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Juvenile Justice Review 1999–2000

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Introduction

The two years covered in this review have seen major developments in the juvenile justice sphere. Not only have several important judicial decisions been handed down, but the process of law reform has advanced significantly with the completion of the South African Law Commission's *Report on Juvenile Justice* which was presented to the Minister of Justice in August 2000. Draft legislation (entitled the Child Justice Bill) to establish a separate procedural system for children in conflict with the law is proposed in that document, and its contents are destined to be debated in Parliament in the second half of 2001.

The South African Law Commission's *Report on Juvenile Justice*

Premised on an approach consistent with international principles, such as those contained in the United Nations Convention on the Rights of the Child, the draft Bill proposes a range of new provisions designed to constitute a separate procedural system for children charged with offences. The proposed legislation will apply to all children aged below 18 at the time of commission of the offence, and to children of 10 years or above. The effect of this is to raise the minimum age of criminal capacity from the present 7 years. The common-law rules pertaining to criminal capacity are to be repealed and replaced with new provisions, which, however, preserve in codified form the rebuttable presumption that children aged below 14 years are *doli incapax*. Children aged below 14 years may only be prosecuted upon the issuing of a certificate by the Director of Public Prosecutions confirming an intention to proceed with the prosecution of such child. No such certificate is required, however, if the matter is diverted.

Further, the draft Bill sets out comprehensively the ambit of police powers upon arrest, and provides greater scope for the use of alternative methods (other than arrest) of securing the attendance of accused children at subsequent proceedings. Enhanced protection for children during pre-trial

procedures such as the noting of confessions is proposed, along the lines of recent case law which has ruled confessions noted in the absence of parents or guardians inadmissible (*S v M* 1993 (2) SACR 487 (A), *S v Kondile* 1995(1) SACR 395 (SE) and *S v Manuel* 1997 (2) SACR 505 (C); the latter two cases are discussed in J Sloth-Nielsen 'Annual Juvenile Justice Review' (1995) 8 *SACJ* 331 and J Sloth-Nielsen 'Annual Juvenile Justice Review' (1998) 11 *SACJ* 97)). The protection of children whilst in detention in police custody has also been addressed in the draft Bill.

Two new procedures that will now receive statutory recognition are assessment and diversion. Pre-trial assessment has now become firmly entrenched as an element of government policy and practice in the juvenile justice system, and the desirability of including provisions regulating assessment was widely accepted during the consultative process followed by the South African Law Commission (see J Sloth-Nielsen 'Annual Juvenile Justice Review' (1995) 8 *SACJ* 331 for a description of some of the first initiatives in establishing assessment centres).

As regards diversion, comprehensive legal regulation of this aspect of emerging juvenile justice practice was felt to be necessary in the light of the potential for human rights violations in the diversion process. The legislation, therefore, requires that diversion programmes must comply with specified minimum standards, ensures that diversion can only be arranged if the child and his or her parents consent to this, and seeks to protect children from harm, exploitation or disproportionately severe outcomes in relation to the harm caused by the offence. A statutory requirement of registration of those diversion programmes that are offered on a regular basis has also been proposed, in order to minimise the possibility of 'diversion being used to promote personal or sectoral interests' by (for example) vigilante groups, religious sects and modern-day Fagins, which could lead to the practice being discredited (*Report on Juvenile Justice* para 7.24).

Restorative justice diversion options are provided for in some detail, and statutory provisions enabling a referral to a family group conference have fleshed out the proposals contained in the earlier *Discussion Paper on Juvenile Justice* (Discussion Paper 79).

That the consideration of diversion is intended to form a central aspect of the new system is emphasised in the draft Bill's provisions for a new procedure termed a preliminary inquiry. This pre-trial conference procedure must be held in respect of each child before the child is requested to plead to any charges. The objectives of the procedure are to ascertain whether assessment of the child has been completed, and if not, whether there are compelling reasons to dispense with such assessment; to establish whether the child can be diverted, and if so, what an appropriate option might be; to provide the prosecutor with an opportunity to assess whether there are

sufficient grounds for the case to proceed to trial; and to determine the release or placement of the child while awaiting trial. The inquiry is intended to be an informal procedure, chaired by a magistrate, with further participation by the prosecution, the child and his or her family, the probation officer and if needs be, the investigating officer. It is proposed that such inquiry be held within 48 hours of an arrest of an offender aged below 18 years, and that age determinations may also be made by the presiding officer at that point. It has been predicted (based on an impact study that was commissioned by the South African Law Commission) that as many as 60% of cases brought to the inquiry will be diverted, converted to a children's court inquiry, or dropped due to lack of evidence (*Report on Juvenile Justice* para 8.23).

As regards court hearings in juvenile cases, the proposed legislation provides for the designation of a 'child justice court' at district court level, along much the same lines as the juvenile courts that presently function in many urban areas. Children will continue to be tried at regional and high court level where the seriousness of the offences warrants a trial before a court with a higher sentencing jurisdiction. An innovation, though, is the legislative provisions enabling the establishment of One-Stop Child Justice Centres, modelled on the Stepping Stones One Stop Centre in Port Elizabeth. This Centre, which commenced as a pilot project of the Inter-Ministerial Committee on Young People at Risk, provides offices for the police and probation services, temporary accommodation for arrested children, and court facilities. The clustering of services in this way has been shown to be an effective means of providing a more child-friendly criminal justice process, and of increasing access to diversion. The draft Bill therefore empowers the Minister of Justice and Constitutional Development, in consultation with other relevant Ministers, to establish such Centres and to determine the geographical boundaries of their jurisdiction. In order to achieve maximum cost effectiveness, the Centres could serve a number of existing magisterial districts, especially where these are situated in close proximity in urban areas.

The draft legislation provides considerable detail on sentencing. Distinguishing between community-based sentences, restorative justice sentences, correctional supervision and sentences with a residential requirement (which involve deprivation of liberty), the legislation proposes that imprisonment be limited to situations where the child is 14 years or above at the time of commission of the offence, and where substantial and compelling reasons for the imposition of such sentence exist because the conviction is for a serious or violent offence. In addition, imprisonment is possible where the child has previously failed to respond to alternative sentences. A wide range of community-based sentences is proposed, including many of the options that are also utilised as diversions.

The draft Bill provides further for a number of requirements concerning legal representation of children. Clause 98 spells out that accused children must be provided with legal representation at state expense if the child is to be remanded in detention pending plea and trial, if the matter is to proceed to trial and a likelihood exists that a sentence involving deprivation of liberty may be imposed upon conviction, and if a child of at least 10, but not yet 14 years of age is to be prosecuted in court. A child who is entitled to legal representation in these circumstances may not waive legal representation: if the child indicates that he or she does not want a lawyer, the court must then appoint a legal representative to assist the child. Such person must (in terms of clause 100(5) of the draft Bill) attend all hearings, address the court on the merits of the case, and note an appeal against conviction or sentence if at the conclusion of the trial this is considered necessary. The person assisting the child may cross-examine state witnesses, and to this end is granted the right to have access to statements in the police docket.

Finally, the *Report* contains a chapter on monitoring of the system, and proposes structures at local, provincial and national level. A central function of these monitoring structures is to ensure the development of diversion, to collect information on the overall functioning of the system, and to facilitate intersectoral co-operation in the implementation of the proposed legislation.

Legislation

The Child Care Amendment Act 13 of 1999 (in operation from 1 January 2000) inserts a new definition of 'secure care facility' in the Child Care Act 74 of 1983. Secure care is defined as the 'physical, behavioural and emotional containment of children offering an environment and programme conducive to their care, safety and healthy development'. Section 28A clarifies that secure care facilities are intended to be used for the reception and secure care of children awaiting trial or sentence. The Minister for Social Development (previously Welfare and Population Development) would assume responsibility for the designation of facilities as secure care facilities. Some progress has been made in the 1999-2000 period towards the development of secure care facilities as an alternative to prison for awaiting trial children, as such facilities have opened in the Free State and Western Cape. These developments entrench the recognition that secure care facilities administered by the welfare sector are to be part of Government's response to the detention of children in prisons awaiting trial.

The Child Care Amendment Act also removes the Ministerial power to transfer children placed in an institution under the Child Care Act to reform schools, and provides, for the first time, for a right of appeal against a placement order of a children's court.

Recent cases

Pre-Trial Assessment

The assessment procedure has been the subject of only one judicial pronouncement thus far. In *S v J* 2000 (2) *SACR* 310 (C), a case involving a review of sentence, reference was made to the fact that the accused had been assessed by a probation officer before appearing in court. The assessment report had been handed in to court, in lieu of a pre-sentence report. Overturning the sentence because of the absence of a proper pre-sentence report, the review judge commented also on the inadequacy of the completed assessment form. It was suggested that the format and language used were unnecessarily complex and that the forms used had not been understood by the probation officer. The judgment stated that this 'highlighted the importance of legislation clarifying the approach to assessment of young people in conflict with the law' (at 312). The recommendations contained in the South African Law Commission *Discussion Paper on Juvenile Justice* (Discussion Paper No 79) in regard to suggested statutory provisions on assessment were referred to with apparent approval.

Diversion

South African case law on diversion, however, has until now been in short supply. This is, perhaps, not surprising given the traditional judicial reluctance to interfere with prosecutorial decisions (*Gillingham v Attorney General* 1909 TS 572). Ordinarily, the prosecuting authority cannot be ordered to take a specific decision unless mala fides or gross unreasonableness is shown. Further, a prosecution commenced in good faith will not be stopped or interfered with on review unless there is evidence of the improper exercise of discretion. These considerations would suggest that there is little scope for interference with prosecutorial decision-making in the sphere of diversion.

The first judicial reference to diversion came about (somewhat uncomfortably) in *S v D* 1997 (2) SACR 673 (C) (discussed in Sloth-Nielsen and Muntingh '1998 Juvenile Justice Review' (1999) 12 *SACJ* 65). In an *obiter dictum*, the Cape High Court expressed some approval for the idea of diversion, but said that that the prosecutor, as *dominus litis*, had the right to proceed with criminal charges against children (at 673 h-i). The import of this *dictum* suggested that there is no right to diversion, even where diversion had been decided upon previously in the same jurisdiction in relation to substantially similar matters.

In *S v Z* 1999 (10) SACR 427 (E) (discussed further below in relation to sentencing), the court quoted with seeming approval (at 437b–438i) the full

content of a circular entitled 'Juvenile Offenders: Diversion Programmes' sent out by the Director of Public Prosecutions (Eastern Cape). Some of the guidelines for referral to NICRO's youth offender school contained in this circular, as reproduced in the judgment, include the following: the juvenile must admit to his (sic) part in the crime for which he is indicted and must be prepared to undergo the programme; the parent or guardian must agree to the implementation of the programme and must be prepared to co-operate; the juvenile should preferably be a first offender, but juvenile offenders with previous convictions may be considered for this referral if the previous convictions are not of such a nature as to result in the conversion of the proceedings to a children's court inquiry (with the view to referring the juvenile to an industrial school), or the referral of the juvenile to a rehabilitation centre or a reformatory, or the imposition of a sentence of imprisonment and the juvenile has not already had the benefit of diversion; the crime should be of a less serious nature (and specific reference is made in the circular to the offences of shoplifting, common assault and malicious injury to property); the juvenile must have a fixed address; finally, if there is a co-accused in a case, and he or she does not qualify for diversion, the juvenile himself cannot escape prosecution although a referral to the relevant programmes may be an option for the sentencing officer to consider.

Erasmus J was further of the view that the court should, where appropriate, promote the placement of the juvenile in a diversion programme prior to the commencement of the trial. In *S v J* 2000 (2) SACR 310 (C), Van Heerden J also referred to the desirability of legislation on diversion. These recent cases suggest not only emerging judicial support for diversion as a matter of good policy, but, in addition, the judgment in *S v Z* alludes to the desirability of active judicial participation in the furtherance of the ideal of diversion.

In *M v The Senior Public Prosecutor, Randburg* (Case 3284/00 WLD, unreported) an application for review was brought by the guardian of a minor girl (M), who had been convicted of shoplifting in the magistrate's court. The argument was launched on the basis that another girl (T, the co-culprit), who had also been arrested for shoplifting, had been granted diversion by the prosecution. Both participated in the same theft. This application, therefore, challenged the exercise of prosecutorial discretion in deciding to prosecute M. The imputation, the court explained, was that the prosecutor in M's case did not consider diversion. As the prosecutor did not respond to the papers filed for the review, whether he actually considered diversion is unknown. Also, the court mentions that if the prosecutor had responded with an affidavit to explain what he did, and indicating that he did consider diversion, the outcome of this application may have been different. But, in the absence of any such explanation, the inference had to be drawn that 'on facts which require that the question of diversion should at least

come into the equation, diversion was not considered' (line 15, page 4 of the judgment). This, the High Court held, implied that there was not a proper exercise of discretion, and, in the absence of any explanation or reasons for proceeding with the charge, the implication was that the prosecutor did not apply himself properly and fully to the content of what was before him. It was concluded that this gave reason to set the conviction aside, and to refer the matter back to the stage where the prosecutor 'does bring the prospects of and the possibility of diversion into the consideration before him' (line 27-8, page 4 of the judgment).

The decision turned, in other words, on the High Court's inherent power to review administrative decisions, and to overturn them where the person who exercised the power displayed bad faith, or failed to apply his or her mind to the matter. *M v Senior Public Prosecutor, Randburg* does not establish a right to be considered for diversion in every case, but proceeding from the principle that like cases should be treated alike, there is scope to argue that within a broad margin of discretion, diversion (and prosecution) must be applied relatively consistently within a jurisdiction. The judgment provides a basis for future challenges when obvious candidates for diversion are taken, instead, through the criminal process.

Sentencing principles

S v Z 1999 (1) SACR 427 (E) can be regarded as an influential judgment in the articulation of juvenile sentencing policy. The case concerned a review of several cases involving the imposition of suspended prison sentences upon children below the age of eighteen years. In an unusually activist manner, the court investigated the conditions under which children in that province actually serve sentences of imprisonment, on the supposition that a suspended sentence may well be put into operation at a later stage. On-site inspection of local prisons revealed that children were not necessarily separated from adult persons, not all children were attending school, and many prisoners occupied themselves in the cells doing nothing at all. It was a point of concern that 18 children were found to have been held in prison awaiting designation of a reform school, some having been in prison for more than 16 months.

As a starting point, the court stated the principle that imprisonment for youthful offenders should be avoided altogether where possible. Three further subsidiary rules were articulated in this case that, in the opinion of the court, should guide the exercise of judicial discretion to impose a sentence of imprisonment. First, the younger the child, the more inappropriate the use of imprisonment. Second, imprisonment is especially inappropriate where the child is a first offender, and, third, short-term imprisonment is seldom appropriate in cases involving juveniles (at 441 d-g). Further, the court held

that if direct imprisonment would not be an appropriate sentence in a particular instance, neither would a suspended prison sentence be a suitable punishment (435 f-g). Thus the correct approach would be first to determine a suitable sentence, and then only to consider the possibility of suspension.

In his judgment, Erasmus J stressed the importance of what he called 'monitoring and follow up' (at 438j) in relation to the choice of sentence for juveniles. For this reason, a sentence (such as a fully suspended sentence) which effectively came to an end when the convicted juvenile walked out of the doors of the court would seldom be regarded as suitable, in the view of the court. Further, it was held that sentences should be tailored to the personal circumstances of each individual juvenile, and a suspended sentence should include some component relating to care or supervision. For this reason, it was suggested that sentencing officers should act dynamically to obtain full particulars of the juvenile accused and his or her personal circumstances, and to obtain pre-sentence reports from probation officers. The court was of the view that even a suspended sentence of imprisonment should not be imposed without such report having been prepared.

In *S v Kwalase* 2000 (2) *SACR* 135 (C) the influence of international law upon sentencing of children was expressly referred to, after reference had been made to the ratification by South Africa of the United Nations Convention on the Rights of the Child. The court alluded to the importance of considering the principles contained in the Beijing Rules for the Administration of Juvenile Justice (1985), the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990) and the Riyadh Guidelines on the Prevention of Juvenile Delinquency(1990), as well as to the fact that the United Nations Committee on the Rights of the Child 'has stated categorically that the provisions of the UN Convention on the Rights of the Child relating to juvenile justice have to be considered in conjunction with the other relevant international instruments' (at138g-139b). Thus, the Court held that

> '[p]roportionality in sentencing juvenile offenders (indeed, all offenders), as also the limited use of deprivation of liberty particularly as regards juvenile offenders, are clearly required by the South African Constitution ... [and with] due regard to the provisions of ... international instruments relating to juvenile justice. *The judicial approach towards the sentencing of juvenile offenders must therefore be re-appraised and developed in order to promote an individualised response which is not only in proportion to the nature and gravity of the offence and the needs of society, but which is also appropriate to the needs and interests of the juvenile offender. If at all possible, the judicial officer must structure the punishment in such as way as to promote the reintegration of the juvenile concerned into his or her family and community*' (italics in original).

It can be argued that the 'follow up' referred to in *S v Z* is intended to promote the 'reintegration' of the accused child into his or her community, along the lines spelt out in the United Nations Convention on the Rights of the Child (1989).

Reform school sentences

The option of referral to a reform school has been increasingly problematic in the latter part of the 1990s. Reform schools have long been regarded as 'universities of crime', and it has been apparent that fewer and fewer children have been sentenced to periods of detention in reform schools in recent years. In the Western Cape, where six of the nine reform schools in the country were situated, significant transformation and rationalisation has taken place since the IMC report *In Whose Best Interests? A Report on Places of Safety, Industrial Schools and Reform Schools* was released in 1996. Several reform schools have been closed, notably Porter Reformatory, which was established in 1871. The remaining institutions in this province have been renamed, and the content and focus of their programmes altered.

In *S v Mtshali and Mokgopadi* (Case A863/99WLD unreported) the sentences of two girls who had been referred to a reform school were overturned, when it appeared that there was no such facility for girls in the province of Gauteng, and that the girls had consequently been held in prison for almost two years awaiting the designation of an appropriate facility. Other provinces had refused them admission to provincially administered facilities, as the referral from another province would have cost implications for the receiving province. The Gauteng provincial authority, on the other hand, had declined to accept responsibility for the costs, and the girls remained incarcerated in prison as a consequence until the matter was brought to the attention of a judge by a social worker. Setting the sentence aside, the judge reasoned that the proceedings were not in accordance with justice, as the magistrates concerned had, through no fault of their own, made orders founded upon a misapprehension as to the nature of the consequences that would follow.

Pre-Sentence Reports

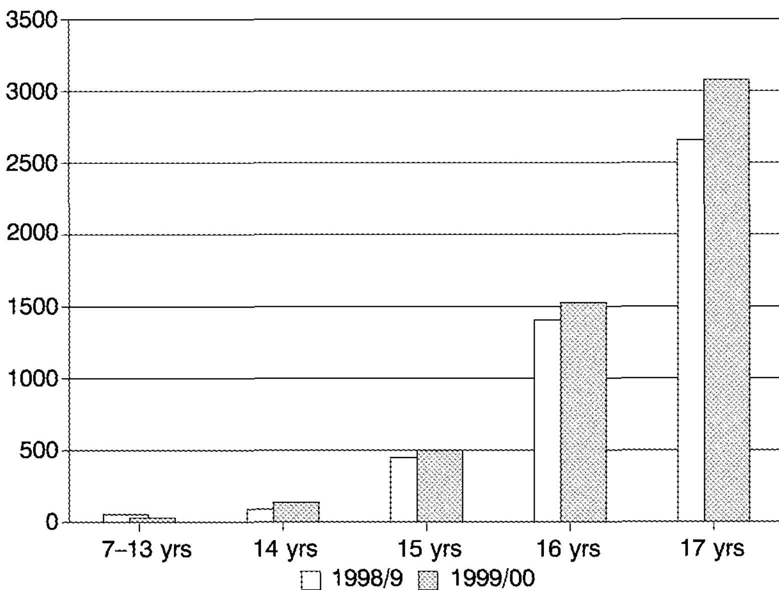
Judges have, in a number of recent cases, emphasised the importance of pre-sentence reports being made available to the court before a sentence involving deprivation of liberty is imposed. The desirability of pre-sentence reports was referred to in the earlier cases of *S v H* 1978 (4) SA 385 (EC), *S v Ramadzanga* 1988 (2) SA 837 (V) and *S v Quandu* 1989 (1) SA 517 (A). However, this trend has lately become more pronounced, as evidenced by cases such as *S v D* 1999 (1) SACR 122 (NC), *S v J* 2000 (2) SACR 310 (C) and *S v Kwalase* 2000 (2) SACR 143 (C). In *S v D*, an appeal court reversed a six-

year prison sentence imposed upon a child for rape committed when he was 16 years old because of the failure of the magistrate to call for a probation officer's report, and because only scant information about the accused's personal circumstances had been placed on record by his attorney. The court maintained that the starting point should be that no child should be sentenced without a pre-sentence report having been considered. The South African Law Commission *Report on Juvenile Justice* provides that no sentence involving deprivation of liberty may be imposed unless a pre-sentence report has been placed before the court (clause 85(2)).

Children sentenced to imprisonment

The total number of children convicted per year decreased from a high in 1980/1 of above 50 000 to 17526 in 1995/6; a decrease of 66%.[1] Not only has the total number of convictions decreased but also the number of children convicted as a proportion of total convictions. In 1980/1 children constituted 13.9% of total convictions, by 1995/6 this had dropped to 7.8%.

Figure 1 Age profile of children sentenced to imprisonment



From October 1998 to September 1999 a total of 4630 children were admitted to prisons to serve sentences at an average of 218 per month. In the following

[1] L M Muntingh (1999) *Article 40* vol 2 'Statistics: Youth Convictions'.

twelve month period a total of 5274 children were admitted to prisons to serve terms, representing an increase of 13.9% on the previous year. The age profile of children sentenced to imprisonment during the 24 month period under review shows an evenly distributed increase for all age categories except for the 7–13 year olds which showed a slight decrease from 69 to 42. The most substantial increase was for the 17 years olds, an increase of 16.9%. The figures do appear to show that there is an undeniable trend to sentence more children to imprisonment, and this is cause for concern.

Table 1 shows the sentence profile of children for November 1999 compared to the figures for November 2000. The table shows that 41% of children were serving sentences of 24 months and less in 1999, whilst the comparative figure a year later was 34%.

Table 1 Sentence profile of children

Sentence	% Nov 99	% 2000
0-6 months	13.0	11.08
6-12 months	16.9	12.5
12-24 months	11.2	11.08
2-3 yrs	26.8	25.8
3-5 yrs	14.7	16.44
5-7 yrs	6.8	7.75
7-10 yrs	6.4	8.0
10-15 yrs	2.6	3.69
15 -20 yrs	1.2	0.98
20 yrs+	0.4	1.16
N =	1 375	1 624

In November 1999 there were 239 children serving sentences of 5 years and longer, and 58 serving sentences of 10 years and longer. In November 2000, these figures had climbed 46% to 351, and 63% to 95 children respectively, in our view attributable to increasingly heavier sentences being imposed by courts. The numbers of children sentenced to terms of imprisonment longer than three years all show increases, whilst the use of short term imprisonment appears to be declining.

From January 1995 to July 2000 the overall number of children serving prison sentences increased by 158.67%. This is the highest increase per age

category.[2] Although children comprise less than 2% of the sentenced prison population, this rapid increase requires close monitoring.

Children are primarily sentenced for property crimes as shown in Table 2. Figures apply to end November 1999. Of the total number of children convicted, 50.5% were convicted for property crime, 30.8% for aggressive offences, 14.5% for sexual offences, 0.7% for narcotics related offences, and 3.4% for other offences. A detailed analysis of convictions for property offences for 1995/6 revealed that 80% of children are convicted for four types of offences: burglary, shoplifting, other thefts and thefts from motor vehicles.[3] The same table shows an interesting shift in the offence profile of sentenced children in custody in that the proportion of children convicted for economic crimes dropped below the 50% mark from 1998/9 to 1999/00. The number of children convicted for aggressive offences increased by nearly 4% from 30.8% to 34.3%. The number of children convicted for sexual offences also decreased by 2.1%.

Table 2 Offence profile of sentenced children in custody on 30 September 1999 and 30 September 2000

	1998/9	1999/00	1998/9 %	1999/00 %
Economical	820	846	50.5	49.2
Aggressive	500	590	30.8	34.3
Sexual	235	217	14.5	12.6
Narcotics	12	14	0.7	0.8
Other	55	52	3.4	3.0
Total	1622	1719	100.0	100.0

Although the number of children in prison declined from 1997 to 1998, it increased again rapidly from 1998 to 1999 and by September 1999 there were 34.3% more sentenced children in prison than in October of the previous year. It is especially 17 year olds that showed the most substantial increase in real numbers. The only decrease was in the age group 7-13 years. The number of sentenced children in custody on selected dates has shown an increase of 26.3% from October 1997 to September 2000.

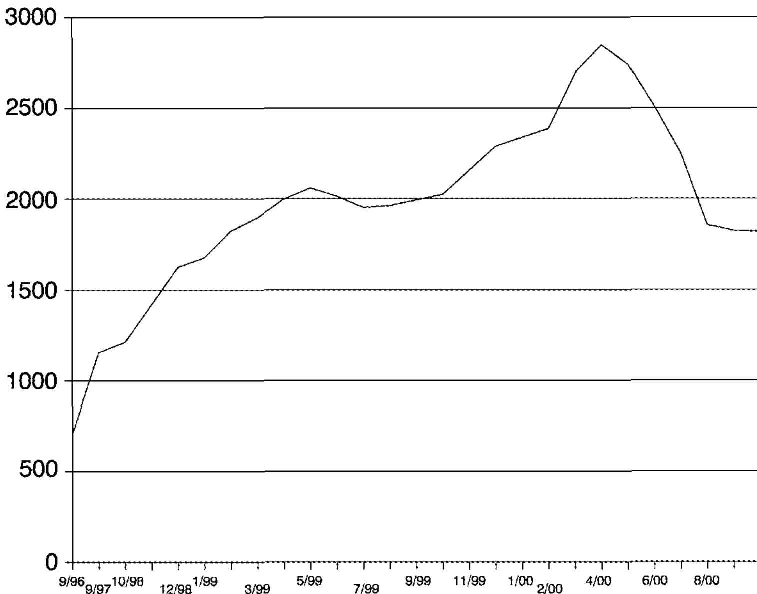
[2] Department of Correctional Services (2000) Trends in the offender population: January 1995 to July 2000, Report prepared for the National Council on Correctional Services.

[3] M Muntingh (1999) *Article 40* vol 2 'Statistics: Youth Convictions'.

Table 3 Number of sentenced children in custody on selected dates, 1997–2000

	7-13 Yrs	14 Yrs	15 Yrs	16 Yrs	17 Yrs	Total	% In/ decrease
Oct 1997	14	23	101	332	891	1 361	
Oct 1998	14	15	118	351	724	1 222	−10.2
Sept 1999	11	24	135	497	974	1 641	34.3
Sept 2000	5	41	145	476	1 052	1 719	4.8

Figure 2 Children awaiting trial in custody



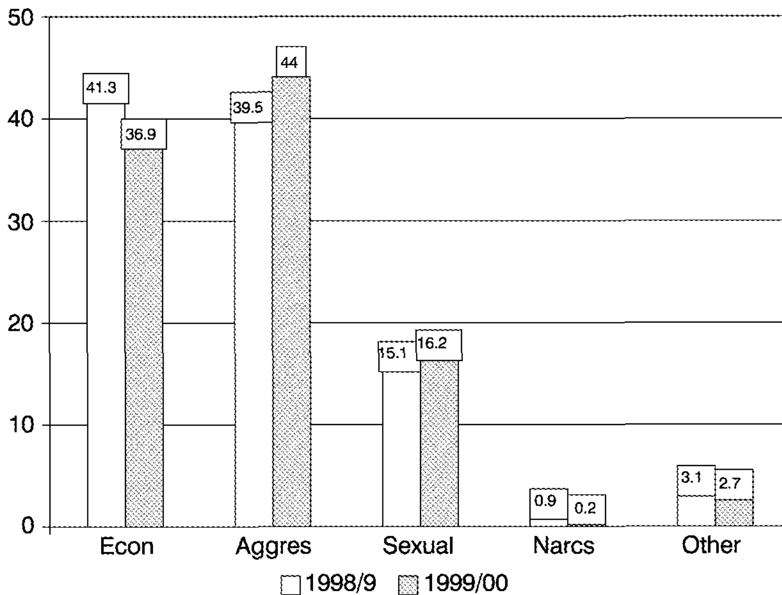
Despite legislative reforms reported on in Juvenile Justice Review 1998 and the activities of Project Go, which was launched to unblock the child and youth care system to create vacancies for children detained in prison, the number of children awaiting trial in prisons continued to increase to a record level by March 2000. The accompanying graph illustrates this clearly.

On the last day of September 1996 there were 698 children awaiting trial, 12 months later this had increased to 1173 and by September 1998, it was 1276. From October 1998 to November 1999, the number of children awaiting trial in prisons increased even further (by 60%) to 2306. By March

2000 the highest ever number was recorded at 2828. It is indeed regrettable that these numbers continued to increase despite all the efforts to effect the opposite. For comparative purposes the number of 18-year-olds was tracked for the period April to October 1999. During this period the numbers of 18-year-olds awaiting trial in prisons declined by 11%. From April 2000 to September 2000 the number of children awaiting trial started to decline significantly and by September 2000 was at the early 1999 level.

Statistics released by the Department of Correctional Services indicates a drastic increase in the average detention cycle of all age categories of awaiting trial prisoners. In July 1996 this figure was calculated to be 76 days; by July 2000 it had increased to 138 days on average. For regional court cases the figure was calculated to be 221 days in July 2000.[4]

Figure 3



Similar to the profile of sentences juveniles, the awaiting trial offence profile also shows a decrease in the number of children awaiting trial on property charges and an increase in the number of children held on aggressive charges. The other offence categories show negligible changes. The offence profile of children awaiting trial at end September 1999 is set out in the following graph. Of the total, 41.3% are awaiting trial on charges relating to economic offences and 39.5% for aggressive offences.

[4] Department of Correctional Services (2000) Trends in the offender population: January 1995 to July 2000, Report prepared for the National Council on Correctional Services.

Children do, however, not only await trial in prisons and the following table presents comparative figures for October 1998 and October 1999 on children awaiting trial in places of safety.

Table 4 Number of Children awaiting trial in places of safety[5]

Province	Place of Safety	Oct 1998	Oct 1999
W-Cape	Bonnytoun	160	170
	Lindilani	70	81
	Rosendal	12	1
	Outeniqua	40	49
	Vredelus		7
E-Cape	Enkuselweni	39	58
	Erica	5	1
	Siyalinga	Not available	9
	Protea	Not available	1
	Nerina	Not available	2
Gauteng	Diyambo	395	114
	Walter Sisulu	60	81
	Jabulani	121	100
	Protem	66	80
	Norman House		4
	Van Rhyn		12
	Tutela		0
	Jubilee		0
KZ-Natal	Excelsior	70	83
	Ocean View	Not available	48
	Pata		24
Total		**1136**	**2924**

In 2000 the Department of Social Development was able to collect more comprehensive figures on children awaiting trial in welfare facilities. These are presented in the table below per province. Although these figures are for December 2000 and thus falling outside the review period, they are nonetheless useful in contributing to the overview of the awaiting trial

[5] Figures obtained from Project Go Provincial Coordinators

situation. The aggregate figures presented in Table 5 do, however, not facilitate comparisons with the figures presented in Table 4.

Table 5 Children awaiting trial in facilities other than prisons (Dec 2000)

Province	Place of safety	Secure care	Youth development centre	Detention centre	Community Corrections	Total
W Cape	12	160		260	57[6]	489
Mpum.		14				14
F State		38				38
E Cape	2			38		40
N Cape	36	70				106
Gauteng		52	471[7]	139		662
N West	3	19				22
KZN	158					158
N Prov	1	4				5
Total	212	357		437		1534

It has also been reported by provincial Project Go Coordinators in 2000 that substantial numbers of children are remanded to police stations to be held there, awaiting trial. This happens despite legislation expressly forbidding the remanding of children to police cells. Figures made available by the Department of Social Development on children awaiting trial in police cells as at the end of September 2000 presents a chilling picture. Table 6 shows that in September 2000 there were 746 children awaiting trial in police cells in South Africa. The table also shows that there were at that time no children awaiting trial in police cells in the Western Cape and in Gauteng. According to a senior official in the Department of Social Development this is the result of an effective assessment and screening process in place in these two provinces that enable the rapid placement of children, preventing their remand to police cells. It had also been observed for some time that the number of children awaiting trial in prisons in the North West and Northern Province had been comparatively low. The reason for this is apparent from Table 6, namely that these children are being held illegally in police cells awaiting trial.

[6] House arrest pilot project of the Department of Correctional Services in the Western Cape.

[7] Diyambo facility in Gauteng

Table 6 Number of children awaiting trial in police cells, September 2000

Province	Scheduled	Non-scheduled	Total
W-Cape	0	0	0
Mpumalanga	61	5	66
Free State	4	24	28
E Cape	67	9	76
N Cape	8	8	16
Gauteng	0	0	0
N West	127	101	228
KZN	97	33	130
N Province	150	52	202
Total	514	213	746

By way of summary the following table provides an overview of the awaiting trial situation.

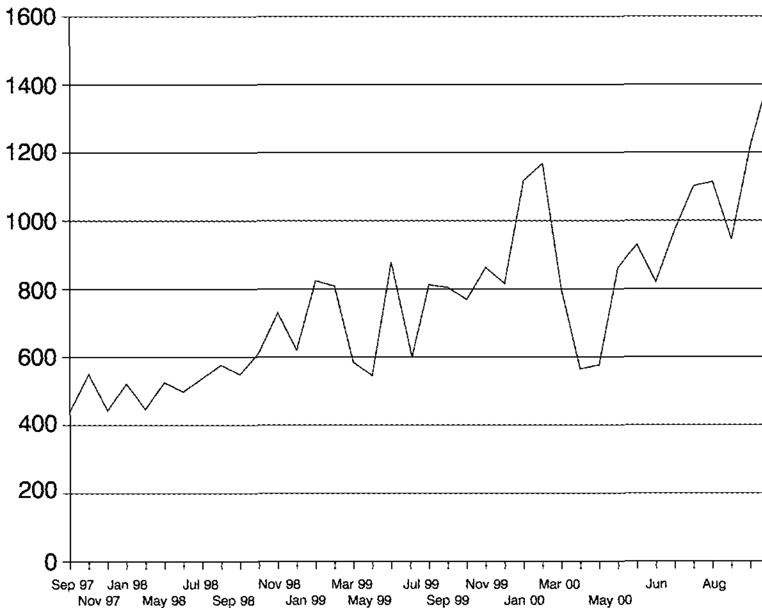
Table 7 Summary of children awaiting trial situation

Locality	Date	Number	Percentage
Children in police cells	Sept 2000	746	18.0
Children in other facilities	Dec 2000	1534	37.0
Children in prisons	Sept 2000	1862	45.0
Total		4142	100.0

Diversion from the criminal justice system

NICRO remains the primary provider of diversion programmes to the courts, although the provincial Departments of Welfare are increasingly rendering diversion programmes.

Figure 4 Diversion from the criminal justice system



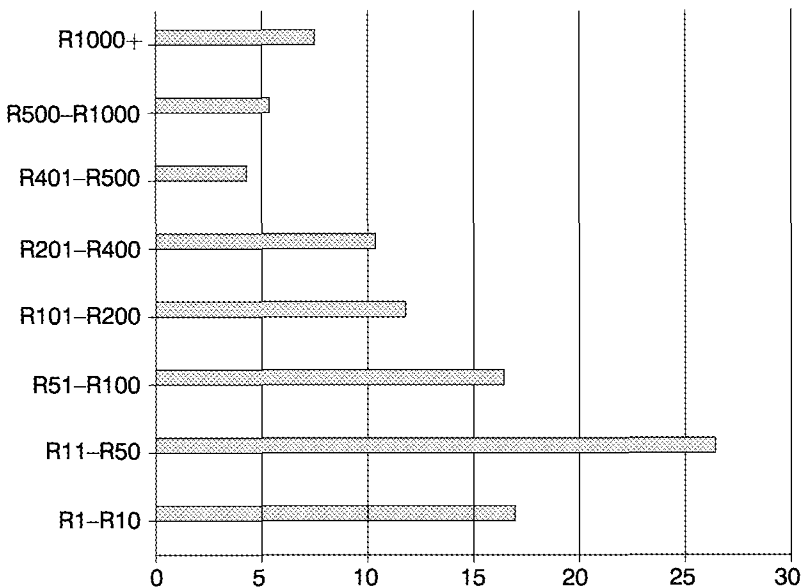
Despite seasonal fluctuations, the overall number of cases diverted to NICRO programmes continued to increase. The highest number of cases referred in one month was recorded in October 2000, a total of 1420. The compliance rate with the programmes remains at above 80% with the result that few cases are returned to court. Diversion services through NICRO are available in all nine provinces; the last to establish services (in 2000) was the Northern Province. In the 1998/9 financial year NICRO rendered diversion services to 111 magisterial districts in South Africa.

The provincial distribution of diversion cases referred to NICRO during the period under review is shown in the accompanying graph. A total of 9446 cases were referred in 1998/9 and 9984 in 1999/00. In 1998/9 69.8% of these were from three provinces, namely W-Cape, E-Cape and KZ-Natal. In the following year this figure dropped somewhat to 63.2%, indicating an increased use of diversion in the other provinces. It remains reason for concern that proportionately few cases are referred for diversion in Gauteng, Mpumalanga, North West and Northern Province, especially if taken into account that 45% of South Africa's population resides in these four provinces.

Table 8 Proportional distribution of diversion cases per province

Province	1998/9	1999/00	%Change
W-Cape	32.0	24.8	−7.2
E-Cape	18.6	16.3	−2.3
KZ-Natal	19.2	22.1	2.9
Free State	6.0	5.8	−0.2
N-Cape	4.9	5.4	0.5
Gauteng	13.4	19.6	6.2
Mpumalanga	2.6	2.4	−0.2
N-West	3.0	2.6	−0.4
Northern	0.2	0.9	0.7

Figure 5 Value of property involved



The offence profile of diversion cases remain fairly stable and in 1998/9, 80.4% were property related cases, 9.1% crimes against the person, and 10.5% victimless offences. The value of property involved is shown in the accompanying graph.

Nearly 80% of referrals are still received from prosecutors. The number of referrals from magistrates has however increased significantly from 7% of the total in 1997/8 to 15% in 1998/9.

NICRO offers five diversion programmes, namely Youth Empowerment Scheme, Pre-trial Community Service, Family Group Conferences, and The Journey. The proportion of cases per programme is presented in the following table:

Table 9 Percentage of cases per programme

Programme	Percentage >98-99	Percentage 99-00
YES	72.3	66.8
PTCS	20.7	22.2
FGC	2.6	2.4
VOM	0.8	0.9
Journey	1.8	2.8
Other	1.9	4.9

The proportion of cases referred to the YES (Life skills) programme continue to show a slight but steady decrease as other, more specialised, options are used increasingly. This is regarded as a positive trend.