

# ARTICLE 40

Volume 4 No. 3 October 2002  
Editor: Jacqueline Gallinetti

- From the Editor
- Update on the Child Justice Bill
- Probation and Correctional Practice Training: New Initiative at Fort Hare and Rhodes
- Mentoring: a prevention, diversion, alternative sentencing and reintegration model for the child justice system
- Child Sex Offenders in Custody in South Africa
- Cape Bench again stresses importance of pre-sentence reports for youthful offenders
- Forthcoming Events

## From the Editor

There have been recent media reports that serious offences committed by children are on the increase. It is however unfortunate that statistics are not given, or if included in reports are not correctly analysed. This can lead to incorrect assessments of the actual situation. Accordingly we have included a summary of a research report undertaken by Jean Redpath for the Children's Rights Project on young sex offenders. It is important that balanced information is readily available so as to ensure an accurate reflection on the state of child offenders in South Africa today.

It has been a while since there have been case summaries in Article 40 and we have therefore included an analysis of two recent decisions relating to pre-sentence reports to emphasise their importance in sentencing procedures.

Mentoring is continually being looked to in diversion options and Buyi Mbambo has provided an insightful look into aspects of mentoring and its impact on the child justice system.

Training is always being highlighted as a need in developing the new child justice system and so we have included an article on a programme being offered by the Universities of Fort Hare and Rhodes on Probation and Correctional Practice. It is encouraging that our tertiary institutions are recognising the need to expand practical and necessary courses to support the criminal justice system.

Finally, it is with great delight that we announce the introduction into Parliament of the Child Justice Bill. We have waited in anticipation and the day finally arrived in August 2002. We have included a brief analysis of the Bill as it was introduced and have coupled this with an article on legal drafters, which is a follow up to the article on Public Participation featured in our April 2002 issue, in order to shed more light on the Parliamentary process.

We urge all readers to make written submissions to the Justice and Constitutional Affairs Portfolio Committee on the Child Justice Bill!

## Update on the Child Justice Bill

The Child Justice Bill was introduced into Parliament in August 2002!

# ARTICLE 40

This means that the Bill is now on the Parliamentary agenda before the Justice and Constitutional Affairs Portfolio Committee.

However, what is important to note is that the Bill is no longer in the form that was originally released by the South African Law Commission in July 2000. The reason for this is that before a Bill can be introduced into Parliament, it must be certified by the State Law Advisors who can make any changes that they deem necessary.

The good news is that, although the Bill has changed, the substance has essentially remained the same. The State Law Advisor had the discretion to remove sections of the Bill, but the essential core elements of the Bill, namely assessment, diversion, the preliminary enquiry and alternative sentences have remained. Unfortunately, the contents of the chapter on monitoring have been removed, and the Bill now provides that monitoring will be included in the regulations to the Bill, once passed.

With good news, there is often bad news and this is true for the Child Justice Bill. While the Bill has basically retained its content, the changes that have been made make the reading thereof somewhat more difficult and laborious and some of the definitions and explanations that the Law Commission included in the original Bill have been removed or altered. While most of the changes are cosmetic and not substantive, it is still unsettling that the Bill now is possibly more difficult to read as a whole. The original draft Bill of the Law Commission was user friendly and allowed for a clear understanding of the new proposed system. The Commission recognised that the legislation had to be readily accessible to practitioners in the criminal justice system that are not legally trained and accordingly attempted to make the Bill as straightforward as possible. An example of the removal of an explanation made by the Law Commission can be found in the definition of detention. The Law Commission's draft defined detention as follows:

"...means the deprivation of liberty of a child including confinement in a police cell, lock-up, place of safety, secure care facility, prison or other residential facility."

The State Law Advisor's version has removed the explanation regarding deprivation of liberty and has defined detention as follows:

"...includes confinement in a police cell, lock-up, place of safety, secure care facility, prison or other residential facility."

## **Some of the changes**

- The principles relating to the detention of children that were listed in the chapter headed "Detention of Children and Release from Detention" are now listed under Chapter One - general principles, section 3(2).
- The application of the Bill that was dealt with under the general issues in Chapter One of the Law Commission's draft, has now been included in section 4 under Chapter 2 dealing with criminal capacity.
- In relation to the issue of criminal capacity, section 6(2) of the original draft stated:

" A child who, at the time of the alleged commission of an offence is at least ten years of age, but not yet 14 years, is presumed not to have had the capacity to appreciate the difference between right and wrong and to act in accordance with that appreciation, unless it is subsequently proved,

# ARTICLE 40

beyond reasonable doubt, that such child at the time of the alleged commission of an offence had such capacity."

- The new version, in section 5(2) is essentially the same, but not as user friendly as, instead of explaining the proof of criminal capacity it refers the reader to another section in the Bill:

" A child who commits an offence under the age of 14 years is presumed not to have had the capacity to appreciate the difference between right and wrong and to act in accordance with that appreciation, unless the criminal capacity of the child is proved in accordance with section 56."

- The section also does not differentiate between children aged between 10 and 14 years and children under 14 years, as the earlier draft did. This could lead to confusion if the reader does not read this sub-section in conjunction with the whole of section 5.
- The remaining provisions relating to age assessment and age estimation that the Law Commission had included in the chapter dealing with age and criminal capacity, have now been placed in section 56 in the chapter dealing with child justice courts and section 82 in the chapter dealing with general provisions. It is arguable that these issues would be better placed in their position in the original draft as they would have to be determined early on in criminal proceedings against a child.
- Section 38 of the Law Commission's draft dealing with assessment clearly set out the purposes of the assessment procedure. These have been removed from the new version and are to be implied from recommendations that a probation officer must make in the chapter dealing with the preliminary inquiry.
- Section 96(3) of the Law Commission's version required a candidate attorney representing a child to have at least 12 months experience as a candidate attorney. Section 73(1) refers to any candidate attorney, therefore doing away with the requirement of 12 months experience.

## **Potential improvements to the Bill**

Some of the changes effected to the Law Commission's draft have the potential of strengthening the effectiveness of the Bill.

For example, the original chapter dealing with police powers and duties has been renamed as " Methods of Securing Attendance of Child at Preliminary Inquiry". This effectively makes the preliminary inquiry the central and defining feature of the new child justice system, focusing on the new procedure and making it integral to the management of child offenders.

In addition, the provisions relating to the release of the child into the care of a parent or appropriate adult at the preliminary inquiry or on bail by the inquiry magistrate have been moved from the chapter on police powers and duties and are now in the chapter that deals with the preliminary inquiry. It seems that this shift will bring greater coherence to the procedures and actions to be determined at the preliminary inquiry.

In addition, the Law Commission's draft dealt with the chapter on diversion after the chapter on the preliminary inquiry. The new version places diversion before the chapter on the preliminary inquiry. This also lends greater clarity to the Bill as diversion has to be considered as an option for the management of children by

# ARTICLE 40

the probation officer prior to making his or her recommendation for the preliminary inquiry. It is therefore fitting that the Bill deals with the diversion options first.

## **The way forward**

The Justice and Constitutional Portfolio Committee has set 30 October 2002 as the deadline for written submissions on the Bill. Once the written submissions have been finalised, public hearings will take place where members of the public can appear before the committee to make oral submissions on the Bill. Thereafter the Committee will debate the Bill. Dates for the public hearings and debate have not yet been set.

Those wanting to make submissions on the Bill, therefore have to be aware of the cut off date and ensure their submissions reach Parliament timeously.

Any submissions must be addressed to the Chairperson: Justice and Constitutional Development Portfolio Committee, Advocate J H de Lange and should be sent to the Committee Secretary, Ms Zodwa Velleman, 9th Floor Parliament Towers, 103-107 Plein Street, Cape Town. The fax number is 021-4622142 and Ms Velleman's e-mail address is [ivelleman@parliament.gov.za](mailto:ivelleman@parliament.gov.za)

## **Probation and Correctional Practice Training: New Initiative at Fort Hare and Rhodes**

*By Brian Stout*

On September 20, 2002 in East London a conference of criminal justice professionals in the Eastern Cape was held to launch the honours programme in Probation and Correctional Practice offered jointly by the Universities of Fort Hare and Rhodes. This launch marks the culmination of a two-year development process.

### **History and Development**

The process of developing the probation and correctional practice programme at Fort Hare began in 1999. A connection was made between De Montfort University in the United Kingdom and Fort Hare and a link was initiated with British Council funding. That link facilitated academic exchanges between the two institutions and facilitated my coming to Fort Hare as a Voluntary Service Overseas development worker. Criminal justice modules were introduced into the basic social work programme, which both served to increase the training that those Fort Hare students were receiving and allowed the modules that would make up the future honours programme to be piloted. The teaching was based upon De Montfort modules, adapted to fit the South African legislation and situation.

At the same time, Rhodes was developing a course of its own in Probation and Correctional Practice. A number of meetings took place between the two departments and it was decided that the best approach for the students, the two departments and the region would be for us to work together and offer the programme jointly. Thus, when the Department of Education announced the incorporation of Rhodes East London into Fort Hare management structures, the two departments already had a strong working relationship on which to build.

# ARTICLE 40

The introduction of this new programme is particularly well timed, given the developments within the criminal justice social work sector in South Africa. The Department of Correctional Services (DCS) is placing a new emphasis on rehabilitation following their conference in Durban in 2000. Representatives from Fort Hare, Rhodes and De Montfort attended that conference and the programme has been designed in line with the training needs identified by the DCS. The Department of Social Development is leading the process of establishing a new registration board for probation officers, and we have been liaising with that department, both provincially and nationally, to ensure that graduates of our programme will be able to register with that body. In particular, however the programme also reflects developments within child justice and the Child Justice Bill, such as an increasing emphasis on diversion for child offenders and restorative justice.

## **Admission Criteria**

The programme is designed to build upon basic social work training so a social work degree is a necessary pre-requisite for admission to the programme. The programme is offered in 2002 as an honours programme for a small number of students, and as the fourth year of the existing social work degree for the remainder. In future we expect that most students will enrol for the three-year basic social work degree and take the Probation and Correctional Practice programme as an honours programme.

We have introduced two new modules to the three-year social work programme, to assist in the delivery of the honours programme. The first of these is 'Orientation to the Criminal Justice System' which provides an introduction into working with offenders and to the South African criminal justice system. This module fulfils two objectives; firstly it gives all social work students a taste of criminal justice, allowing them to make an informed choice regarding whether they want to take the Probation and Correctional Practice programme in their fourth year. Secondly it provides the students who do choose to take that option with some basic skills and knowledge that the honours programme builds on.

The second new module in the three-year programme is 'Values, Ethics and Anti-Discriminatory Practice'. This teaches students to be aware of the discrimination faced by themselves and their clients and trains them how to take steps to challenge discrimination and to eliminate bias, both intentional and unintentional. This module has benefit for all social work students, not just those who intend to work within the criminal justice system.

## **Content of the Programme**

The programme is a two semester, one-year programme, which is made up of a practice placement, a research project and four taught papers.

## **Practice Placement**

Fort Hare and Rhodes have been placing final year students with criminal justice social work agencies for many years. Both universities have long standing relationships with the relevant departments as well.

We now recall the students at the beginning of the first semester to provide them with some additional, specific placement preparation. This was done for the first

# ARTICLE 40

time in 2002; students were trained in court work skills, criminal justice legislation and computer skills. We keep in close contact with students throughout their placements.

## **Research Project**

All students who take the programme are expected to carry out a research project while they are on placement. Some of the projects that have been carried out this year include research into the treatment of young people in custody and places of safety and research into the treatment of victims within the criminal justice system.

The intention is to raise the profile of research within the programme and to build closer links between research, teaching and practice. Published research carried out in South Africa by Fort Hare and De Montfort has already been incorporated into teaching on the programme. We hope that by creating a culture of research the programme will continue to be vibrant, contemporary and relevant.

The outline of the four taught modules is as follows:

## **Transformation Policy**

There are three main elements to the transformation policy module:

- The legal basis for working with offenders, including the relevant legislation and the judicial processes.
- Criminology. Our students will have taken criminology options during their basic degree and in this section we briefly revisit the theories in light of their experiences on placement. Particular attention is paid to cognitive-behaviourism as research has shown that methods based on the cognitive-behaviourist approach are most effective in addressing offending behaviour.
- Victimology. Victimology has traditionally been a neglected aspect of both criminal justice teaching and practice. However, we are finding that a number of our students are being offered placements where they will be expected to work with victims for all or part of the time. For this reason we felt the subject could usefully be included in the honours programme. In this module we consider the theory of victimology including perceptions of victims, the needs of victims and the theoretical frameworks of victimology.

## **Probation and Correctional Practice**

This module links the theoretical aspects of the transformation policy module with the much more practical skills training of the later probation services module. There are three main aspects to this module:

- Assessment. The students are trained in the four main aspects of assessment; the seriousness of the offence; the risk posed by the offender; the strengths of the offender and his or her ability to respond to interventions and the criminogenic needs of the offender. Special attention is paid to the assessment of risk; we discuss the different aspects of risk, such as risk of dangerousness, risk of reoffending and risk of custody, and the strengths and weaknesses of clinical and actuarial approaches.

# ARTICLE 40

- Stages of change and motivational interviewing. We teach the students the concepts of how change is neither a one-off event nor a linear process, but a cycle which often includes relapse. We teach them techniques of motivational interviewing that they can use to help their clients through this cycle of change.
- Effective Practice Research. Extensive research has been done regarding what techniques are effective and ineffective in working with offenders, in what has become known as the 'What Works' research. This module includes teaching on the findings of this research, enabling graduates to work effectively in challenging offending behaviour.

## **Youth at Risk**

The field of child justice is undergoing the greatest transformation at present in South Africa with the proposed introduction of the Child Justice Bill. It is the field where the most innovative practice appears to be occurring, for example Stepping Stones in Port Elizabeth and the SAYStOP sex offender project. We find that almost all our students work with young people for part or all of their placements. For this reason we include a module looking specifically at child offenders. As well as applying the material covered in other modules such as assessment and programme delivery to the specific group of child offenders, this module also includes teaching on:

- The Child Justice Bill. It is hoped that the Bill will be enacted in the near future, so our graduates will be required to work under the new legislation. We cover the background to the Bill and the main philosophies that have informed it. The main provisions of the Bill are also taught, with particular attention given to the new emphasis on assessment, diversion and the preliminary enquiry.
- Restorative Justice is applicable to many of the modules throughout the programme, and it is briefly introduced during the 'Orientation to the Criminal Justice System' module. However, the emphasis on restorative justice in the Bill suggests that the most appropriate time to cover restorative justice in detail is the 'Youth at Risk' module. We teach the theory and history of restorative justice and provide the students with basic training in facilitating a family group conference.
- Child Sex Offenders. There is an increasing awareness in South Africa of the need to address the behaviour of children who sexually abuse other children. The introduction of the SAYStOP programme into the Eastern Cape means that an increasing number of our students will be expected to work with this group of children. We provide them with basic training regarding child sex offending; to create foundational skills and knowledge that SAYStOP training can build on.

## **Probation Services**

This module is divided into two distinct sections; working with offenders and victims and managing within the agency context.

- As this is the final module, it builds upon the material covered in earlier modules. Students develop an action plan for working with an offender, in line with SMART objectives. They are taught how to implement the plan, and monitor its success. They are also trained in the writing of a pre-sentence report. Good practice in working with victims of crime is also covered in this module.

# ARTICLE 40

- The second section of this module concentrates on preparing the students for the world of employment. Students are taught how to manage themselves within a criminal justice agency; to manage stress, contribute to team working, manage time and manage conflict.

## **Conclusion**

The Probation and Correctional Practice programme is built upon solid principles, in line with the established needs of the main employers; the Department of Correctional Services, the Department of Welfare and the criminal justice NGOs. It is informed by research and by training practices both in South Africa and abroad. Strong relationships are established between the social work departments of Fort Hare and Rhodes so the pending merger will aid the delivery of the programme, rather than threaten it. Recruitment is healthy, there are 25 students enrolled in the programme in 2002, we expect a similar number to enrol in 2003 followed by a sharp increase in 2004 and 2005, reflecting the higher student numbers in the first two years of the Fort Hare social work programme. We expect that the programme will make a significant contribution to training and research in criminal justice in the Eastern Cape for many years to come.

## **Mentoring: a prevention, diversion, alternative sentencing and reintegration model for the child justice system**

*By Buyi Mbambo*

### **What is Mentoring?**

Every child or young person needs a role model to look up to other than parents. When children have committed crimes, having this type of person is even more critical. A mentor can be described as an experienced and trusted friend, big brother or sister for the child or young person and can be :

- a guide,
- a friend,
- a coach,
- a responsive adult,
- a positive peer,
- a listener

This is a person who gives to a child, in a sustained and supportive relationship, wisdom, friendship, guidance and caring. The Youth Development Outreach (YDO) in Pretoria defines a mentor as:

...a loving older brother or sister wanting what is best for the younger brothers or sisters. He/She looks for ways to help them develop from childhood into adulthood, by making his/her personal strengths, resources, and networks of friendships and contacts available to them in order for them to positively reach their full potential

Mentoring can be summed up as the presence of a caring individual who offers guidance, friendship and understanding and who provides a child or the young person with opportunities where coping mechanisms develop, where personal goals can be achieved and where personal growth at all levels can take place.



# ARTICLE 40

Mentoring can also be defined as the commitment of a mature peer or adult to the growth and well being of a child through long-term personal relationships. Often these relationships are defined by duration of the relationship and frequency of interaction.

To children, mentoring means having a trusted friend, who cares about them, who listens to them, who is a role model they can look up to and who is there to help them negotiate their way around the challenges of daily living. This becomes even more important when children have come up-close-and-personal with a harsh criminal justice system. The relationship between the child and the mentor is "informal but also professional" in that the mentor has to adhere to ethics and has to be accountable for the work done with the child.

It is important that we differentiate between a role model and a celebrity. Too often there is a blurred distinction between a famous personality and a role model. A celebrity does not necessarily equal a positive role model. For a celebrity to qualify as a role model to other children and young people she or he must exhibit some positive elements in her or his character, conduct, values and behaviour that stand out to be emulated by other children. The behaviour, conduct, attitude and values of a mentor are those that when emulated by children, promote positive behaviours, positive character development, development of a sense of responsibility, development of core values that make children positive contributing citizens in the society. A role model can be an ordinary person in the community, who has achieved a lot against all odds, it can be a teacher, it can be a person with a disability, it can be a cousin, a sister or brother and all these persons need not necessarily have the fame of television personalities, for example.

## **Critical elements of mentoring**

- Young people being part of the solution and helping their peers
- Young people listen to their peers, older brothers and older sisters - more than they do to adults.
- A special one-to-one relationship that provides guidance, advice and support to children;
- Mentors serve as role models for younger people who need support and help.
- A mentor can also be simply someone a child hangs out with.

When properly and carefully designed and well-implemented, mentoring programmes provide positive influences for younger people who may need a little extra attention or who do not have a good support system within their families.

## **What does it take to keep a mentoring programme going for the child justice system**

- Selection and screening of mentors
- Training and competency development for mentors
- Matching and pairing a mentor and a young person
- Frequency of meetings between mentor and the child - greater success relies on significantly greater time commitment
- Community support is a strong ingredient for an effective mentoring programme. Community members - teachers, leaders, elders, etc. can play a supportive role to mentors - in an advisory capacity, they can offer ideas and serve to link mentors with resources in the community and may

# ARTICLE 40

offer advice on how best to support and guide children that are being mentored.

## **Duration of mentoring services**

Research conducted on mentoring programmes and lessons from South Africa indicate that the average duration for mentoring services is 6 months. This means that mentors should commit themselves to working with the child for six months and sometimes more, as after care support and reintegration services are critical. This is very important because mentoring is not a "hit-and-run" affair. This is about the growing needs of the child and is certainly about developmental and transition issues in the life of the child. Duration of services become even longer when the child has been involved in the criminal activities for some time.

Equally important is the time spent with the child. Without regular contacts, mentoring has no effect. Face-to-face contact, consistency and continuity of contact are important during the intense phase of the programme.

## **Accountability**

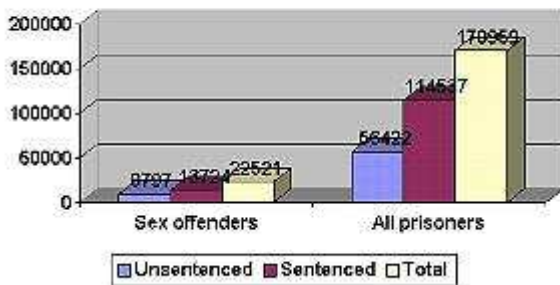
Although the mentoring relationship is often described as "informal" in nature, accountability is very important. For use by courts for instance, mentors should be able in writing to account what has happened to the child, what growth or changes have taken place as well as the degree to which the child has complied with any conditions set by the courts.

## **The role of mentors in the new child justice system**

- Mentors can supervise level one diversion options and can be used in conjunction with a positive peer association order;
- Mentors, if properly trained and skilled, can run level one and level two structured programmes;
- Mentors can organize and arrange community service and ensure compliance with such service, whilst offering the child some support in other areas;
- Mentors can successfully run level two diversion options as demonstrated by Youth Development Outreach (YDO) in Pretoria, which runs an intensive six-month life skills programme, with family group conferencing as an integral part of their intervention.
- Through creativity afforded by a mentoring programme, it can be a crime prevention/reduction programme and reduce recidivism. Research on mentoring has shown that youth involved in mentoring programmes are less likely to experiment with drugs, less likely to be physically aggressive and less likely to skip school than those not involved in mentoring programme.
- Mentors could also be used effectively to re-integrate children back into their families and communities.
- Mentoring can also be used as a pre-trial alternative to detention and can also be used as an intensive alternative sentencing option.

## **Challenges facing mentoring programmes**

- Time and self-investment on the part of a mentor. Failure to follow through with the relationship, canceling and not honoring appointments



## LE 40

- Failure to give the child the attention and support needed
- Compatibility between the child and the mentor
- Lack of skills and competencies on the part of the mentor - patience is important.
- Relationship between mentors and the child's

parents. Sometimes parents may want to impose their ways of dealing with the child on the mentor. Some parents want to see the mentor as "being on their side", or some may simply feel threatened by the mentor. Parents need to be helped to understand that mentors are not competing with them and mentors on the other hand need to respect and support positive parent's rules and concerns while building their own relationship with children.

- In South Africa, mentoring has not been used much in relation to the criminal justice system, therefore there is a serious challenge of ensuring that mentoring programmes are credible and have the desired effect. Mentoring programmes have to be properly evaluated based on clear indicators that are critical for the child justice system.

## Child Sex Offenders in Custody in South Africa

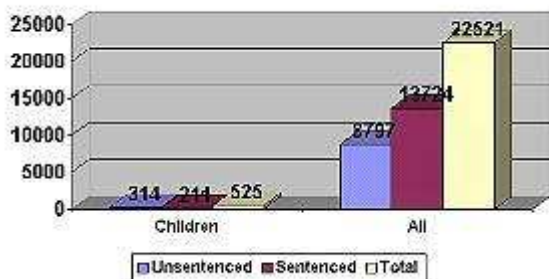
*By Jean Redpath*

The Department of Correctional Services has provided figures on sex offenders in custody in South Africa. The figures provided show the average number of sentenced and un-sentenced prisoners (adults and children, men and women) in custody in each month in respect of sexual offences for the period January 1998 to December 2001. The Department has also provided the same information for children in custody (boys only). They have also provided subtotals for children of different ages.

### All Sex Offenders

Sex offenders comprise 13% of all prisoners, 12% of sentenced prisoners, but 16% of un-sentenced prisoners. This might be a reflection of the difficulty in obtaining convictions for sexual offences.

A linear equation plotted to the total numbers shows that the total number of sex offenders in prison is increasing at a rate of 138 prisoners a month ( $m=137.54$ ). The numbers fit a straight line almost perfectly ( $R^2= 0.909$ ) which means we can use the equation to predict the number of prisoners in future months. The number of prisoners sentenced for sexual offences is increasing at a rate of 72 prisoners per month ( $m=72.573$ ), and the fit to a straight line is even better ( $R^2=0.9368$ ) than for total prisoners, showing a very steady predictable increase.



## Total number of arrests of children for sexual offences



There are fewer un-sentenced sex offenders in prison at any are sentenced,

particular time than there and the difference is growing. Un-sentenced prisoners are increasing at a rate 65 of prisoners a month. However, the number of un-sentenced prisoners fluctuates more widely with time, as compared to sentenced prisoners ( $R^2=0.5806$ ). Local peaks seem to occur in the period November to March of each year. This coincides with the court recess and the summer months in South Africa.

### Child Sex Offenders

The Table above shows the number of sex offenders in custody in March 2001, comparing values for children and the total number. It is immediately clear that children make up a very small proportion of sex offenders in custody: only 2.3% of the total, 1.6% of sentenced prisoners, and 3.6% of un-sentenced prisoners.

How does this compare with child offenders of all crimes? There were 6062 child offenders in prison in March 2001, which is 3.5% of all prisoners (170959); in other words, child sex offenders comprise a somewhat smaller proportion of sex offenders, compared to the proportion of child offenders in custody for all offences.

The total number of child sex offenders in prison is increasing at an approximate rate of 2 per month ( $m=2.3785$ ), but the straight line is a poor fit ( $R^2<3$ ) so the equations for all three lines are not predictive, but can show an increasing or decreasing trend. Un-sentenced child sex offenders are increasing a rate of almost 3 per month ( $m=2.873$ ). By contrast, sentenced child sex offenders are decreasing at a rate of about 1 every three months ( $m=-0.3362$ ).

### Arrests of children for sexual offences in the Western Cape

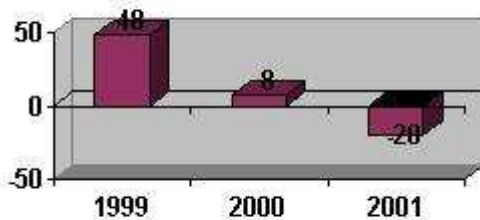
The office of the Provincial Commissioner of the SAPS in the Western Cape has provided figures for the total number of persons 17 years and younger arrested for sexual offences during the period 1 January 1998 to 31 December 2001.

Over this four-year period, more children (498) were arrested in 2000 than in any other year; however, the greatest percentage increase on a previous year was recorded in 1999. The lowest number of arrests (312) was recorded in 1998. The percentage change in numbers of arrests is reflected in the graph on the right. This appears to show a decrease in the rate of increase: indeed from 2000 to 2001 we find a decrease of 29% on the previous year.

A linear equation fitted to the total arrests shows that the trend is toward an increase in the number of children arrested each year, at the rate of just under 30 arrests per year ( $m=28.7$ ). The fit to a straight-line graph is poor, however, ( $R^2 < 0.3$ ), so this rate of increase must be seen only as showing a trend, and the equations cannot be used to predict values in a particular year.

It also indicates that changes in factors affecting arrest, not correlated with changes over time, are responsible for the fluctuation in the number of arrests. (Population, for example, changes over time and would be a factor affecting the number of arrests closely correlated with time).

## Change in numbers of arrests of children for sexual offences



■ Percent change on previous year

# LE 40

It is also worth noting - as we shall see in the statistics for the Western Cape and South Africa as a whole at the end of this section - that the arrest of 470 children in the Western Cape represents 6% of the total (8971) reports of rape, attempted rape and indecent assault in the Western Cape, and 0.1% of all such reports (56993) in South Africa as a whole.

### Rape and indecent assault arrest trends

It is also interesting to note that the total increase in Western Cape arrests of child sex offenders is almost entirely due to an increase in the number of child arrests for rape, which are increasing at a rate of just over 25 a year ( $m=25.6$ ), although the fit to a straight line graph is again poor. The peak in total figures in 2000 is also due to a peak in rape figures.

The rate of increase in child arrests for indecent assault, however, at just under 16 per year, matches a straight line very well ( $R^2 = 0.98$ ), which indicates that the increase is closely correlated with factors that change with time.

### Conclusions

The fact that the number of un-sentenced children is consistently higher than that of sentenced children since 1999 is worrying. It suggests that a large number of children, whom the courts are loath to sentence with prison time, are spending time in prison. If the aim is to keep children out of prison as far as possible, it makes no sense that fewer are being sentenced, while more are spending time in prison un-sentenced. It also implies that children are spending time in prison in accordance with the vagaries of the criminal justice system, rather than after a court of law has duly considered a case and chosen prison time as the most appropriate punishment.

The fact that the 'adult' graph of sex offenders in custody over time is smooth compared to the child graph, also suggests erratic management of child offenders. There is a need to determine what is happening to child offenders who do not go to prison; it appears a significant proportion do not. This is not necessarily a problem if they are being appropriately addressed by diversion or other means, but it is not clear to what extent that is occurring.

The arrest figures do show that the number of arrests of children for sexual crimes committed against other children is increasing; however, the number of all arrests for such crimes is also increasing, and at a faster rate. This analysis therefore does not provide evidence of an 'epidemic' of child sex offenders. For all sexual crimes, the 18-30 age group remains the most problematic in respect of sexual crimes and this is largely confirmed by the findings of other research. However, it is recognised that significant under-reporting may occur. Children do nevertheless commit a significant portion of sexual crimes against other children; the Childline research indicates that the true extent of this problem may be somewhat hidden. Children's involvement in sexual crimes against other children does appear to be lower for rape than for indecent assault.

What is of concern is the very small percentage of child sex offenders who are diverted from the criminal justice system. The large proportion for whom no outcome is recorded and the large number of withdrawn cases, are also worrying. Furthermore, comparing the prison numbers with arrest and prosecution numbers

# ARTICLE 40

also suggests that many prosecutions are unsuccessful, which implies that most child sex offenders are simply going through the system without any impact that might affect their future behaviour. On the contrary, it is more likely that such an experience would lead to the belief that they could 'get away' with their behaviour despite being 'caught'.

Nothing in this analysis suggests that the provisions of the Child Justice Bill are inappropriate for child sex offenders; on the contrary, the analysis suggests better management of such children is necessary. Furthermore, the relatively few reported cases at present suggest that such management would not involve an impossible task. assault (smooth small increase, closely correlated with factors changing over time). It may be an indication that child cases of indecent assault are dealt with in a more consistent manner than cases of rape; why this might be, however, is also unclear.

## Summary of Findings

- The number of children sentenced for sexual offences in South African prisons is decreasing.
- The number of children in custody for sexual offences, but not sentenced, is increasing.
- Since January 1999, more children in custody for sexual offences are un-sentenced than sentenced, which is the reverse of the normal pattern of more sentenced than un-sentenced prisoners.
- The number of children in prison at any time 1998-2001 did not exceed 700: less than 4% of sex offenders in prison are children.
- The number of all sex offenders in prison is increasing at a rate of 138 a month.
- The number of children arrested in the Western Cape for sexual offences has not yet exceed 500 in one year, and is increasing at a rate of 38 arrests a year.
- This number constitutes 6% of all reports of rape, attempted rape, and indecent assault in the Western Cape.
- Just under a half of all children arrested for sexual offences in the Western Cape are prosecuted; about 5% are diverted, while it is not known what the outcome is in 25% of cases.
- Children were arrested in 23% of recent East Metro CPU cases for crimes against other children, with large monthly fluctuations.
- The number recorded by the CPU of such crimes committed by children is increasing, but at a lower rate than for adults.
- Children were arrested for a larger proportion of cases of indecent assault than their average for all crimes recorded.
- Children were arrested for a smaller proportion of cases of rape than their average for all crimes recorded.
- The 18-30 age-group is responsible for most rapes and contributes more to such crimes than predicted by their share of the population.
- A study on social fabric crime in the Northern Cape is consistent with these East Metro findings.
- Research by Childline shows that the 15-20 age-group of offenders accounts for 35% of all calls regarding child sex abuse recorded by Childline.
- Childline also shows that the under 15 age-group of offenders accounts for 19% of all calls regarding child sex abuse.
- The under 15, 15-20 and 30-40 population groups accounted for more Childline perpetrators than predicted by their population share.

# ARTICLE 40

## **Cape Bench again stresses importance of pre-sentence reports for youthful offenders**

In two recent review judgments, judges from the Cape Bench have set aside sentences imposed on young offenders because of the absence of pre-sentence reports.

In *S v Van Rooyen* (High Court case number 01/5413), an offender who was 18 years old at the time of commission of the offence of housebreaking had been sentenced to 2 years imprisonment, of which 1 year had been suspended for four years. He was a first offender, unemployed, and still living with his parents. After querying the imposition of a sentence of direct imprisonment upon a juvenile offender, as well as the fact that it was imposed in the absence of a pre-sentence report, the court received a reply from the magistrate that she had considered calling for a pre-sentence report, but decided against it as an 18 year old is no longer considered to be a juvenile.

The High Court expressed some difficulty with this approach. First, the Court referred in some detail to the Convention on the Rights of the Child, which underlines 'the policy that as far as possible, children under the age of 18 years should as far as possible be dealt with by the criminal justice system in a way which takes account of their special needs', and to the seminal case of *S v Z* (featured in Article 40, August 1999 edition), which pointed to the difference between children aged under 18 years, and juveniles aged under 21 years in Correctional Services policy and legislation. Several aspects of, and provisions contained in, the proposed Child Justice Bill concerning sentencing and pre-sentence reports are also cited in the judgment. The Court concluded that when the Draft Child Justice Bill becomes law, pre-sentence reports will become mandatory in respect of offenders aged below 18 years, but that this does NOT mean that 'in all cases where the offender is 18 years or older, the court can dispense with the obtaining of a pre-sentence report'. The court concluded that in cases like the instant one, it is difficult to see how the magistrate could properly have determined an individualised punishment suitable for the needs of this offender without the benefit of a pre-sentence report.

As regards the content of the original sentence, the High Court maintained that despite the reasons for imposing direct imprisonment that were given by the magistrate concerned, there had been insufficient attention paid to the extremely prejudicial effects of imprisonment particularly upon youthful offenders, and nor had the magistrate given proper consideration to the need for monitoring and 'follow up' in respect of young offenders, as required in *S v Z*. The Court felt that at the very least, correctional supervision should have been considered, and set aside the sentence to enable the magistrate to call for and consider a report from a probation officer or correctional official.

Similarly, in *R v B* (High Court case number 0982/02), a sentence of three years imprisonment for theft of golf clubs from a motor vehicle imposed upon a 15 year old was set aside because of the failure to call for a pre-sentence report. The motivation for this failure, as provided by the sentencing officer, was that the child had told that court that he had received a five year prison sentence in regional court a couple of weeks earlier, and that a probation officer's report had been produced prior to the imposition of that sentence. This, the court held, did not exonerate a sentencing officer from getting full particulars of the accused, especially where there were obvious indications that his family circumstances were problematic, as no biological parents appeared in court, and he was assisted

# ARTICLE 40

by an unrelated 'aunt'. Also, the Court pointed out that getting access to the probation officer's report in the earlier regional court case after being alerted by the High Court's query did not suffice, and, in any event, that report may not have been suitable or appropriate for the determination of a suitable sentence in this case. In summary, the sentencing officer had misdirected himself by imposing sentence on the basis of scant information on the accused's personal circumstances, which necessitated the case to be referred back for sentence.

## **Forthcoming Events**

- "Evaluating the SAYStOP Diversion Programme: Findings from the Second Follow Up Study" by Catherine Wood is now available from the Institute for Criminology, University of Cape Town. Contact Ms. V Lorenzo at 021 6505625
- The Miller du Toit/ University of the Western Cape Family Law Conference will be held on 4 and 5 April 2003 in Cape Town. The theme of the conference is "Equality in Family Law and family Law Processes". For more details contact Joan Cornish at 021 418 or email [mdt@iafrica.co.za](mailto:mdt@iafrica.co.za)
- The 16th World Congress of the International Association of Youth and Family Judges and Magistrates will be held at the Melbourne Convention Centre, Melbourne, Australia from 26 - 31 October 2002. For more information and contact details : Tel.: +61 3 9417 0888; Fax: +61 3 9417 0899; email: [youthandfamily@meetingplanners.com.au](mailto:youthandfamily@meetingplanners.com.au)