

Ann Skelton's comments on the CJB 12 June (2)

Section 2 (c)

Comment

The word "to" is superfluous.

Suggested wording:

(c) provide for the special treatment of children in a child justice system designed to break the cycle of crime, which will contribute to safer communities, and [to] [ensure that] encourage these children to become law-abiding and productive adults;

Section 25

Comment

Incorrect cross reference

Suggested wording:

25. ~~[(2)](1)~~ ~~[(a)]~~ Chapter 9 of the Criminal Procedure Act applies to an application for the release of a child on bail, except for section 59 and section 59A, to the extent set out in section ~~[(22)(b)]~~ 21 (2)(b).

Section 28 (3)

Comment:

This is one place where removing the word "such" does not work, as the sentence does not read properly without it.

Suggested wording:

(3) The station commissioner of each police station must keep a register in which prescribed details regarding the detention in police cells or lock-ups of all children must be recorded **[separately]** in such a manner that entries therein regarding the detention of children are clearly distinguishable from entries regarding the detention of adults.

Section 42(2)

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Comment:

There is an error in the section which refers to assessment instead of preliminary inquiry.

(2) If a diversion order is likely to be made, a diversion service provider identified by the probation officer should be present at the [assessment] preliminary inquiry.

Section 51 (k)

Comment:

The word "values" is superfluous

Suggested wording:

(k) promote the dignity and well-being of a child, and the development of his or her sense of self-worth as a way of enhancing his or her sense of ubuntu [values] and ability to contribute to society.

Section 52(2)

Comment:

It is suggested that the requirement of checking with police should also be subject to "where possible". This would make schedule 2 diversions more workable in practice.

Suggested wording:

(2) A prosecutor may –
in the case of an offence referred to in Schedule 1, if the matter has not already been diverted in accordance with Chapter 6, or in the case of an offence referred to in Schedule 2, after he or she has, where possible –
(a) [where possible,] considered the views of the victim or any person who has a direct interest in the affairs of the victim, whether or not the matter should be diverted; and
(b) consulted with the police official responsible for the investigation of the matter,
indicate that the matter may be diverted.

Section 56 (2)(a)(iii)

Comment:

As diversion service providers now have so many requirements placed on them by the Act it is essential that the state must provide the necessary resources. Non-governmental organizations cannot carry this burden. The addition of the words "assist with" undermines the word "must". If the State is only going to "assist" with financial support, where will non-government diversion service providers get the rest of the financial support from? I don't remember the sub-committee making a decision to add these words, but maybe I missed something.

Suggested wording:

(iii) **[may] must**, for these purposes, **provide [assist with]** financial and technical support.

Section 56(2)(e)

Comment:

If the quality assurance is going to link to the accreditation process, it may be better to make it once within the period of accreditation, or in the year before the expiry of the accreditation.

Suggested wording:

(e) A quality assurance process must be conducted in the prescribed manner in respect of each accredited diversion programme and diversion service provider[?] by a team including independent persons [every two years] at least once during the period of accreditation/ within one year prior to the expiry of the accreditation certificate.

Section 72(1)

Comment:

Only correctional supervision in terms of s 276(1)(h) is community based.

Suggested wording:

A community-based sentence is a sentence which allows a child to remain in the community and includes any of the options referred to in section 53 or any combination thereof and correctional supervision referred to in section 75 (b).

Section 76(3)

Comment:

This clause gives rise to difficulties because a child who is sentenced to a child and youth care centre (CYCC) who then has to go on to an adult prison will have no sense of hope, and will not be amenable to rehabilitation whilst in the CYCC. The other problem is that a person sentenced to 8 years in prison is eligible for parole after 4 years. A person sentenced to 5 years in a CYCC and a further 3 years in prison (which is also a total of 8 years), will not become eligible for parole until having served 6 and half years, as there are no parole provisions for CYCC's. This is problematic. I can think of only one way to make a clause like this viable, and that is to give the discretion back to the court after the 5 years, which means that the child has a hope that if he/she behaves well there will be some chance of avoiding adult prison, but at the same time deals with the concerns about public safety that the sub-committee has expressed.

Section 76(3)

Suggested wording:

(3) (a) A child justice court that convicts a child of an offence referred to in Schedule 3, may –

(i) in exceptional circumstances; and

(ii) if substantial and compelling reasons exist,

impose a sentence [provided for in this section, as well as a sentence of imprisonment provided for in section 77(4) which is to be served once the person turns 18 years of age] of compulsory residence in a child and youth care centre for a period longer than five years.

(b) At the expiry of the five years the matter must be brought back before the court that handed down the sentence or a court of the same jurisdiction, for consideration to be given as to whether the child may be released, or must continue to remain in the child and youth care centre if his or her age permits that, or where appropriate, serve the remainder of the sentence in a prison.

(c) A report written by a social worker employed by the child and youth care centre where the child has been serving his or her sentence must be presented to the court for consideration of the decision made in subsection (b), and the social worker must appear before the court to answer questions about his or her report.

(d) A child appearing before a court in terms of subsection (b) may be legally represented.

Section 77

Comments: Two of the internal cross references are incorrect due to subsection 2 having been moved down:

- [(4)](3) [Subject to subsection (5), a] A child who was[–**
(a) below the age of 16 years; or
(b) 16 years of age or older and in respect of whom subsection (3) does not apply]

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14 years or older at the time of the commission of the alleged offence, and in respect of whom subsection ~~[(3)](2)~~ does not apply, may only be sentenced to imprisonment, if [such] the child is convicted of an offence referred to in –

- (i) **[Part I of Schedule 3] Schedule 3;**
- (ii) **[Item 1, 2, 3, 5, 6, 7 or 8 of Part II of Schedule 3;**
- (iii) **Part II of Schedule 3, excluding the offences referred to in item 1, 2, 3, 5, 6, 7 or 8 of that Part, if substantial and compelling reasons exist for imposing a sentence of imprisonment;]**
- (iv)] Schedule 2, if substantial and compelling reasons exist for imposing a sentence of imprisonment; or
- ~~[(v)](iii)~~ Schedule 1, if the child has a record of relevant previous convictions **[or diversions]** and substantial and compelling reasons exist for imposing a sentence of imprisonment.

(5) A child referred to in subsection ~~[(4)](3)~~ may be sentenced to a sentence of imprisonment for a period not exceeding 25 years.

Section 94(5)

Comment:

The old subsection 5 was not deleted.

Suggested wording:

[(5) The Committee may co-opt members from the non-government sector or civil society onto the committee as observers, or may invite persons who may provide assistance, support or advice to attend meetings when required.]

- (5) The Committee may invite –
- (a) representatives from the non-governmental sector and civil society to its meetings with the view to fostering co-operation between government and civil society in the implementation of this Act; and
 - (b) persons to its meetings, when necessary, with the view to obtaining assistance, support or advice the Committee might require.