the real prospects for release of a child sentenced to life imprisonment under South African law. At the moment lifers are considered for release only after they have served 20 years of their sentences. As soon as the new Correctional Services Act, 111 of 1998, comes into operation, there will be a minimum period of 25 years before someone sentenced to life imprisonment can even be considered for release. No exception is made for children. Of course, release may not follow after 25 years and the lifer who is released is subject to parole supervision and possible recall to prison for the rest of his life. The true question is whether it is appropriate for children to be subject to a sentence that

gives them no chance of being returned to the community for 25 years and keeps them restricted and subject to recall until they die. In the light of this harsh reality it is clear that it will be only in truly exceptional circumstances, if at all, that children, if their interests are taken into account, could be subjected to such a sentence. It may well be that the constitutionality of imposing life imprisonment on children in its current specific South African form will be open to challenge on the grounds that it cannot be applied with sufficient flexibility to guarantee that the constitutional interests of the child are appropriately considered.

A similar clear-eyed analysis of consequences must be undertaken before imposing long determinate sentences on children. There are no short cuts: the strange suggestion, admittedly not followed in Nkosi's case, that it is somehow a "useful guideline" that a sentence of imprisonment should not be longer than the age of the offender on whom it is imposed is numerical jiggery-pokery with no basis in principle whatsoever. It is true that, in the first instance, a sentencing court has to decide whether the sentence it imposes is proportionate to the seriousness of the offence, a judgement in which consideration must be given to both the offence itself and the culpability of the offender. Culpability, as we have seen, for a child is normally less than for an adult. The overall sentence must be determined with this in mind. But as a child is to be regarded as still malleable and therefore particularly likely to be rehabilitated, the court must also concern itself, more than it need do in the case of an adult, with when a child could possibly be released from prison. What we do know is that in terms of the new Correctional Services Act all offenders will have to serve at least half their sentences. This includes children. A court therefore needs to satisfy itself that a fixed term sentence, which it regards as proportionate to the offence, also provides adequate opportunities for early release to meet the needs of the child in this respect. If it does not, all the court can do under current law is to impose a lesser sentence. If we are going to sentence children convicted of heinous crimes to imprisonment, serious thought needs to be given to revising the law relating to early conditional release from prison for such children.

Judicial Education Programme on Transnational Drug Trafficking and Control

In October 2001, thirty judges from fifteen African countries, including South Africa, participated in a Judicial Training Programme on drug-related case work in Southern and Eastern Africa, presented by the United Nations Office for Drug Control and Crime Prevention (UNODCCP) in partnership with Justice College, under the auspices of the Training Committee of the Judicial Service Commission. One of the topics addressed was the link between juveniles, illicit drugs and crime. Here is an except from the speech given by **Judge Belinda van Heerden** of the Cape High Court:

"Article 33 of the United Nations Convention on the Rights of the Child (CRC) obliges States Parties to take all appropriate measures *'to protect children from the illicit use of narcotic drugs and psychotropic substances'* and *'to prevent the use of children in the illicit production and trafficking of such substances'*. The discussion focussed on the role of the proposed new South African child justice system in attaining these objectives and in assisting this country to fulfil its international legal obligations, both under CRC, as also under the various international conventions on drug control to which South Africa is a party.

The UNODCCP World Drug Report 2000 graphically illustrates the growth in drug abuse and in the illicit production, distribution and trade in narcotic drugs and

psychotropic substances in many countries in Africa over the last few years. It demonstrates out that children and youth are especially vulnerable to the increasingly pervasive influence of illicit drugs on the African continent. They are not only a prime market for drug dealers, but are used in many areas of the drug trafficking business. The Report describes increased seizures of cannabis, heroin and psychotropic substances worldwide and points to the fact that countries in Africa are increasingly used as transit points for these substances. This process has been fostered in Africa by the decline of social support structures due to various regional disturbances and the spread of the HIV/AIDS pandemic, as well as the growth of transnational organised crime as a result of the opening of markets and borders.

In the preamble to the Political Declaration made at the 20th special session of the General Assembly of the United Nations in June 1998, the Participant States (of which South Africa was one) emphasised that *'drugs affect all sectors of society in all countries'* and that *'in particular, drug abuse affects the freedom and development of young people, the world's most valuable asset'*. The Declaration on the Guiding Principles of Drug Demand Reduction adopted at this special session focussed attention on, amongst other things, the necessary development within criminal justice systems of capacities for assisting drug offenders with treatment, education, aftercare, rehabilitation and social reintegration, where appropriate. One of the key areas of action identified was the need to encourage close co-operation between criminal justice, health and social systems in this context.

The multi-sectoral and rights-based strategies identified by the States Members of the United Nations for dealing with juvenile drug offenders as a group most at risk are echoed in the South African Child Justice Bill. These strategies attempt to strike a healthy balance between the rights and responsibilities of drug offenders, so as to foster their sense of dignity and social worth, while at the same time holding them responsible for their actions. The involvement of families, schools, enforcement services and community agencies of all kinds in drug prevention and treatment efforts, and in the social reintegration of drug offenders, is also considered a priority. As pointed out in the World Drug Report 2000, families, schools and community agencies can promote resilience in young drug offenders by providing care and support and by offering opportunities for participation and reconciliation. The objectives set out in clause 4 of the Child Justice Bill tie in perfectly with these international strategies for countering and combating drug abuse and juvenile drug offending.

The Child Justice Bill provides for a mandatory assessment of all arrested children prior to their appearance at a preliminary enquiry. The primary purpose of this assessment is to collect and evaluate information about the child, his or her home circumstances and the circumstances surrounding the commission of the offence. This information must then be used to motivate recommendations regarding the further conduct of the matter: whether there are prospects for diversion; whether the child is a child in need of care who should be transferred to the children's court; whether the child can be released into the care of a parent or an appropriate adult and, if not, what placement options pending the trial are recommended for that particular child. Probation officers play a very important role in this assessment process. The international drug conventions emphasise the importance of early identification of drug abuse, with reference to a set of so-called *'risk factors'* which operate as early warning signals of drug-related offences. Many of these *'risk factors'* may be apparent from the assessment process, provided that the probation officers involved are properly trained to pick

up the danger signs. Thus, family disruption, weak family relationships, criminality and drug abuse of parent and siblings, the breakdown of the extended family network, have all been identified as critical predisposing factors for later problems. So too, the importance of negative peer networks and the links between drug use and other social factors (such as truancy, poor school performance and dropping out of school) are aspects that may be identified by the probation officer at the assessment stage and may play a vital role in the future treatment of the child and his or her family.

Central to the Child Justice Bill is the preliminary inquiry. The new inquisitorial role given to the presiding judicial officer at this inquiry, as also the involvement of the prosecutor, the probation officer, the child and his or her parents, create much greater potential for the early identification of risk factors and the formulation of a plan to address such factors by diverting the child away from the criminal justice process in appropriate cases. Adapting the terminology of the International Narcotics Control Board, the judicial officer, prosecutor and probation officer *'must work co-operatively with, and support the child and his or her family, as together, the problem is clarified, appropriate goals are designed and diversion options are creatively considered'*.

The purposes of diversion, the minimum standards applicable to diversion and the different diversion options identified in the Child Justice Bill also show a remarkable similarity with the purposes and content of internationally accepted drug treatment and prevention programmes. While the identification and elimination of risk factors is an important part of international drug strategies, the strengthening of so-called *'protective factors'* and the empowerment of drug abusers and offenders is increasingly seen as equally important.

Among the protective factors identified are: consistent parental supervision and positive relationships with at least one significant adult outside the immediate family; positive peer association; educational factors such as the stimulation of educational aspirations and good teacher-student relationships; individual characteristics such as good self-esteem and high levels of motivation; and general personal and social competence. Mirroring these protective factors, diversion options provided for in the Child Justice Bill include compulsory school attendance orders, family time orders, positive peer association orders, good behaviour orders, and orders placing the child under the supervision and guidance of a mentor or peer role model.

The Bill also provides for these diversion options to be used as sentencing options, in cases where the child does stand trial and is ultimately convicted. Innovative use of these options in the case of juvenile drug abusers and drug offenders not only promotes the *'proportionality principle'* encapsulated in article 5 of the Beijing Rules, but also strengthens the approach that imprisonment of children should be used as a last resort and should be limited to exceptional circumstances. In this regard, the Bill gives effect to South Africa's international legal obligations under article 40(4) of CRC, which obliges States Parties to make available *'a variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; educational and vocational training programmes and other alternatives to institutional care ... to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.'*

It is a well-documented fact that the use of retributive justice options in most cases of juvenile drug abuse and the commission of drug-related crimes by

juveniles does much more harm than good. Incarcerating juveniles in such situations simply drives them further into the flourishing drug culture in prisons, where drug habits are greatly reinforced and the risk of HIV/AIDS is significantly increased. Restorative justice strategies are, generally speaking, much more effective in this regard, giving juvenile offenders an opportunity to re-assess their lives, make amends for past wrongdoing and develop a sense of self-esteem and *'belonging'*. The Child Justice Bill blends children's rights and restorative justice and emphasises the desirability of children taking responsibility for their actions. In so doing it represents an important step forward in South Africa's compliance with its international legal obligations in the sphere of drug control, prevention and treatment. In his Opening Statement at the General Assembly 20th special session mentioned above, the United Nations Secretary-General, Mr Kofi Annan concluded that:

'Young people need their leaders to take action, together, to counter the production, trafficking and abuse of illegal drugs. Their future is in our hands? We will make mistakes along the way, and we will suffer disappointments. But let us not cease trying. It is time for every nation to say "no" to drugs. It is time for all nations to say "yes" to the challenge of working towards a drug-free world.'
In my view, the promulgation of the Child Justice Bill into law is an important way in which our criminal justice system and those involved in it will take up this challenge." SA is a party to the following international drug conventions:

- Single Convention on Narcotic Drugs of 1961, as amended by the 1972
- Protocol amending the Single Convention
- Convention on Psychotropic Substances of 1971
- United Nations Convention against Illicit Traffic in Narcotic Drugs and
- Psychotropic Drugs, 1988

Kwakwatsi Local youth Unit

S.A. TLADI writes on a pilot programmme for the education and re-integration of offenders

On the 15th August 2001 a very informative meeting was held at the Koppies Magistrate's Court. This meeting was attended by delegates from our Provincial and Regional offices of the Department of Social Welfare in the Free State, a social worker from Nicro, the local magistrate and public prosecutor, SAPS and representatives from the local Youth Desk.

It is very encouraging to hear the positive approach that the Department of Social Welfare, SAPS and Justice have given to the proposals laid down in the discussions. It was mentioned that Nicro's diversion referrals have increased by 87 % in the Free State. 60 % of these referrals are for economic and property related offenses. This alone highlighted the need for development of more innovative programmes to cater for the majority of children who had committed crimes.

One such programme emerged from this crucial meeting. After careful consideration and consultation with different stakeholders in the Koppies community, the Kwakwatsi Local Youth Unit had designed a programme that accommodates the most frequent offenses committed by juveniles and this program is aimed at giving the community a bigger stake in justice.

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The programme for the Education and Re-integration of Youth Offenders started in June 2000 and focuses mainly on juveniles at risk, in conflict with the law and young victims of crime. The program started getting referrals from local schools, churches and from community members. So far close to 20 young women and men have passed through this life skills programme. The style and content of this programme is very popular with juveniles and their feedback has been positive. It appears the program provides the first opportunity for many of the juveniles to speak about issues that trouble them. The juveniles are encouraged to focus on the positive aspects of their lives in an attempt to improve their self-esteem, which has been broken down by crime, the events surrounding it and their family and friends' reactions. The program offers a chance for them to open up and deal with what has happened to them.

After the presentation of the programme to the delegates at the meeting, the programme for the Education and Re-integration of Young Offenders was implemented as a Pilot Programme at the Koppies Magistrate's Court. The programme will utilize the expertise of the local social worker, Nicro and the Koppies Youth Desk. The participants agreed that it depends solely on the discretion of the prosecution which juveniles will be referred to this program. Another thing that was noted was the lack of funding from the Departments in order to oversee the successful implementation of this program. The SAPS locally is under-staffed and short of vehicles. A serious number of juvenile offenses occur in the neighboring farms. Our area is in serious need of the services of a probation officer or assistant probation officer to oversee that petty offenses are diverted.

The Programme and the Child Justice Bill

The programme has been implemented to deal with problems experienced by juveniles at risk, in conflict with the law and young victims of crime, and its continued implementation is possible under the provisions of Article 52 of the Bill.

The programme accommodates level 2 and 3 diversion options. These include, for instance, compulsory attendance at a specified center/ place for a specified vocational or educational purpose, referral to family group conferencing or victim offender mediation process and referral to counseling or therapeutic intervention.

Furthermore, the programme is befitting of both the objectives and principles of the Draft Child Justice Bill in that it:

- involves parents, family and the victim (wherever this is possible) in child justice processes in order to support the reintegration of the child into the community and
- allows the child to maintain direct contact with his / her family and to have access to social services.

Framework of the Programme

Referral: Participants are referred by magistrates, public prosecutors, social workers , investigating officers, SAPS, schools, churches or interested person(s) on a voluntary basis. Participants are to call at the offices of the Youth Desk two days after sentences by court.

Address: Participants must have a fixed address. This allows a certain amount of control to be exercised over the whereabouts of the juvenile.

Guardian: The juveniles must have a parent or guardian who is prepared to take co-responsibility for his or her attendance present at court.

Guilt: The juvenile offender must plead or be planning to plead guilty on the charges(s).

Non compliance with conditions of program: Participants must sign a sworn statement indicating that they are prepared to participate in the program by a court order and if they disobey the terms, they can directly be referred back to court.

Evaluation of the Child's Development

This will be done by an individual follow-up during and after the completion of the entire program and for a period not exceeding three months. All the details of the follow-up will be recorded and these include:

- the child's co-operation during and after sessions
- the child's behavioral change
- relationship with parents, friends, family and victim
- academic performance
- the child's interests, hobbies and lifestyle
- any drug abuse or alcohol abuse
- his or her present feelings and attitude about involvement in crime.

Conclusion

The meeting ended with the delegates agreeing that there should be coordination and partnerships between the relevant stakeholders in the child justice struggle in our area. We appeal to government, national and international agencies to assist us in enhancing the capacity and the use of this programme for diversion and alternative sentencing for children, which is aimed at rendering direct assistance by securing the release of as many children as possible into the custody of their parents, guardians, families and the community, shortening their periods of imprisonment and also at changing the atmosphere of the court as well as the attitudes of the police and court officials towards young women and men in conflict with the law.

Potential donors can contact the Programme Co-ordinator:

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Child Justice Alliance Update

- Cabinet approved the Child Justice Bill on 21 November 2001!! This means that the Bill will be introduced into Parliament in the first session of 2002.
- Membership stands at approximately 120 and there are 118 friends of the Alliance.

- The Alliance has received positive updates on planning around the Bill that indicate many government departments are gearing up for implementation of the Bill these include:
    - On 26 November 2001 the Department of Correctional Services launched a Restorative Justice Programme
    - The Department of Justice established an additional Regional Court in Durban during October 2001 to deal with the backlog of juvenile cases. In its first month of activity the court finalised 33 matters. On 1 December 2001, the Department is also establishing an additional district court in Wynberg for a period of four months in order to help clear the outstanding juvenile matters.
    - The Bloemfontein One Stop Child Justice Centre will begin operating on 1 February 2002

Dime Project Launched

Saturday 8 September 2001 saw the launch of DIME - Diversion Into Music Education by the Judge President of the Cape High Court, Judge Hlope. It is a new diversion programme that involves a partnership between the University of the Western Cape and *Nicro*. Although the project was initiated by the Faculty of Law at UWC, it also brings together the Department of Psychology, which will be evaluating the programme, and the Audio-Visual Department, which will be producing a video of the project. DIME is possible thanks to generous funding from the Open Society Foundation and the University of South Florida.

The project was well received by the local media and it was highlighted in the November 2001 NICRO NEWS, where **THOZAMA MLINDAZWE** wrote as follows:

"This is a new exciting project through which the township youth have been given an opportunity to show their talent in terms of African music. The project focuses on the youth in conflict with the law. After they have completed the six weeks life skill programme they are given an opportunity to play marimba instruments, sing and dance. This project is run in collaboration with the University of the Western Cape.

We have had the opportunity of working with people like Professor Julia Sloth-Nielsen who is co-ordinating the process, as well as Professor Shelia Woodward from the University of South Florida in the United States of America.

This project gives our youth the opportunity to communicate with the youth from the USA. The Department of Psychology and the Faculty of Law at UWC play a crucial part as they are evaluating the programme.

I would like to take the opportunity to thank all the role-players that availed themselves and worked very hard to make this Nicro programme a success, especially the music instructor, Xolani.

The young people from Khayelitsha are very dedicated and they love what they are doing. The programme plays a role in reminding them of their culture and provides them the opportunity to explore their roots. Above all, they develop pride in their culture and discover real meaning in their lives."

The Trend Continues...

The enlightened and logical approach of Judge Erasmus in *S v Z en Vier Andere 1999 (1) SACR 427 ECD* continues to bear fruit. In his judgment Judge Erasmus stated that a court should at the outset adopt the attitude that a sentence of imprisonment for a juvenile offender should be avoided, especially where the accused is a first offender. The learned Judge went on to state that a court should always consider the appropriateness of other sentencing options but that, if after considering all the relevant circumstances and the objectives of sentencing, imprisonment is the only appropriate sentence the then the court must impose such a punishment. The Judge also expressed the view that a court should not impose a suspended sentence of imprisonment where imprisonment is inappropriate for the particular accused.

In *S v S 2001 (2) SACR 321 TPD*, the court followed this line of reasoning (although without citing the judgment). Briefly, the facts involved the conviction of a 15-year-old girl on a charge of perjury. The accused had laid a false charge of rape on account of the fact that she was afraid her father would assault her if he discovered she had consented to intercourse. The district court magistrate sentenced her to two years imprisonment suspended for 5 years. The case went on automatic review and the review judge requested the magistrate to comment on whether a two-year sentence for a 15-year-old child was not shocking, as although it was suspended there was the possibility it would have to be served. The magistrate replied that a wholly suspended sentence of direct imprisonment was the only appropriate sentence and that further, the complainant in the matter had been in custody for 5 months as a result of the false charge laid by the accused.

The court then determined that not only had the magistrate erred, as the complainant was in custody for just over one month, but that there was a probation officer's report recommending a postponed sentence and the DPP had concurred that this recommendation was the appropriate sentence in the matter. The court then set aside the sentence and postponed sentencing for a period of five years.

It is clear that the court reasoned that direct imprisonment, although suspended, was not the only appropriate sentence in the circumstances, particularly in light of the age of the accused and her reason for laying the false charge in the first place. This emphasises the need for courts to take special care in assessing the totality of circumstances when considering any type of imprisonment as a sentence as well as the value of probation officers' pre-sentence reports.

New Publications

The SAYStOP Manual

This is a comprehensive manual to assist social workers and professionals in running the 10 week SAYStOP diversion programme for young sex-offenders. The programme has been running for two years in the Western Cape and was recently launched in the Eastern Cape. The manual has practical suggestions and step-by-step procedures that facilitate the group work sessions. The manual was developed with the financial assistance of the Open Society Foundation.

Limited copies of the manual are available at R50-00 a copy.

ARTICLE 40

A New Child Justice System: Two Decades of Research - An annotated bibliography collating documents used to inform the process of child justice reform in South Africa.

And

A New Child Justice System: Research Gap Analysis

These two research documents have been compiled by the Institute of Criminology at the University of Cape Town in support of the Child Justice Alliance, with the financial assistance of the Swiss Agency for Development and Co-operation . The annotated bibliography highlights the important and seminal work done in South African child justice research by authors including Julia Sloth-Nielsen, Ann Skelton and Buyi Mbambo. It provides an easy reference source for decisive child justice issues. The gap analysis examines the research done and suggests areas and issues that still require some investigation.

Limited copies of these documents are available at the joint price of R60-00.

For ordering or further information on all of these publications contact:

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