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**BRIEFING ON THE IMPLEMENTATION OF THE CHILD JUSTICE ACT, 75 OF 2008**

**22 October 2013**

**1. Introduction to the Act:**

The Child Justice Act was introduced into law in 2008 and creates a procedural framework for dealing with children who come into conflict with the law. The Act seeks to ensure children's accountability and respect for the fundamental freedoms of others, and through diversion, alternative sentencing and restorative justice prevents crime and promotes public safety. Section 7(1) of the Act states that a child who at the time of the alleged commission of the offence is below the age of 10 years, cannot be prosecuted.

Section 7(2) states that a child, who is 10 years or older but under the age of 14 years at the time of the alleged commission of the offence, is presumed to have criminal capacity unless it is subsequently proved beyond a reasonable doubt that the child had such capacity at the time of the alleged commission of the offence. Children who are 14 years and older continue to have full criminal capacity.

The Act further seeks to:

- ensure the individual needs and circumstances of children in conflict with the law are assessed;
- provide for special processes or procedures for securing attendance at court of, the release or detention and placement of, children;
- creating an informal, inquisitorial, pre-trial procedure designed to facilitate the disposal of cases in the best interests of children by allowing for the diversion of matters involving children away from formal criminal proceedings in appropriate cases;
- provides for the adjudication of matters involving children which are not diverted in child justice courts; and
- provides for a wide range of appropriate sentencing options, specifically suited to the needs of children.

The Act further places emphasis on the effective monitoring of children going through the child justice system by requiring the establishment of an integrated information management system to enable such monitoring and analysis of trends and interventions, through the collection of both qualitative and quantitative data.

Section 93 of the Act requires the Minister of Justice and Constitutional Development to adopt a national policy framework. The Child Justice National Policy Framework was developed and tabled in parliament in 2010. The key priority areas for the implementation of the Act were identified as follows:

- Building Capacity in the Sector;
- Ensuring assessments of children;
- Preliminary inquiries;
- Sentencing;
- Provision of Diversion and Alternative Sentencing Services;
- Establishment of Child and Youth Care Centres;
- Establishment of One Stop Child Justice Centres;
- Resources and Budgets;
- Public Education and Communication; and
- Development of necessary IT and IJS-systems to support information management systems.

**2. Issues for Consideration in respect of the Second and Third Implementation Report:**

Key Points	Issues Reported		Questions
<p><b>Building Capacity:</b></p> <p>The implementation of the Act requires capacity building within the Child Justice System (CJS) both in terms of human resource skills and knowledge, as well as availability in terms of physical infrastructure.</p>	<p><b>2011/2012</b></p> <p><b>Overall Capacity Building:</b></p> <p><b>2012: 13665</b></p>	<p><b>2012/2013</b></p> <p><b>2013: 7278</b></p> <p>Total number of personnel trained across Departments: <b>45 292</b></p> <p><b>Variance between 2012 and 2013:</b> 6387 more personnel trained in 2012 than in 2013</p>	<p>Why has there been a significant drop in training in the last financial year? Please provide an explanation</p>

	<p><b>Child Justice Court Clerks:</b></p> <p>Since 2010, 128 child justice court clerks have been appointed.</p> <p>Where no dedicated child justice court clerks have been appointed, the clerks of the criminal court have been trained to perform the duties of the child justice court clerks.</p>		<p>Since 2010 how many court clerks should have been appointed to date?</p> <p>Why has existing staff been trained and no further appointments made of child justice court clerks?</p>
<p><b>Infrastructural Capacity:</b></p> <p>The Act enables the establishment of OSCJCs. In terms of the existing budgetary constraints, the funding of such Centres during the first few financial years, will primarily have to be done through requesting donor funding</p>	<p><b>One Stop Justice Centres:</b></p> <p>Two sites were identified namely North West and Eastern Cape</p>	<p>3 sites completed – a further one established in Free State</p>	<p>Why were these two sites identified? How far is this process? How are challenges being dealt with and when will more Justice Centres be established?</p> <p>Has donor funding been obtained for the establishment of these sites?</p> <p>What is the outcome of the viability study which has been undertaken in relation to the challenges experienced in establishing further OSCJCs</p>
<p>A priority for the DSD is the building of an additional 18 Child and Youth Care Centres in provinces (previously known as Secure Care Facilities) within this MTEF cycle.</p>	<p><b>Child and Youth Care Centres</b></p> <p>3272 bed capacity</p>	<p>2100 bed capacity</p>	<p>Explanation given that DSD has put mechanisms in place to explain the reduction in bed capacity – please explain the mechanisms which have been put in place and the variance in bed capacity?</p>

<p><b>Assessments of Children:</b></p> <p>The Act provides that every child alleged to have committed an offence must be assessed within a prescribed time frame. This obligation requires the active participation of the South African Police Service (SAPS) in notifying the probation officer and the Department of Social Development (DSD) must ensure that probation officers are available and accessible as required by the Act. During the medium term expenditure framework (MTEF) period, DSD planned to incrementally increase the staff capacity to meet the requirements of the Act.</p>	<p>18334 assessments completed in 2012</p>	<p>32 125 assessments completed in 2013</p>	<p>Why has there been a significant increase in the assessments of children over the last year?</p> <p>Still require an indication through statistics of a child's journey through the criminal justice system to establish whether the implementation of the Act is working or not. Suggest that an evaluation be conducted.</p>
<p><b>Preliminary Enquiries:</b></p> <p>A preliminary inquiry is an informal inquisitorial pre-trial procedure which must be held in respect of every child who is alleged to have committed an offence, except in a matter which has been diverted or withdrawn by the Prosecutor, or the child is under the age of 10 years.</p>	<p>All courts are deemed child justice courts. Amongst the needs identified to make courts more child friendly has been the establishment of child-friendly preliminary inquiry rooms where possible. However, the implementation report notes that the infrastructure of courts poses a challenge and the rooms will be introduced in courts where it is possible.</p> <p>Total number of preliminary enquiries conducted: <b>14471</b></p>	<p>Total number of preliminary enquiries conducted:</p> <p><b>17822</b></p>	<p>In 2012, availability of inquiry rooms were reported as problematic – in 2013 there has been an increase in the number of preliminary inquiries which were conducted compared to 2012 – have more inquiry rooms been established?</p> <p>Why has there been an increase in preliminary enquiries?</p> <p>How have courts been identified in terms of priority of establishing inquiry rooms? What rollout plan is in place and timeframe?</p>
<p><b>Diversion:</b></p> <p>The DSD has developed a national policy framework and system for accreditation of diversion service providers and programmes in South Africa. This DSD policy outlines a management</p>	<p>7270 less children were diverted in 2011/2012 compared to 2010/2011. A research study was commissioned to investigate this drop in numbers.</p>	<p>Increase of 2228 diversion cases in 2013.</p>	<p>In 2012: What were the main research findings? How has the Department addressed the challenges?</p> <p>2013: Why the increase in diversion services? What has changed since last</p>

<p>framework for the accreditation, quality monitoring and quality improvement of diversion service providers and programmes.</p>		<p>Summary of accredited diversion service providers provided without the detail of who the statistics refer to?</p>	<p>year? Which organisations or centres are represented in these figures? Please give examples for the Committee to understand who the partners are?</p>
<p><b>Remand Detention</b></p>	<p>Significant decrease in the amount of children in detention since 2009:  <b>2009: 771</b>  <b>2013: 135</b></p>		<p>It would be important for the intersectoral task team to provide evidence supporting the conclusion that the decrease in detention is related to the implementation of the Act. An evaluation will establish the legitimacy of the conclusion.</p>
<p><b>Sentencing:</b>  The Act creates an effective sentencing framework for children to give effect to the constitutional mandate that detention of children should be a last resort and for the shortest appropriate period of time. The sentencing framework in the Act prioritises the use of alternative or non-custodial sentences and creates a framework to ensure that residential sentences are a last resort.</p>	<p><b>Sentenced Children:</b>  Significant decrease in the number of sentenced children:  2009: 884 sentenced children  Diagram on Sentences Imposed on P24 of the presentation: no figures available for postponement of suspension of passing of sentence for 2010/2011 and 2011/2012</p>	<p>2011/2012: 410 sentenced children</p>	<p>What are the most recent statistics – in all other areas of presentation statistics are presented for 2013 but not in this diagram, why is this the case and what are the most recent statistics?  Why is there a lack of information for 2 years. Kindly explain generally how statistics are collected/gathered and analysed to inform the current figures presented to parliament?</p>
<p><b>Key Limitations</b></p>	<p>No existing government owned buildings suitable for conversion into OSCJs, shortage of psychiatrists, no integrated electronic inter-sectoral data collection system.</p>		<p>What has been done to address these challenges?  What timeframes will be implemented to ensure that the limitations are addressed?</p>

### 3. Overall Concluding Questions:

- **Statistics** was a huge challenge in the last financial year. Identify all the gaps and challenges experienced and whether the information management system has improved the collection and reporting of statistics? Provide recent updated statistics.
- How are **capacity** challenges being addressed eg too few probation officers and the lack of a dedicated budget for personnel to implement the Act? Provide the Committee with an overview of capacity gaps and how they are being addressed.
- Has the intersectoral task team conducted any research or an evaluation **on the movement of children through the criminal justice system** to establish the impact of this legislation on the lives of children in conflict with the law? If yes, kindly provide the analysis to the Committee? If no, please attend to ensuring that such an analysis is furnished to the Committee.
- The previous financial year revealed some challenges related to **budget**. Kindly provide the Committee with an overview of budget expenditure to date and whether or not the challenges related to budget has been resolved in the last financial year? If it has been resolved, please indicate how this has been done?
- Indicate if any huge challenges or obstacles are experienced in the operation of the **intersectoral task team**. If yes, how are these challenges being addressed?