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# JUVENILE JUSTICE • REGSPLEGING TEN OPSIGTE VAN MINDERJARIGES

## Juvenile Justice Review 1998

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JULIA SLOTH-NIELSEN

*Senior Researcher, Children's Rights and Advocacy Project,  
Community Law Centre, University of the Western Cape*

LM MUNTINGH

*Director: Research and Programme Design  
South African National Institute for Crime Prevention  
and the Reintegration of Offenders (NICRO)*

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### **Introduction**

The 1998 Juvenile Justice Review charts developments in juvenile justice law and practice in South Africa from October 1997 until October 1998. However, the release of the South African Law Commission discussion paper on juvenile justice (Project 106) on 14 December 1998 paves the way for an introduction to the contents of the discussion paper, and more especially an overview of the proposed new child justice system, as reflected in the draft bill attached to the discussion paper. The draft bill will be extensively debated with relevant departments, members of the profession, academics and other interested parties during 1999, with a view to producing a final report to the Minister of Justice during the latter half of 1999.

### **South African Law Commission Discussion Paper on Juvenile Justice**

The South African Law Commission Project Committee on Juvenile Justice (Project 106) released a discussion paper with draft legislation in late 1998 (Discussion Paper 79). The paper contains proposals relating to a new structure to govern criminal proceedings against children under the age of 18 who are accused of having committed offences. In essence, the proposed system aims to entrench diversion as a central feature of the proposed system. Diversion, the referral of cases away from the criminal justice system to an approved programme, or mediation or community service, is

comprehensively regulated in the proposed draft legislation. Decision-makers and actors who deal with children in the pre-trial phase (such as police and probation officers) are required to ensure that consideration is given as to whether diversion can be effected for each and every child accused of criminal offending. However, diversion can only take place where a child admits guilt. Appropriate procedural safeguards are presented in the draft legislation to ensure that constitutional and procedural protections are upheld. Assessment of children by probation officers, a practice which has been developing since the first assessment centres were established in 1994, and which has gained impetus through the work of the Inter-Ministerial Committee on Young People at Risk in piloting different models of assessment, assumes an important role in the new system. Proper and thorough pre-trial assessment and review of the social circumstances of each child is the key to unlocking the door to diversion. The legislation does not limit diversion to children who have been accused of any particular offences, or to children who are first offenders, but recognizes that in more serious matters, or where a child has been diverted before, the matter may (and in many instances, will) be deemed too serious for diversion.

The pivotal aspect introduced by the proposed new justice system for children accused of criminal offences is the insertion of the preliminary inquiry procedure, presided over by a magistrate at district court level. The preliminary inquiry provides a formal step, prior to charge and plea, to ensure that the relevant assessment has been completed, all possibilities of diversion considered, and to provide safeguards regarding the use of pre-trial detention.

The draft legislation does not envisage the creation of a set of new criminal courts, but does provide for specialized child justice courts which would treat children in accordance with their age and maturity. These courts, which approximate the juvenile courts which presently function in some urban magisterial jurisdictions, will have increased sentencing jurisdiction, if the proposals are accepted. This is to enable them to draw as wide a range of cases within their ambit as possible, thereby enhancing the more specialist nature of the child justice procedure. A degree of specialization as regards legal representation is also promoted by means of a requirement that defence lawyers desirous of receiving legal aid briefs regarding accused children register their 'speciality' with the Legal Aid Board, which in turn should set up an appropriate roster.

The Discussion Paper aims to extend the sentencing options available to the proposed child justice court, in accordance with the restorative justice model that is evident throughout the envisaged system. Examples of some of the new orders are appended to the discussion paper in order that public debate in this regard can take place.

Finally, the draft legislation includes proposals for a monitoring system, akin to the New Zealand Office for the Commissioner for Children, which has overseen the implementation of the 1989 Children, Young Person and their Families Act, and which produces evaluations and reports analysing the system introduced in New Zealand by that Act.

The discussion paper does not propose a solution to what is often the most hotly debated question in relation to juvenile justice: what should the minimum age of criminal responsibility for children be, and what evidentiary and procedural rules should govern any inquiry into whether children in fact possess the requisite criminal capacity. Instead, the project committee has proposed a number of options. The first is retention of the existing legal position of a lower age of criminal capacity (either seven or ten years), with a rebuttable presumption that children below the age of fourteen lack such capacity as a protection for younger children. Second, the option is mooted that a minimum age of responsibility be fixed (at either twelve or fourteen years), without reference to any evidentiary presumption. However, children ten years and older would, in this proposal, be able to be brought before a probation officer, for possible referral to the Children's Court (established under the Child Care Act 74 of 1983), or several other specified options (see section 29 of the draft bill).

The closing date for comment on the discussion paper is 31 March 1999; the process towards the adoption of legislation for the creation of a separate juvenile justice system is therefore substantially further along the way.

## **Pilot projects**

The 1997 Annual Juvenile Justice Review<sup>1</sup> reported on three of the Inter-Ministerial Committee on Young People at Risk's (IMC) pilot projects, namely Family Group Conferencing, Stepping Stones, and Assessment, Reception and Referral Centre. It is the aim of the IMC to replicate these projects countrywide. The final reports were published in 1998 (except for the Stepping Stones Project) and the following highlights some of the findings.<sup>2</sup>

### **Family Group Conferencing — Pretoria**

Family Group Conferences were tested as a diversion option available to local police stations and courts in the Pretoria area. The essence of Family Group Conferencing is to bring together the victim and the offender to restore the imbalance between the victim and the offender resulting from the crime. Right from the start the project encountered problems with low

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<sup>1</sup> J Sloth-Nielsen 'Juvenile Justice Review 1997' (1998) 11 *SACJ* 97.

<sup>2</sup> For more detail see *The Inter-Ministerial Committee on Young People at Risk: Report on Pilot Projects, Pretoria* (1998).

referral rates; neither the police nor prosecutors were referring substantial numbers of cases. Corrective steps were taken and by the end of the project in September 1997, 42 cases had been referred. The project was able to identify numerous problems when interfacing with the criminal justice system, indicative of a wide theoretical and philosophical divide between the more restorative approach of Family Group Conferencing and the more prosecution-oriented criminal justice system. Despite these structural difficulties, the majority of cases referred were resolved successfully through creative agreements between the different parties.

### **Stepping Stones — Port Elizabeth**

The Stepping Stones Project<sup>3</sup> centralized almost all services required for arrested children into one building; that is holding cells, a court room, police services, probation services and diversion programmes. The project's services were designed in this way in order to expedite children's cases through the criminal justice system. All children arrested in the Port Elizabeth area are brought to the Stepping Stones Project where they are assessed by a probation officer. Based on this assessment the probation officer makes a recommendation to the prosecutor with regard to detention, diversion and suitability for specific programmes.

Since the project opened its doors on 15 August 1997 until 31 October 1998, 2 688 children have been assessed of whom 1990 (74%) appeared at the Stepping Stones court. The balance (698) were referred to other courts for various reasons such as adult co-accused or the seriousness of the charge. Of the 1990 that appeared at the Stepping Stones court, 713 (36%) were diverted. Of the total group of 2 688, the diverted cases represent 27%.

### **Assessment, Reception and Referral Centre — Durban**

The Durban Assessment, Reception and Referral Centre pilot project was established with the following goals:

- to provide a social work assessment of every child under the age of 18 years arrested in the Durban Magisterial District within 12 hours after arrest. This included the tracing of parents and a target of 80% success rate was set;
- to provide the social work assessment as soon as possible after arrest and before first appearance in juvenile court in order to identify cases to be diverted (the target was set at 50% of cases to be diverted);
- to minimize the exposure of arrested children to the criminal justice system;

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<sup>3</sup> A final evaluation report on the project is not yet available and statistics presented here were provided by the Project Manager, Ms U Scheepers.

- to set up and maintain a computerized information system that would enable centre staff to track and record information on cases passing through the centre.

The pilot project ran from 16 June 1996 to 16 June 1997 and during that period 2 712 children were assessed and referred by the centre. Despite substantial problems with regard to cooperation from the police, the centre assessed between 179 and 273 children per month. The centre operated during office hours as well as after hours from 16:00 till 22:00, and from 09:00 till 21:00 over weekends and public holidays.

The majority of children (87%) were charged with economic offences. The research report<sup>4</sup> provides a wealth of statistical information on a wide variety of issues pertaining to the operation of the centre. One of the most significant findings of the report relates to diversion. A recommendation by the probation officer to divert was made in 549 cases (20,24%), and of these 78% were charged with shoplifting. The recommendation to divert was accepted in 400 cases or 14,7% of the total group. Similarly, only 6,3% of cases were converted to children's court inquiries. Overall, this is substantially below the target of 50% set for diversion.

Although the goal was to perform assessments within 12 hours after arrest, the data showed that nearly 40% of children were kept in police custody for longer than 12 hours before appearing at the assessment centre and a further 9,4% were kept in police custody for longer than 48 hours. One of the major issues was that some arrested children, especially those charged with more serious offences, bypassed the Assessment Centre and were held in Westville prison. The research showed that only 10% of the children being held at Westville prison were in fact assessed at the centre.

In overview, it appears that the centre was able to provide a service that achieved some of its objectives. The main value of the project was that it was able to clearly identify some serious problems in the operation of the criminal justice system, with specific reference to inter-sectoral cooperation, resistance by officials to change and transparency.

## Recent cases

In *S v Manuel* 1997 (2) SACR 505 (CPD) the trend remarked upon in the 1997 Juvenile Justice Review to emphasize the juvenile's right to parental assistance in pre-trial procedures continued to be evident. The accused, a sixteen year old, had made a confession before a magistrate, the admissibility of which was placed in dispute on the grounds that the state could not prove the absence of undue influence, and that admission of the confession as

<sup>4</sup> J Sloth-Nielsen *Report of the Durban Pilot Assessment, Reception and Referral Centre, Inter-Ministerial Committee on Young People at Risk* (1997).

evidence would be contrary to the accused's right to a fair trial as enshrined in the 1994 constitution (which was still in force at the time that the confession was made). The salient factor was the exclusion of the juvenile's mother from the room during interrogation, in violation of the juvenile's right to parental assistance. The interrogation led to the accused exercising two cardinal choices: first, waiver of his right to remain silent, and the decision to make a confession, and secondly, waiver of his right to legal representation. No judicial officer would have countenanced these critical decisions being made by a juvenile without all reasonable steps being taken to locate a parent or guardian, and excluding such parent or guardian from a court room at the time that these important choices are to be exercised would not be permissible. Thus, the court argued, the exclusion of the juvenile's mother from being present in the pre-trial interrogation would similarly be impermissible, and would constitute undue influence. The confession was thus held inadmissible, despite the presence of the parent during the actual noting of the confession by the magistrate.

An interesting conundrum is raised (albeit obliquely) in the case of *S v D* 1997 (2) SACR 673 (C). The presiding officer sent the matter on special review after convicting the four school-going accused of possession of very small quantity of dagga. The grounds for the special review were, according to Traverso J, not clear. The accused had been arrested at 08h00 before school started, and, after charges were put to them by the prosecutor, entered a plea of guilty and were consequently convicted (at 11h00), which would ordinarily have resulted in a criminal record. In the event, the children's convictions were overturned on review, on the basis that their constitutional rights may inadvertently not have been explained to them by the presiding officer, so surprised was he at the prosecutors 'unexpected behaviour' in putting charges to the children, and requiring them to plead. It is in this 'unexpected behaviour' that the actual nature of the complaint appears to have arisen: the usual practice in this court, it would seem, was that matters of this sort would be diverted without the necessity of appearing in court. Six weeks earlier, a substantially similar matter had arisen in this jurisdiction, also involving school-going children, and their cases were diverted. The four accused in the present case, as well as their parents, were deeply unhappy about the prosecutorial action taken, and argued that this was tantamount to discrimination against them.

This is, in effect, an argument that children accused of minor offences have a right to be considered for diversion: an interesting thought.

The judge deduced from the facts set out that the motivating factor behind the special review was the children's and parents dissatisfaction noted above that the case was not diverted, and the possible failure to give the requisite explanation of constitutional rights was a 'way out' in order to defuse the

situation. The argument that the effect of the exercise of prosecutorial discretion in this case was discriminatory in relation to a specific previous case, or even in relation to the general practice in that jurisdiction, was dismissed with the argument that status of the prosecutor as *dominus litis* disallows any possibility of review of the decision to prosecute.

It has been averred that it is precisely the lack of clarity about prosecutorial discretion, and the absence of a legal or policy framework which lays down the ground rules for the manner in which the option of diversion should be considered, that has proved to be a significant impediment to the growth of diversion for juveniles in South Africa. Diversion is fairly extensively regulated in the South African Law Commission's proposed Discussion Paper on Juvenile Justice referred to above, which lays down the principles applicable to diversion, the manner in which diversion decisions at various stages in the pre-trial process can be taken, various diversion options that can be considered by decision makers, and minimum standards in relation to diversion for those presenting diversion programmes. However, while the draft bill clearly favours the obligatory consideration of diversion in every case, it does not envisage *a right* to diversion, and the possibility of an appeal against a decision not to divert a case by an aggrieved person or child (such as was implicit in the facts of the case under discussion) is expressly excluded.

A reform school sentence was overturned on review by the Cape High Court in *S v M* 1998 (1) SACR 384 (C). The two accused were 15 and 16 years old respectively at the time of commission of the offence of stealing a bag of electrical switches from a deserted house. One was a first offender, the other had one previous conviction. A probation officer recommended a reform school sentence on the grounds that the two boys were disobedient at home, smoked dagga, and were starting to play truant. Their parents had lost control over them, and the probation officer was of the opinion that the necessary strict discipline to enable them to complete their schooling would be available in a reform school. The parents would have preferred a referral to an industrial school (available not as a sentence through the Criminal Procedure Act, but usually effected by means of a transfer to the children's court). However, the presiding officer followed the recommendation of the probation officer in imposing a reform school sentence. The High Court pointed out that despite the wording of section 290 of the Criminal Procedure Act which suggests that a reform school referral is an alternative to sentence, it is in fact a punishment in itself, and it can be experienced by those that are referred there as a severe punishment. Reform schools are not simply institutions where a young person can complete his or her education in a disciplined environment. Reform schools can be a place where a juvenile comes into contact with others who have marked criminal proclivities or who



have committed serious criminal offences (reform schools have long been regarded as 'universities of crime'. Accordingly, for this offence, committed on impulse, other options should have been considered, including the possibility of conversion of the matter to a children's court inquiry so that such court could refer the children to an industrial school.

Recent investigations have illuminated the unsatisfactory situation prevailing in many of the country's reform schools. In a damning report entitled *In Whose Best Interests: Report on Places of Safety, Schools of Industry and Reform Schools* (produced for Cabinet in July 1996) the Inter-Ministerial Committee on Young People at Risk provides a comprehensive account of human rights abuses, assaults and sexual abuse in institutions, and a dearth of developmental and therapeutic programmes. Attention is presently being given by certain provincial education departments to the closure of certain reform schools, rationalization of staff and facilities, and the reform of curriculum content and management practices.

Statistics suggest that, for reasons that have not been adequately researched, fewer and fewer children are being sentenced to reform schools, some of which are severely under-utilized as a consequence. Reform schools often provide the only alternative to a prison sentence, and it is not apparent whether the decline in the imposition of reform school sentences is linked to an increase in the use of imprisonment for children.

*S v Ceylon* 1998(1) SACR 122 (C) concerned the imposition of a sentence of 5 months imprisonment for a 17 year old who was convicted of assault with intent to commit grievous bodily harm. There were several mitigating factors: the accused was a first offender as regards offences involving an element of violence, there was provocation, the accused tendered a guilty plea, and was in steady employment. No medical evidence was lead to illustrate that the single stab wound had had serious consequences. The sentence was regarded as shockingly inappropriate in the circumstances, although the decision appears to turn more on the inappropriate use of short term imprisonment for a first offender, than it does on the youthful age of the accused. However, both the Convention on the Rights of the Child (1989) which South Africa ratified in 1995, and the Constitution, provide that as far as a child under the age of 18 is concerned, detention should be a matter of last resort.

### **Children awaiting trial in prisons and places of safety**

The position of children awaiting trial in prison has occupied considerable legislative energy since 1994, and 1998 has proved to be no exception. Although the provisions of the now infamous section 29 of the Correctional Services Act were supposed fall away at the expiry of their two year existence on May 8 1998, this did not occur due to a drafting error in the so-called

'sunset clause'. The provisions of the section have therefore have continued to regulate the position of awaiting trial children.

However, three Bills were published and circulated in 1998, all containing amendments to section 71 of the Criminal Procedure Act 51 of 1997, to regulate when a child under eighteen may be detained in prison. Bill 59 of 1998 repeated most of the provisions of section 29 of the Correctional Services Act which it was designed to replace, with one major departure: the clause allowing judicial officers to detain children for offences not mentioned in the schedule, where the offence was committed 'in circumstances so serious as to warrant such detention', was to be deleted. The consequence of this would have been that only children charged with listed offences would have been able to be detained in prison. By all accounts, this would have virtually halved the numbers of children detained in prison pending trial.

However, after the parliamentary public hearings, this Bill was replaced with a new bill, Bill 132 of 1998. Several major changes were to be brought about by this Bill, not the least of which was removing the legislative barrier to holding children under the age of 14 in prison. A further Bill, with amendments requested in the National Council of Provinces, was produced (Bill 132B of 1998), but was not introduced in parliament before the closure of the parliamentary session.

Section 29 of Act 8 of 1959 is likely to be replaced, as the entire Correctional Services Act has been replaced by a new Act, which may come into operation in 1999. The new Correctional Services Act does not regulate when a child may be detained in a prison pending trial. Thus interim legislation, pending the approval of comprehensive juvenile justice legislative, will have to be enacted.

In the lead up to May 8, when section 29 was expected to disappear, Project Go was launched by the Inter-Ministerial Committee on Young People at Risk to 'unblock' the child and youth care system (including children's homes and places of safety) to create vacancies for children detained in prison. Amongst its key goals was a review of the status of all children in residential facilities, and assessment and placement of youth awaiting trial in prisons or police cells. Reports suggest that a large number of children were moved out of prison custody on or before 8 May 1998; however, the overall trend has been that the number of children awaiting trial in prisons has been on the increase. By October 1998 there were 1 440 children awaiting trial in prisons; the highest since September 1996 as shown in Figure 1. The increase in the number of children awaiting trial in prisons is in all likelihood the result of the increasing period of time it takes to finalize cases as well as the limited availability of alternative places of secure care. At the time of writing, only one secure care facility had opened its doors, although several are expected to open in early 1999.

Figure 1: Total numbers awaiting trial

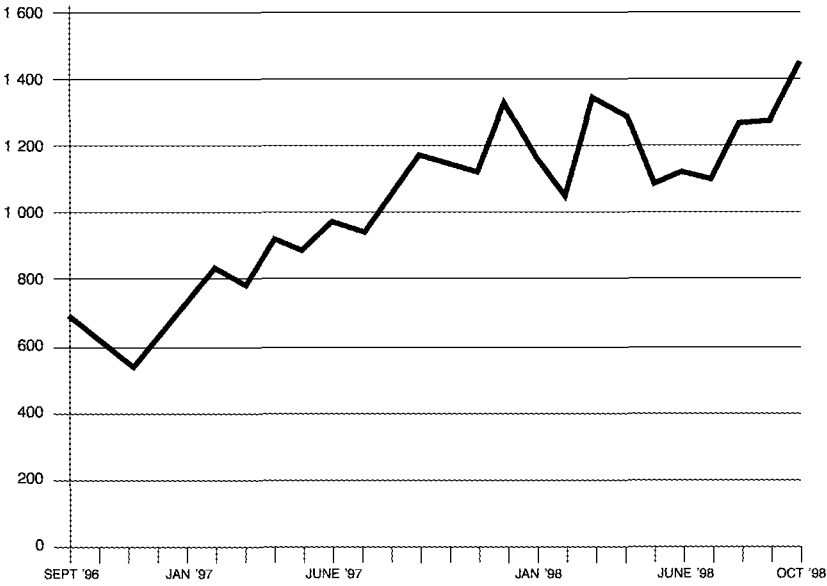
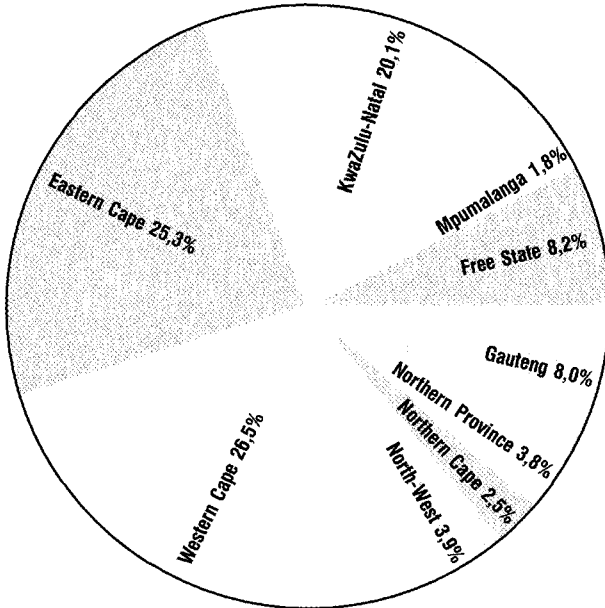


Figure 2 shows the average provincial distribution of children awaiting trial in prisons for the period August to October 1998. More than 70% of these

Figure 2: Average distribution of awaiting trial population per province



children are held in three provinces, namely Western Cape, Eastern Cape and KwaZulu-Natal. Gauteng province's contribution to the profile is surprisingly low.

The number of children awaiting trial in places of safety in the Western Cape, Eastern Cape, KwaZulu-Natal and Gauteng are presented in the following table.<sup>5</sup>

**Table 1: Number of children awaiting trial in places of safety, October 1998**

Province	Place of Safety	Number in custody at end of October 1998
Western Cape	Bonnytoun	160
	Lindilani	70
	Rosendal (females)	12
	Outeniqua	40
Eastern Cape	Enkuselweni	39
	Erica	5
Gauteng	Diyambo <sup>6</sup>	395
	Walter Sisulu	60
	Jabulani	121
	Protem	66
KwaZulu-Natal	Excelsior	70
<b>TOTAL</b>		<b>1 136</b>

Table 1 shows that a substantial number of children are being held awaiting trial in places of safety. Despite the efforts of Project Go, the number of children awaiting trial in prison remain on the increase. No single reason can be forwarded for this and it appears that a number of factors contribute to this trend. One persistent problem is the fact that some children are co-accused with adults in regional court cases resulting in substantial delays. Remand dates for cases are also often set weeks (if not months) ahead, especially in Regional Courts where the most severe delays are experienced. Many children are also held in place of safety that are far away from where their cases are being heard and this results in further delays as remand dates

<sup>5</sup> Figures obtained from Provincial Project Go Coordinators.

<sup>6</sup> Please note that Diyambo is a privately operated place of safety contracted by the Department of Welfare.

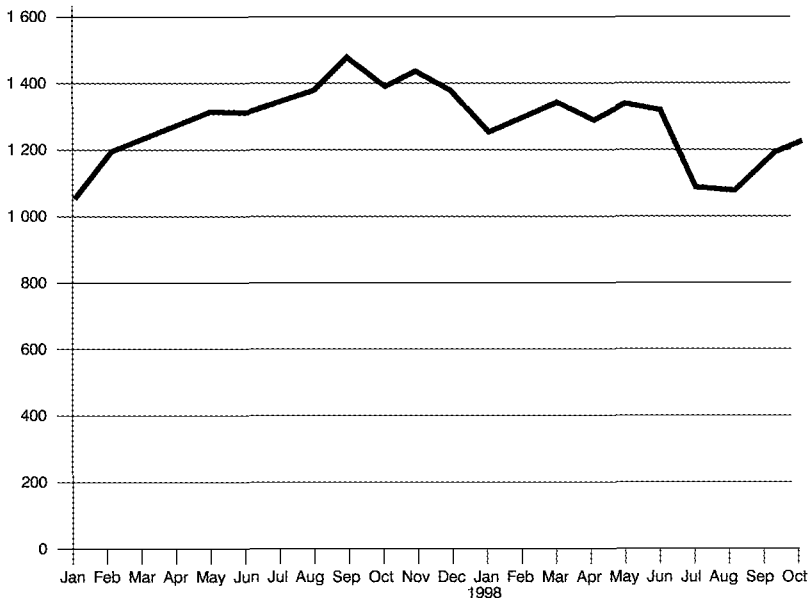
are extended. Although there is no reliable data available yet, it has been alleged that children are being charged with more serious offences and that more cases involving juveniles then have to appear in regional courts.

### Sentenced children

The number of sentenced children in South African prisons showed a continuous decline from September 1997 to August 1998. The sharpest decrease was in July 1998 as a result of the presidential pardon to prisoners on the occasion of his 80th birthday. However since September 1998 there has been an increase which nearly negated the July–August 1998 drop in numbers. Minor increases occurred after September 1997 but were not sufficient to alter the general downward trend. This trend is in all likelihood related to the increasing time it takes for cases to be finalized as is also reflected in the number of children awaiting trial in prisons, as shown in Figure 1.

Table 2 presents the provincial distribution of children serving prison terms and the majority are in four provinces, namely Gauteng, Eastern Cape, Western Cape and KwaZulu-Natal (65% of the total). Compared with the September 1997 figures the October 1998 figures show an overall decrease of 10% although the numbers for 15- and 16-year-olds increased by 17% and 6% respectively.

**Figure 3: Number of sentenced children in prison per month, 1997/98**



**Table 2: Number of children serving prison terms as on 31 October 1998**

Province	7-13 years	14 years	15 years	16 years	17 years	Total
Free State	3	1	10	29	69	112
Mpumalanga	0	1	5	18	47	71
KwaZulu-Natal	5	4	19	53	112	193
Eastern Cape	0	1	18	51	103	173
Western Cape	2	2	17	51	125	197
North-West	1	0	11	38	63	113
Northern Cape	0	0	9	15	45	69
Northern Province	2	1	4	21	36	64
Gauteng	1	5	25	75	124	230
<b>Total October 1998</b>	14	15	118	351	724	1 222
<b>Total September 1997</b>	14	23	101	332	891	1 361
% Increase/Decrease	0,0	-34,8	16,8	5,7	-18,7	-10,2

**Diversion**

NICRO remains the primary provider of formal diversion programmes and a total of 6 601 cases were dealt with by the organization from September 1997 to August 1998. The period under review also shows a 76% increase between September 1997 and August 1998. Of the five diversion programmes offered, 72% were referred to the Youth Empowerment Scheme. The programme is a six part life-skills course run over six weeks and the parent(s) or guardian(s) attend the first and last sessions. Other programmes are pre-trial community service, victim offender mediation, The Journey and family group conferencing.

Although the children referred for diversions are charged with a wide variety of offences, the majority (85%) are charged with property offences and specifically theft and shoplifting. A very limited proportion of housebreaking cases are referred. The overall impression is that diversion is used primarily for minor property offences.

A follow-up survey of 468 NICRO juvenile diversion clients countrywide found that only 6,7% re-offended in the first 12 months after attending a diversion programme.<sup>7</sup> Where children did re-offend, the average time lapse

<sup>7</sup> LM Muntingh, *The Effectiveness of Diversion Programmes—A Longitudinal Evaluation of Cases*, NICRO (1998).

Figure 4: Summarized offence profile of diverted cases

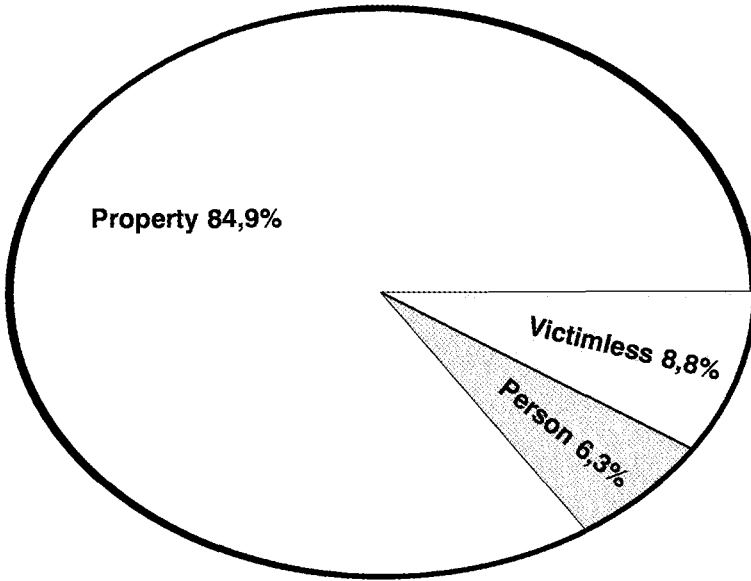


Figure 5: Number of diversion cases per month



from attending the programme to re-offending was 7,2 months. The research was also able to create a fairly detailed profile of diversion programme participants and the typical client is male, aged between 15 and 17 years, a first offender charged with a property offence, who resides with his parents and is in his 2nd or 3rd year of secondary schooling. The majority of clients (83,4%) were originally referred for property offences such as shoplifting, theft and malicious damage to property. The compliance rate with the conditions of the diversion, including attendance and completion of the programme, is also very high, varying between 74% and 90%.

The study also collected feed-back on programme content and found that nearly all participants interviewed had a favourable opinion of the programme they attended and regarded it as a memorable experience. Experiential and adventure education techniques appear to have had a lasting impression on the programme participants. The majority of participants indicated that they experienced a positive personal change after attending the diversion programme, with the emphasis on more responsible decision-making.

## **Conclusion**

In overview, it appears that certain important achievements in the process towards juvenile justice development were made in 1998. The release of the South African Law Commission's Discussion Paper on Juvenile Justice, with draft legislation being made available for debate and consultation, is a milestone on the road to the creation of a children's rights oriented criminal procedure. The pilot projects initiated by the Inter-Ministerial Committee on Young People at Risk, and the focus on the development of probation services lay a solid practical foundation for implementation of a new child justice system. Encouragingly, there are (at least for the moment) fewer sentenced children in prisons in the country. Finally, the use of diversion has increased markedly, indicative of a growing acceptance (especially by prosecutors) of the importance of diversion as the preferred route for children charged with less serious offences. Furthermore, a recent study shows that the recidivism rate for diversion appears to be very low, lending additional support to the increased use of referrals away from criminal courts.

On the other hand, it should be noted that the number of children awaiting trial in prisons has continued to increase, despite the concentrated focus on the potential demise of section 29 (which did not, however, eventuate). Project Go, set up to co-ordinate the planned release of children from prison, has failed to significantly affect the overall profile. Secure care facilities, intended to be the alternative to prison for awaiting trial youth, have been slow to get off the ground. Some have been plagued by building delays, yet others are complete, but no staff have been appointed. For the tardy



development of secure care, the respective provincial welfare departments must bear at least a large part of the blame. The prospect that no children will await trial in prison, even when secure care facilities are operative, has receded substantially, and it is likely that legislation providing for the detention of some children in prison pending trial will be a permanent feature of South African law.