


PC Correct

20101027

10/21/2010




Legal Aid
South Africa

Your voice. For justice.

**JICS Briefing - Overcrowding in
Detention Facilities**

Wednesday 27 October 2010



Legal Aid
South Africa

Presentation Contents

1. Alternative Sentencing
2. Diversion – Children
3. Diversion – Adults
4. Bail Protocol
5. Bail – 2 Stage Approach
6. Minimum Sentencing
7. Plea Bargaining



Alternative Sentencing

- Legal Aid SA fully endorses alternative sentencing initiative
- Increasing focus on rehabilitation and reducing the prison population forms part of Legal Aid SA Strategic Plan for 2009-2012
- Training on alternative sentencing and rehabilitation form part of the comprehensive criminal trial training offered to practitioners employed by Legal Aid South Africa
- Practice Manual for Practitioners employed by Legal Aid SA
- Legal Newsletters are available to all Legal Aid SA staff on its intranet which deals with preparation for sentencing hearings in considerable detail (also on intranet)
- Where appropriate, reports are requested from probation officers and social services in support of non-custodial sentences
- Legal Aid SA participates in Restorative Justice Task Team



Alternative sentencing Cont

NICRO MOU

- Legal Aid SA recently entered into a memorandum of understanding with NICRO
- NICRO programmes
 - advocated to judicial officers as community service alternatives to direct imprisonment
 - and/or which will assist released prisoners in reintegrating into society
- Monthly training and update sessions at each Legal Aid SA Justice Centre
- Preparation of regular newsletters to the professional staff of Legal Aid SA



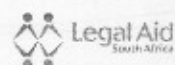
Alt Sentencing - challenges

- Limited Community Service Programmes available – particularly in rural areas
- Probation officers and social workers are overstretched in some areas with resultant delays
- Some magistrates are reluctant to consider non-custodial sentencing due to difficulties in supervising and monitoring participation of accused in community service programmes
- A possible alternative sentencing option is for detainees with short sentences convicted of non-violent crimes or who are not a threat to society to undergo home detention where they are electronically monitored



Diversion - Children

- For children consideration of diversion obligatory 1 April 2010 - Introduction of the Child Justice Act
- Preliminary indications are that fewer children are being sent to trial
- Legal Aid SA takes the view it is obliged to represent children at any preliminary enquiry where legal representation is requested by the presiding judicial officer
- All Legal Aid SA practitioners are trained to, and required to, apply their minds to possible diversion in each case involving children
- Justice Centres are monitored and required to report that this is being implemented
- Challenge exists in getting more programmes registered in terms of the diversion framework



Preliminary Enquiry Statistics

Region	June 2010	July 2010	August 2010	September 2010	YTD FY 10/11
Eastern Cape	12	22	24	9	67
Free State		1	5	4	10
Gauteng	3	17	8	8	36
Kwa-Zulu Natal		8	8	10	26
Mpumalanga				0	0
North West	8	7	6	6	27
Northern Cape		46	19	12	77
Western Cape	17	26	32	48	123
YTD FY 10/11	40	127	102	97	366



Diversion - Adults

- All Legal Aid SA practitioners are trained to and required to apply their minds to possible diversion in appropriate cases involving adults
- Many withdrawals are negotiated diversions



Bail Protocol

- Legal Aid SA practitioners are trained extensively in bail applications and are required to consider applying for bail in each criminal matter
- Detailed standard form bail affidavit in Practice Manual provides a checklist of factors to be considered in each case.
- Legal Aid SA practitioners also have a mandate to review and apply for a reduction in bail in appropriate matters ito S63(1) of CPA



Bail Protocol Cont

DCS statistics

- 9 000-10 000 detained persons at any one time who have been granted bail but who have not paid bail amount
- Of these 8 000-9 000 were granted bail below R2 500
- over 4 000 detainees were granted bail of less than R1 000



Bail – 2 Stage Approach

- In recent precedent setting litigation undertaken by Legal Aid SA it was clarified that judicial officers must follow a two-stage approach in considering bail (*Jacobs vs The State* Unreported CA&R 24/2009 EC:PE)
 - firstly whether the accused should be released on bail
 - secondly the affordability of the amount
- As this filters through to magistrates it should help reduce the number of persons in detention who have not been released because they cannot afford the bail set
- Some magistrates remain reluctant to consider alternatives to monetary bail such as daily reporting
- Police remain reluctant to consider alternatives to arrest and detention such as summons for ensuring that accused persons come before court



Minimum Sentencing

- Legal Aid SA supports the view that minimum sentences are not effective in reducing crime levels
- What is required are:
 - High likelihood of detection
 - Speedy and competent trial
 - Efficient and effective criminal justice system
- Statistics of the Judicial Inspectorate of Prisons reveal
 - average periods of imprisonment have increased significantly
 - without a correspondingly significant improvement in crime statistics



Plea Bargaining

- Formal process is complex/time consuming and not widely used except in large commercial matters
- Informal plea bargaining takes place widely
- Plea bargaining could be more widely utilised if:
 - NPA representatives could be persuaded not to use only where the state has a weak case
 - In these cases, Legal Aid SA practitioners are ethically obliged to draw weaknesses in the State case to the attention of the accused



Thank you