



PARLIAMENT
OF THE REPUBLIC OF SOUTH AFRICA

Implementation of the Child Justice Act:

Progress Report 2010/11 – 2013/14

**A happy or sad story for children
in conflict with the law?**

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IMPLEMENTATION OF THE CHILD JUSTICE ACT: 2010/11 TO 2013/14

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LIST OF ABBREVIATIONS

CAS:	Crime Administration System
CJA:	Child Justice Act, 75 of 2008
CYCC:	Child and Youth Care Centre
DBE:	Department of Basic Education
DCS:	Department of Correctional Services
DG:	Director General
DOE:	Department of Education
DOH:	Department of Health
DOJ&CD:	Department of Justice and Constitutional Development
DSD:	Department of Social Development
ICDM:	Integrated Case Docket Management system
IJS:	Integrated Justice System
ISCCJ:	Intersectoral-Committee for Child Justice
LASA:	Legal Aid South Africa
NGO:	Non-Governmental Organisation
NPA:	National Prosecuting Authority
OCJSR:	Office of the Criminal Justice System Review
OPAM:	Operational Planning and Monitoring System
OSCJC:	One Stop Child Justice Centre
PI:	Preliminary Inquiry
RD:	Remand Detainee
SAPS:	South African Police Service
SOCA:	Sexual Offences and Community Affairs
UNCRC:	United Nations Convention on the Rights of the Child

Section A | INTRODUCTION AND SUMMARY OF KEY POINTS

1.1 BACKGROUND

Before 1994, South Africa did not possess an admirable record of protecting the rights of all children. However, having ratified the United Nations Convention on the Rights of the Child (UNCRC) in 1995, South Africa committed itself to internationally agreed principles such as the best interests of the child, restorative justice, diversion and alternative sentencing options. Thus since 1995, interventions aimed at children in conflict with the law were predicated on the principles of the UNCRC, but these were not in legislative form. Section 28 of the Constitution (1996) served as the overarching framework for the rights of all children, including children in conflict with the law. While section 28(h) specifies that a child may only be detained as a measure of last resort – and then only for the shortest appropriate period – it still required legislation to give effect to this provision in a consolidated manner. The various departments, policies, and laws which guided services to child offenders were perceived as problematic and incoherent, and often resulting in serious violations of fundamental child rights.

Prior to the implementation of the Child Justice Act, 75 of 2008 ('the CJA') it was estimated that on average about 10 000 children were arrested in the country each month. Of these, between 2 750 and 4 000 appeared in court, between 1 300 and 1 900 were diverted from a magistrate's court, more than a thousand awaited trial in a prison cell, while about 900 were eventually sentenced to prison. These statistics hinted at some of the complexities that had to be addressed when considering any solution to the problems posed by children who come into conflict with the law.

The Child Justice Bill [B49 – 2002] was first introduced in Parliament in 2002 and was subject to intense debate. It was assented to by the President on 7 May 2009, and the CJA came into effect on 1 April 2010. The CJA creates special mechanisms, processes and procedures for children in conflict with the law and institutionalises the following:¹

- amending the common law pertaining to criminal capacity by raising the minimum age of criminal capacity for children from 7 years to 10 years of age;
- ensuring that the individual needs and circumstances of all children in conflict with the law are assessed by a probation officer shortly after apprehension;
- providing for special processes or procedures for securing attendance at court, the release or detention, and placement of children;
- providing for appearance in a preliminary inquiry which is an informal, inquisitorial, pre-trial procedure, designed to facilitate the best interests of children by allowing for the diversion of matters involving children away from formal criminal proceedings in appropriate cases;
- providing for the adjudication of matters involving children which are not diverted in child justice courts; and
- providing for a wide range of appropriate sentencing options specifically suited to the needs of children.

The Intersectoral-Committee for Child Justice (ISCCJ) is responsible for submitting an annual intersectoral report highlighting progress with the implementation of the CJA. The DGs ISCCJ (there is also a National Operational ISCCJ) comprises the Director-Generals of Justice and

¹ Child Justice Act, 2008 (Act No 75 of 2008)

Constitutional Development (as Chairperson), Social Development, Health, the National Director of Public Prosecutions, the National Commissioner of the South African Police Service (SAPS), and the National Commissioner of the Department of Correctional Services.

Since the CJA came into effect, three annual consolidated implementation reports covering the periods 2010/11; 2011/12 and 2012/13 have been tabled in Parliament. In addition, an unconsolidated report (which excludes information from the SAPS) has been tabled for the 2013/14 year.

The objective of this paper is to investigate the progress in the implementation of the CJA in South Africa, since 2010, and to highlight issues which Parliament could consider to include in its oversight strategy, when reviewing the implementation of CJA. This paper provides an overview and analysis of progress in implementation of the CJA over the reported four year period.

The paper is divided into three broad sections. These are as follows:

Section A	This section provides an introduction to the paper and highlights some of the key concerns (that are described in more detail in Sections B and Sections C), as well as key recommendations.
Section B	This section focuses on the latest reports: the consolidated Report for 2012/13 (the Third Annual Report on the Intersectoral Implementation of the CJA) which was tabled in Parliament in 2014 as well the 2013/14 unconsolidated Report which was also tabled in 2014. It provides a summary and analysis of: <ul style="list-style-type: none"> • Statistical progress in implementation of the CJA over the four year period • Progress on selected issues
Section C	This section of the paper is divided by departmental responsibility and focuses on the First and Second Reports (and provides a progress report on issues contained in the Third Report and the unconsolidated 2013/14 Report). This summary table contains cross sectoral general challenges and recommendations, as well as detailed challenges and recommendations per sector/department.

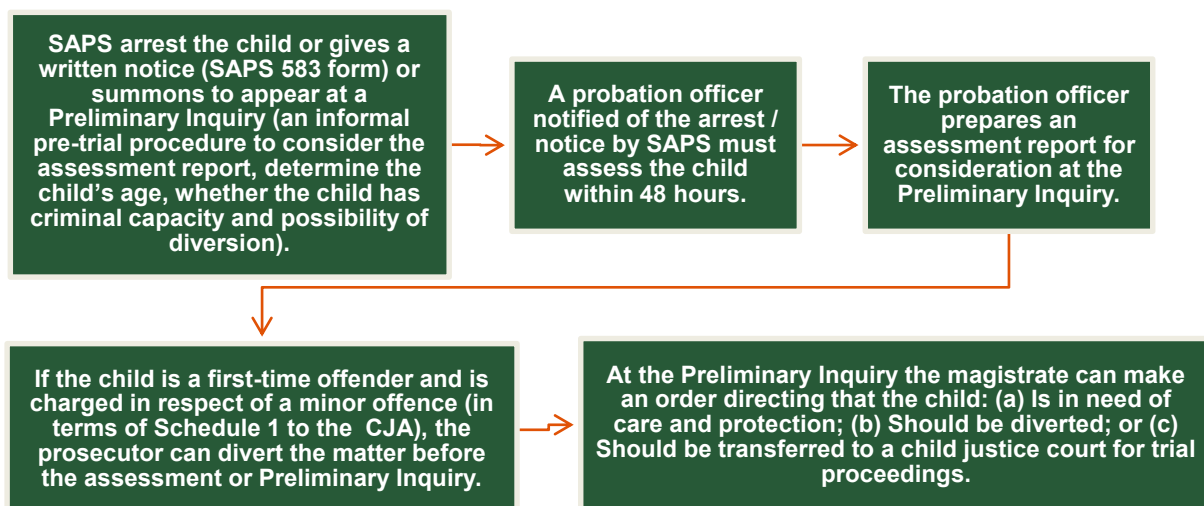
A detailed baseline paper, focusing on the First and Second Reports provided the background for this summary paper, which is the first of two in a Series. Most of the key challenges and recommendations contained in the baseline paper are summarised in this paper. The second paper in the Children in Conflict with the Law Series will contain the information on the international and national framework governing children in conflict with the law, international guidelines in terms of the age of criminal capacity and the developing case law in child justice.

1.2. THE PROCESS

The CJA seeks to instil the uniquely African element of ubuntu into child justice proceedings and endeavours to balance the interests of children with those of society.² It does this by underpinning the Act with principles of restorative justice and emphasising the involvement of parents and families as well as the community whilst acknowledging the need to ensure children accept responsibility and accountability for crimes committed. It also promotes the importance of the effective rehabilitation and reintegration of children who have committed crimes to minimise the potential for re-offending.³

The following provides a summary of the main stages that should occur when a child comes into conflict with the law:

The pre-trial CJA chain of events when a child is alleged to have committed an offence:



1.3. KEY CONCERNS

The main aim of including the requirement in the CJA for the ISCCJ to report annually on progress with implementation of the Act, is to ensure that the Act is working effectively in terms of the spirit of the Act.

Ideally, the Reports should provide a clear understanding of what is working and what is not working; and thus enable clear interventions to ensure improved implementation.

This paper highlights the following key concerns:

a) Assessment of progress is hampered by the poor quality of the Reports

The three consolidated Reports that have been tabled to date do not provide a clear picture on progress with implementation mainly due to the way that the statistics and information is presented and analysed. Problems in the Reports include:

- Inaccurate and contradictory statistics
- Inconsistent reporting

² Section 2(b) Child Justice Act

³ Sloth Nielson and Galinetti (2011)

- Lack of systematic year on year reporting
- Absence of detailed analysis of the statistics
- Gaps in information and statistics

The ISCCJ has to some extent acknowledged this problem and blames it on slow progress in the implementation of the Integrated Justice System (IJS) and departmental specific information systems. While acknowledging this problem, this paper makes a number of recommendations related to reporting that if implemented would result in a clearer picture of progress with implementation of the Act and its impact on children in conflict with the law.

b) Progress as reported by the Reports in contrast to ‘real’ progress

The Reports continually try to project a picture of improvement in the child justice system. But while this may indeed be the case, a close interrogation of the information that is presented in the Reports reveals that there are problems in coming to this conclusion. The following eleven questions illustrate this problem:

Question 1
Are there fewer children coming into conflict with the law?
We do not know the answer to this question because the Reports do not contain any information on the number of children that are arrested (or issued with a written notice or summons by the police). The Reports only contain information on the number of charges against children in conflict with the law, but because one child may face multiple charges, a decrease in charges does not necessarily reflect a decrease in the number of children charged. The number of charges has decreased by 23% over the three year period (that is from 2010 to 2012). No information is available to date on the charges for 2013/14.
Question 2
Are all children who are arrested assessed by a probation officer within 48 hours?
We do not know the answer to this question because the Reports do not contain information on the number of children arrested (or issued with a written notice or summons) so we cannot tell whether all children are assessed. We do know that less children were assessed in both 2011/12 and 2012/13 than were assessed in the first year of implementation of the Act, with a very high decline in the number of assessments that took place in 2011/12. While it is noteworthy that the ratio between charges and assessments is closer in 2012/13 (pointing to the probability that more arrested children are being assessed) this cannot be categorically stated. It is still possible that not all children are being assessed by a probation officer. Fewer children were assessed in 2013/14 than in the previous year.
Question 3
How many children under 10 years of age come into conflict with the law and what happens to these children?
We do not know the answer to this question. These are children that come into conflict with the law but that cannot be charged and instead must be referred to a probation officer. We do not know the answer to this question because the CAS system of the SAPS is currently being

modified (and is being piloted) to be able to capture information of children that are not charged (i.e. under 10 years old). The first three Reports do not capture any information on children under 10 years of age. It is important to know that appropriate interventions are put in place to ensure that these very young children are assisted so that they do not reoffend. The unconsolidated 2013/14 Report states that 254 children below the age of 10 were assessed by probation officers during that year.

Question 4

How many children between the age of 10-13 years are referred to the Department of Health for an assessment of whether they have criminal capacity or not, and what is the outcomes of these assessments? How many children are referred to this Department for age determination?

We do not know the answer to these questions because these statistics are not contained in the Reports. This information is crucial for the review of the age of criminal capacity which must be tabled in Parliament by 1 April 2015. It is going to be very difficult to motivate for either retention of or raise of the age of criminal capacity without knowing how many children would be effected.

Question 5

Are more or fewer children being diverted before the preliminary inquiry, during the preliminary inquiry or referred to trial?

The answer to these questions are not clearly shown in the Reports. The spirit of the Act calls for diversion as soon as possible to ensure that a child, unless absolutely necessary, is not tainted by entering the criminal justice system.

All children that are assessed must go forward to a PI (unless they have committed a minor offence and are diverted by a prosecutor before the PI; the case is withdrawn; or the child is between 10 and under 14 years of age where it is unlikely that criminal capacity would be proved). No information on the number of children diverted before a PI was included in the 2012/13 Report. However, the 2011/12 Report showed a drop in these pre-PI diversions in comparison to 2010/11. So it seems as if the number of children being diverted early on in the process may be decreasing (rather than increasing which would be preferable).

The number of PI held is definitely increasing - reflecting greater alignment with the requirement that all children that are assessed go forward to a PI. But the outcome of the PI is as important. In 2012/13 only 17% of PI resulted in the child being diverted. In contrast, 42% of PI resulted in referral to trial. In addition, over the past three years this percentage of cases referred to trial has been increasing (rather than decreasing, which would be desirable). This is not in line with the spirit of the Act. However, it should be noted that without information on the nature of the charges (in terms of seriousness) it is difficult to assess whether all these children should indeed be referred to trial.

Question 6

Are more or fewer children being diverted at the trial stage?

In terms of the total number of diversion orders made, the percentage of children diverted at the trial stage has declined in comparison to 2010/11 but then remained constant in 2011/12 and 2012/13 at about 42%. This means that more children (57%) were diverted before enrolment

(i.e. before reaching the trial stage) than were diverted at the trial stage. It is desirable that more diversion occurs before enrolment.

Question 7

Are more or fewer children that come into conflict with the law going to trial?

For the period 2010/11-2012/13 more children are going to trial (both in terms of raw numbers as well as a percentage of outcomes of the preliminary inquiries). This is not in line with the spirit of the Act. No information is provided for 2013/14.

Question 8

Are more or fewer children that go to trial sentenced to imprisonment?

This should be a very simple question to answer but unfortunately is not. While all the Reports hail a reduction in the number of children sentenced to imprisonment as a key success story of the Act, the fact is that the baseline figure (for 2010/11) on which this is asserted is apparently inaccurate which means that this cannot be categorically stated. And if one ignores this 2010 figure, then in fact the number of children sentenced to imprisonment increased slightly from 2011/12 to 2012/13. A definite decrease is, however, noted for 2013/14.

The number of non-custodial sentences has increased – which is desirable.

Question 9

Are more or fewer children been sent to prison on remand (i.e. while awaiting trial)?

The answer to this question is also unclear even though the Reports again state that the reduction in the number of children that are in remand detention is a success of the Act. The problems with the statistics are outlined in detail in this paper, the key problem being that the number of children in prison will differ on any particular day. However, the spirit of the Act would require that fewer children enter the facilities of the Department of Correctional Services as remand detainees and that more children are released from these. It is a concern that the figures that are available show in fact that more remand detainee children were admitted to DCS facilities in 2012/13 (as compared to the previous year) and that fewer of these children were released. It is acknowledged that these admission and release figures may include the entry and re-entry of the same child into DCS at different times. Figures for 2013/14 show some improvement.

Question 10

Are more or fewer children in prison serving sentences of imprisonment?

Again, the answer to this question is unclear even though the Reports present the figures to illustrate that less children are serving sentences of imprisonment in correctional centres. Figures for 2012/13 reflect that more sentenced children were admitted to DCS facilities in that year in comparison to the previous year and that less children were released. It must again be acknowledged that these admission and release figures may include the entry and re-entry of the same child into DCS at different times. Figures for 2013/14 show some improvement.

It is also problematic that insufficient detail and inconsistent reporting is contained in the Reports on the average length of sentences of imprisonment. This would enable one to

conclusively state whether the period of time for which children are imprisoned is increasing or decreasing.

Question 11

Are children in Child and Youth Care Centres (CYCCs) or in prison (on remand or serving sentences) provided with a supportive environment in terms of access to social work and psychological services as well as access to education to ensure effective rehabilitation and intervention?

Very simply, the Reports do not provide information that would be useful in answering this question. It would be desirable that all children in both types of facilities have access to high levels of supportive care and education. The Reports merely list some of the services that are available to children (in a very ad hoc manner). The Reports do not provide information on the percentage of children in both types of facilities that have access to educational programmes, and that access social and psychological services. Reporting on the percentage of children that have accessed services (in comparison with the percentage of children that have not accessed these services) would assist in identifying clearly where more resources and interventions are required. The 2013/14 unconsolidated Report identifies some of the problems in the provision of services to children as acknowledged by the DCS.

Reporting on services in CYCCs is completely inadequate.

1.4. RECOMMENDATIONS AND WAY FORWARD

This paper makes a number of detailed recommendations to address the inadequacies in reporting and to ensure that a more accurate assessment of progress in implementation of the Act is possible (and thus identification of problem areas and where interventions should be directed).

It is also makes a number of recommendations for improved Parliamentary oversight and highlights the following:

RECOMMENDATION 1:

Parliamentary oversight over implementation of the Act and the Annual Report of the ISCCJ

Each relevant Portfolio Committee should schedule at least one meeting per year with its department and relevant civil society role-players on experiences and problems in this department's implementation of responsibilities in terms of the CJA.

The Select Committee on Social Services and the Select Committee on Security and Justice should schedule at least one meeting per year with the departments and relevant civil society role-players to interrogate provincial implementation of the Act.

The Portfolio Committee on Justice and Correctional Services⁴ (as the lead Portfolio Committee) should schedule an annual joint intersectoral meeting with all relevant portfolio committees, select committees and departments on the annual Reports of the ISCCJ.

⁴ In the Fifth Parliament, the Portfolio Committee on Justice and Constitutional Development was merged with the Portfolio Committee on Correctional Services to form the Portfolio Committee on Justice and Correctional Services.

In addition:

The Portfolio Committee on Justice and Correctional Services should encourage the ISCCJ to table biannual reports for information purposes. This will improve the ability of the Committees to effectively oversee implementation.

The Portfolio Committee on Justice and Correctional Services should recommend that the ISCCJ compile an action plan (following the intersectoral meeting) to follow up on issues raised. This action plan should be tabled for information to the Portfolio Committee on Justice and Correctional Services (and shared with the other Committees) within six (6) months of each meeting.

Note: The Judicial Matters Amendment Bill [B2-2015] seeks to change the manner in which the implementation of the Child Justice Act is reported to Parliament. The Bill proposes the removal of the requirement for the Justice Minister to submit annually to Parliament separate implementation reports from each of the respective role-players. Instead each Department/institution responsible for implementation must incorporate a separate section setting out their activities/role in respect of the Act as part of their regular Annual Reports submitted to Parliament in terms of section 40 of the PFMA.

Recommendation: The proposed amendment should be rejected by Parliament. The separate annual reporting requirement is a critical to monitoring intersectoral co-operation and effective implementation of the Act.

RECOMMENDATION 2:

Review of the National Policy Framework

In terms of the Act, the National Policy Framework must be reviewed within three years of its publication – i.e. by 1 August 2013- and at least once every 5 years thereafter- i.e. again by 1 August 2018.

The first review of the National Policy Framework should be completed, and tabled in Parliament as a matter of urgency as it is already overdue.

RECOMMENDATION 3:

Review of the age of criminal capacity

Section 8 of the Act provides for a five year review of the age of criminal capacity. The deadline for the report on this review is 1 April 2015.

Parliament should ascertain whether the ISCCJ is on track to table the report on the review of the age of criminal capacity by the stipulated date i.e. 1 April 2015.⁵

RECOMMENDATION 4:

Lack of effective Information Systems

⁵It is noted that the 2013/14 unconsolidated Report states that there is a 'lack of data required for the review of the minimum age of criminal capacity' and that 'the Department has initiated a robust research study at our courts which is expected to be finalised in 2014/15'. In addition, this Report states that the NPA 'was tasked with the responsibility to conduct research on the minimum age of criminal capacity and has recommended that the **minimum age of criminal capacity remain at 10 years and the *doli incapax* presumption be retained for children 10 years or older but under the age of 14 years**'. (DoJpg 41)

Parliament should recommend that, in the interim, each department needs to improve the accuracy of manually collected statistics. Better use should be made of the Case Review Committees to ensure that the local statistics are accurately relayed provincially and then eventually to the national structures. In addition, Parliament should call for an urgent and detailed briefing on:

- Progress in establishing departmental systems.
- Progress in establishing the Integrated Justice System projects in relation to children.

Parliament should recommend that implementation of the Child Justice component of the IJS systems must be prioritised and fast tracked for implementation. A clear and detailed project plan with stipulated and realistic time frames should be presented to National Treasury and to Parliament and monitoring of adherence to this plan should be undertaken by National Treasury and Parliament.

Parliament should recommend that all future Reports must include detailed progress reports on implementation of the department specific and integrated information systems.

1.5. CONCLUDING COMMENTS

The Third Report follows the unfortunate pattern of the previous two Reports in its inability to provide a clear picture on the extent of progress with implementation of the Act. The Reports are characterised by a dearth of 'real' analysis, inaccurate and contradictory statistics, lack of and inconsistent year on year reporting and gaps in information and statistics.

These problems cannot be blamed solely on the lack of integrated databases and information management (and thus manual systems to gather information are used). The Reports attempt to portray a 'rosy picture' but even a superficial interrogation of the actual figures provided reflects some glaringly obvious problems. In the meanwhile it is still unclear, whether the spirit of the Child Justice Act is being optimally realised.

Section B | PROGRESS IN NUMBERS 2010/11-2013/14

2.1. CHARGES

The SAPS only keep records of the number of charges and not the number of children arrested. The number of charges therefore does not equal the number of children as one child can face multiple charges.

Table 1: Number of charges

	2010/11	2011/12	2012/13	2012/13 compared to 2010/11 (%)	2012/13 compared to 2011/12 (%)
Number of Charges	75 797	68 078	57 721	23.85% Decrease	15.21% Decrease

First, Second and Third Consolidated Annual Reports

There was a 23.85% overall decrease in the number of charges over the three year period. Charges decreased by 15.21% between 2011/12 and 2012/13. 4 960 or 8.6% of the 57 721 charges in 2012/13 involved sexual offences committed by children.

COMMENT

Note: There is no information from SAPS in the unconsolidated 2013/14 Annual Report on the Implementation of the Child Justice Act. Thus there is no information on the number of charges for 2013/14.

Decrease in charges

While there is a decrease in charges against children over the three year period, because of insufficient information provided in the Reports, it is not possible to categorically state that fewer children are being arrested or charged. Additional information should be provided including:

- Number of children arrested;
- Number of children issued with written notices;
- Number of children issued with a summons;
- Total number of charges;
- Breakdown of charges in terms of age, gender, province and type of crime;
- Number of children under 10 years old (Section 9 referrals); and
- Number of children referred to probation officers.

The 2012/13 Report notes progress in measures to ensure speedy notification of probation officers (by SAPS) when a child is arrested or charged. Progress should be requested on the following:

- The status of the information systems enhancement process to capture data on the notification of probation officers of children under 10 years of age; and
- The status of local service arrangements between police stations and probation officers to expedite the handling of children on a 24hour basis, countrywide.

2.2. ASSESSMENTS

Assessments are the responsibility of probation officers in the Department of Social Development. Assessments are done to ascertain, *inter alia*, whether the child is in need of care, whether the child was used by an adult to commit the crime charged with, age estimation, the need for an evaluation of criminal capacity, and the prospects for diversion.

Table 2: Number of assessments

	2010/11	2011/12	2012/13	2013/14	2012/13 compared to 2011/12 (%)	2013/14 compared to 2012/13 (%)
Assessments	32 500	18 334	32 125	29 280 ⁶	75% Increase	8.85% Decrease

First, Second and Third Consolidated Annual Reports and 2013/14 unconsolidated Report

In 2012/13 there was a noticeable increase of 13 791 or 75% in the total assessments conducted compared to 2011/12. However the number of assessments in 2012/13 is still slightly less (375) than in 2010/11. The number of assessments conducted in 2013/14 decreased in comparison to 2012/13 by 8.85%.

Children under 10 years: In 2013/14, a total of 254 children below 10 years of age were reported by SAPS and assessed and placed in various intervention programmes.⁷ Of these children, the highest numbers were reported in the Eastern Cape (98) and Limpopo (44).⁸

COMMENT

Increase in the number of assessments in 2012/13

It is laudable that the number of assessments increased substantially in 2012/13 in comparison with the previous year but it should be noted that the relatively low number of assessments in 2011/12 is of serious concern. The 2012/13 Report notes measures that have been taken to 'improve interdependencies' and thus ensure closer correlation between children charged and assessments conducted.

- *The 2012/13 Report notes that the problem of variance in the number of charges against children and the number of assessments conducted will not be addressed until 'interconnectivity in information systems' between SAPS and the Department of Social Development is addressed. Progress in the development of these integrated systems should be requested.*
- *It should be noted that the number of assessments (32 125) in 2012/13 does not correlate with the number of children charged (57 721) as (a) the prosecutor can dispense with the requirement that a child be assessed if it is in the best interest of the child (reasons for this must be recorded by the Magistrate) and (b) SAPS does not keep records of the number of children charged but reports the number of*

⁶2013/14 unconsolidated Report DSD Appendix page 16

⁷ 2013/14 unconsolidated Report DSD Appendix page 16

⁸ 2013/14 unconsolidated Report DSD Appendix page 16

charges. Because of insufficient data in the Report it is not possible to ascertain whether all children who were charged in 2012/13 were assessed. Future reports should contain:

- Data on the number of children exempted from the assessment process and reasons for the exemption.

Decrease in the number of assessments in 2013/14

- It may be a concern that the number of assessments in 2013/14 have decreased (in comparison to the previous year). However, because there is no information in the unconsolidated 2013/14 Report on the number of charges, it is not possible to assess whether this decrease is in line with a decrease in charges or not.

2.3. PRELIMINARY INQUIRIES

During the Preliminary Inquiry (informal pre-trial procedure) the court considers the assessment report (in particular the age estimation and the need for an evaluation of criminal capacity). The Preliminary Inquiry can determine whether a child is in need of care (the matter is thus referred to a children’s court), or whether the matter should be referred to trial, or whether the matter can be diverted before a plea is made.

Table 3: Number of Preliminary Inquiries

	2010/11	2011/12	2012/13	2013/14	2012/13 compared to 2011/12 (%)	2013/14 compared to 2012/13 (%)
Diversion before the Preliminary Inquiry	2 444	1 577	Not reported	Not reported	-	-
Total number of Preliminary Inquiries	14 471	17 822	25 517	21 563	43.17% Increase	15.49% Decrease
Legal Aid services at Preliminary Inquiry	Not reported	Not reported	15 295 (out of 25 517)	Not reported	-	-
Preliminary Inquiries referred to Children’s Court (and as a percentage of all PI)	Not reported	4 511 (25%)	3 856 (15%)	3 169 (14.6%)	-	-
Preliminary Inquiries referred to trial (and as a percentage of all PI)	3 216 (22%)	6 526 (36%)	10 821 (42%)	Not reported	65.82% Increase	-

	2010/11	2011/12	2012/13	2013/14	2012/13 compared to 2011/12 (%)	2013/14 compared to 2012/13 (%)
Diversion at the Preliminary Inquiry (and as a percentage of all PI)	4 630 (31.9%)	2 608 (14.6%)	4 428 (17%)	Not reported	69.7% Increase	-
Cases withdrawn during Preliminary Inquiries (and as a percentage of all PI)	Not reported	Not reported	517 (2%)	Not reported	-	-

First, Second and Third Consolidated Annual Reports and 2013/14 unconsolidated Report

- The number of Preliminary Inquiries increased significantly over the three year period: by 23% from 14 471 in 2010/11 to 17 833 in 2011/12; and by 43.2% from 17 833 in 2011/12 to 25 517 in 2012/13. In 2012/13, there was a 76.3% increase in the number of Preliminary Inquiries conducted compared to 2010/11.
- However, there was a 15.49% decrease the number of Preliminary Inquiries conducted in 2013/14 (to 21 563) compared to the previous year.
- Of the 25 517 Preliminary Inquiries conducted in 2012/13, 3 856 Preliminary Inquiries were referred to children’s court (15%) and 10 821 Preliminary Inquiries were referred to child justice courts for trial (42%). A total of 4 428 cases were diverted at the Preliminary Inquiry (17%). In 2012/13, 517 cases were withdrawn during the Preliminary Inquiry.⁹
- In 2013/14, 3 169 (14.6%) children were referred to the Children’s Court which is a decrease in the number of these referrals in comparison to 2012/13 (where 3 856 children were referred). This percentage however, remains constant as a percentage of all Preliminary Inquiry referrals in comparison to 2012/13.
- LASA services were only offered in 15 295 of the 25 517 Preliminary Inquiries that were held in 2012/13.

COMMENT

Decrease in Preliminary Inquiries in 2013/14

The decrease in Preliminary Inquiries in 2013/14 in comparison to 2012/13 by 15.49% is an even greater decrease than the decrease in Assessments that took place in that year (by 8.85%). Unless there has been a substantial drop in the number of charges or an increase in the number of children diverted before the Preliminary Inquiry these decreases will need to be interrogated further.

Increase in the number of Preliminary Inquiries and correlation between assessments and Preliminary Inquiries

⁹It is noted that these figure do not total up to 25 517 (which is the number of Preliminary Inquiries that took place). The outcome of the remainder of these is thus unclear.

It is noteworthy that the correlation between the number of assessments and the number of Preliminary Inquiries is becoming closer, especially in comparison to 2010 where 32 500 children were assessed but only 14 471 Preliminary Inquiries were held (which means that 18 029 children who were assessed did not go forward to a Preliminary Inquiry). In contrast, in 2012/13, a total of 32 125 children were assessed and 25 517 Preliminary Inquiries were held. This means that a total of 6 608 children were assessed but did not go forward to a Preliminary Inquiry. In 2013/14 this gap increased again slightly to 7 717 children that were assessed but did not go forward to a Preliminary Inquiry. The key question is what this variance means and how much variance is desirable in terms of these figures?

*In this regard it must be noted that **all** children that are assessed must go forward to a Preliminary Inquiry unless:*

- *They are diverted by a prosecutor before the Preliminary Inquiry in terms of Chapter 6 (section 41) of the Act. This can only be applied to children that are alleged to have committed a Schedule 1 (minor) offence. These decisions must be made an order of court (section 42).*
- *The case is withdrawn*
- *The case involves a child of between 10 and under 14 years of age where it is unlikely that criminal capacity would be proved.*

In order to understand what the data on Preliminary Inquiries means it is thus necessary that additional information is included in the Report including:

- *the number of children diverted in terms of Chapter 6 (before a Preliminary Inquiry)*
- *the number of cases withdrawn after assessment*
- *the number of cases where criminal capacity is unlikely to be proved*
- *a breakdown of the nature of charges of all children, arrested, issued with a written notice or summons (as outlined in the section on Charges) - to assess whether the majority of children alleged to have committed minor offences are diverted before the Preliminary Inquiry.*

Only in this way is it possible to ascertain whether an increase in Preliminary Inquiries is a positive development or not. This data should be requested for 2012/13 and 2013/14 and should be contained in the Reports for all future years.

Increase in percentage of Preliminary Inquiries referred to trial

The increasing percentage of Preliminary Inquiries resulting in referral to trial (42% in 2012/13 increasing from 36% in 2011/12 and 22% in 2010/11) may be a concern. A related concern may be the decrease in the percentage of cases diverted at the Preliminary Inquiry from 31% in 2010/11 to 17% in 2012/13. This issue should be probed further as it is not in line with the spirit of the Act. Note that again, without the relevant data (such as the nature of offences for which the children were charged) it is not possible to ascertain whether all referrals to trial were necessary (i.e. serious cases) and thus that the increase in referrals to trial is not a concern. Similarly, without this data it is not possible to assess whether the drop in percentage of diversions at Preliminary Inquiry stage is a concern or not.

- *Why was no data included in the 2012/13 Report (but included in previous Reports) on the number of children diverted before the Preliminary Inquiry?*

- *The Third Report notes as a challenge that there are no specialised rooms to hold Preliminary Inquiries; and available courtrooms are not designed to conduct Preliminary Inquiries. To address this problem, the Report states that a process was initiated to develop a blueprint for Preliminary Inquiry Rooms and that the blueprint will be finalised in 2013/14 and piloted in selective courts. What is the status of the blueprint and has it been piloted/implemented? The Third Report notes that due to budgetary constraints, LASA does not have dedicated practitioners to assist in all Preliminary Inquiries even where there is a dedicated Preliminary Inquiry Court. How many dedicated Preliminary Inquiry courts are there? What measures are taken to ensure that all children that require legal assistance at the Preliminary Inquiry receive such assistance?*

2.4. BAIL AND PLACEMENT

The 2013/14 unconsolidated Report provides a useful table on the bail and placement of children awaiting trial decided by the inquiry magistrate.

Table 4: Bail and placement of children alleged to have committed offences

	2011/12	2012/13	2013/14	2013/14 compared to 2012/13 (%)
In care of parent/guardian/appropriate adult	4 664	4 582	5 314	15.9% Increase
Bail	261	283	327	15.5% Increase
In prison	565	733	789	7.6% Increase
In child and youth care centre	1 534	1 721	1 440	16.3% Decrease
Police lock up	174	110	76	30% Decrease

2013/14 unconsolidated Report

It is commendable that the vast majority of children awaiting trial are released into the care of a parent/guardian/or appropriate adult or granted bail, rather than kept in a place of detention while awaiting trial (either prison, CYCC or police lock up).

COMMENT

However, there may be a concern that the number of children detained in correctional centres while awaiting trial is increasing rather than decreasing. There is also a notable decrease in the number of children detained in child and youth care centres (which is a concern when read together with this increase in the number of children detained in prison). This should be explained further.

2.5. CRIMINAL CAPACITY ASSESSMENTS

The Department of Health (DOH) is responsible for criminal capacity assessments of children aged 10 -13 and for determining the age of a child when it is uncertain whether the child is under 10 or under 14 years old.

Apart from mentioning that the DOH has a serious shortage of clinical psychologists and psychiatrists (and that it has 54 private psychiatrists and 32 private clinical psychologists on its database that can perform criminal capacity evaluations for courts but who charge very high rates), the Third Report did not provide any other data on the number of criminal capacity assessments done in 2012/13. Nor was this information provided in the unconsolidated Report for 2013/14.

Table 5: Number of criminal capacity assessments

Number of criminal capacity assessments	2011/12	2012/13
Children aged 11-14	1 584	No data

Department of Health: written response to request for information

COMMENT

Key challenges identified in the Third Report is the lack of adequate capacity within the DOH to conduct criminal capacity evaluations; and the 'exorbitant' fees claimed by private practitioners for criminal capacity evaluations (which are beyond the current tariffs issued by the Department of Justice). The Report states that the DOH invites psychiatrists and clinical psychologists to register with the Department to provide these services; and that the Department of Justice is negotiating for the establishment of an affordable tariff.

In terms of broadening capacity, the unconsolidated Report for 2013/14 states that the Board of Psychology has revised and submitted categories within psychology that can conduct evaluations for criminal responsibility. However, in terms of attracting private clinicians the unconsolidated Report for 2013/14 states that a limited number of private psychiatrists or psychologists are willing to conduct these evaluations as the tariffs paid by the Department of Justice 'are not attractive'. The Report states that the 'matter has been referred to Department of Justice to revise the tariffs'.

- *Information on the number of criminal capacity assessments conducted (and the results of these assessments) should be contained in the Reports. How many assessments were done in 2012/13 and 2013/14 and what is a summary of the results?*
- *What is the status of negotiations between the Department of Justice and the Department of Health on standard tariffs for private practitioners?*
- *What plans are in place to increase the number of **state** practitioners and to standardise guidelines or provide specialised training in respect of criminal capacity assessments?*

2.6. DIVERSIONS

The aim of the CJA is to divert the child away from the formal criminal justice system where possible, and to apply restorative justice taking into account the child's age, unique circumstances and needs. Diversion services are provided by accredited service providers contracted by the Department of Social Development.

Table 6: Number of diversions

Diversion Orders	2010/11	2011/12	2012/13	2013/14	2012/13 compared to 2011/12 (%)	2013/14 compared to 2012/13 (%)
Before enrolment (and as a percentage of all diversion orders)	Not reported	Not reported	6 605 (57%)	Not reported	-	-
Before Preliminary Inquiry	2 444 ¹⁰	1 577 ¹¹	Not reported	Not reported	-	-
At Preliminary Inquiry	4 630 ¹²	2 608 ¹³	4 428 ¹⁴	Not reported	69% Increase	-
At trial (after enrolment) (and as a percentage of all diversion orders)	8 539 ¹⁵ (51.8%)	3 946 ¹⁶ (42.9 %)	4 815 (42%)	Not reported	22% Increase	-
At District court	Not reported	Not reported	4 725	Not reported	-	-
At Regional court	Not reported	Not reported	90	Not reported	-	-
TOTAL	16 462	9 192	11 420	10 809	24% Increase	5.3% Decrease

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- Diversions peaked at 16 462 in 2010/11, after which there was a considerable decrease in 2011/12, followed by an increase in 2012/13 to 11 420, although the 2012/13 total number

¹⁰ Information contained in the First Report.

¹¹ Information contained in the Second Report.

¹² Information contained in the First Report.

¹³ Information contained in the Second Report.

¹⁴ Page 36 of Third Report- Number that 'complied with diversion orders at PI sessions' It is unclear whether this is the same as previous Reports which reported on number of diversion orders made at PI.

¹⁵ Information contained in the First Report. It is noted that the reported pre-enrolment and after enrolment figures do not add up to the total number of diversion orders reported.

¹⁶ Information contained in the Second Report. It is noted that the reported pre-enrolment and after enrolment figures do not add up to the total number of diversion orders reported.

of diversions is still not as high as in 2010/11. In 2013/14 the number of diversions decreased again to 10 809 which is 5.3% less than the previous year.

- Of the 11 420 diversion orders issued in 2012/13, there were 4 815 diversion orders made after enrolment at court (42%), and 6 605 (57%) were made before enrolment.

COMMENT

Total number of diversion orders made

While it is encouraging that the total number of diversions has increased by 24% (from 2011/12 to 2012/13) it is disturbing that these numbers are still much lower than 2010 (30% lower) and that the drop in diversions in 2011/12 (in comparison to the previous year) has still not been adequately explained. It may be a concern that the total number of diversion orders decreased in 2013/14 in comparison to the previous year (by 5.3%).

Stage in which diversion orders are made

In terms of the spirit of the CJA it is desirable that diversions are made as early as possible, preferably before the trial stage (i.e. before enrolment), although the seriousness of the case is a consideration.

- *Therefore one would like the Reports to show trends in the percentage of diversion orders made pre-enrolment (before the Preliminary Inquiry and during the Preliminary Inquiry) and the percentage of diversion orders made at the trial stage (after enrolment).*
- *Unfortunately this was not done in the 2012/13 Report. No comparative data was provided to enable one to assess whether diversions are occurring later or earlier in the child justice cycle.*
- *Thus consistent reporting categories should be used over the years to enable ease of analysis of progress. This was not done in 2012/13.*
- *The table above shows that the percentage of diversion orders made **at trial stage** remained constant in 2012/13 in comparison to 2011/12 at 42%. This means that for both these years a higher percentage of diversion orders were made pre-enrolment (about 57%). The ISSCJ should respond as to whether they are satisfied with the percentage of diversion orders made pre-enrolment, in line with the spirit of the Act. Again, because no information is provided on the nature of charges it is not possible to ascertain whether more children should have been diverted before the trial stage or not.*

Norms and standards

The Third Report notes as a challenge that the 'prescriptive nature of the Act, particularly for diversion service providers and programmes requires children to be referred to accredited service providers and programmes' and that to address this challenge the 'DSD is reviewing the minimum norms and standards for diversion orders in order to align them with the relevant legislation'. The ISSCJ should explain this problem and the proposed solution. What is the status of the review of the minimum norms and standards? What is the problem with lack of alignment with the legislation?

Trends and decreases in diversions

- *The 2013/14 unconsolidated Report states that the NPA SOCA Unit has started the process of analysing trends for children diverted in terms of the Act to assist in identifying:*
 - *Causes for the decreases and increases*

- Interventions to be implemented
- Transfer of best practices in provinces.

When will this trend analysis be completed? The outcomes should be shared with Parliament.

- The NPA report contained in the 2013/14 unconsolidated Report provides a number of reasons for the decrease in diversions as relayed from the provincial nodal points. These include: social worker reports take very long and thus mediation is used as an alternative tool; decrease in funds to NGOs means that service providers for diversion programmes are not readily available; fewer cases of children are enrolled; shortage of probation officers and the long time that they take to finalise reports impacts on finalisation of statistics; non-completion of diversion programmes by children; and more children committing serious offences who are repetitive offenders and thus not suitable candidates for diversion.

2.7. OUTCOME OF TRIALS

The 2013/14 unconsolidated Report provides a useful table on the outcome of trials in the child justice courts for the period 2011-2013.

Table 7: Outcome of trials in the child justice courts

	Guilty	Not guilty or acquitted	Withdrawn	Struck off the roll	Total
2011/12	1 128	794	1 637	1 000	4 559
2012/13	1 443	628	1 384	1 123	4 578
2013/14	1 179	650	1 179	949	3 957
Total	3 750	2 072	4 200	3 072	13 094

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COMMENT

Guilty verdicts

The above table reflects that over the past three years (2011/12-2013/14) only 3 750 of the 13 094 trial outcomes reported comprised a guilty verdict (or 28%). This means that in the remaining 72% of cases the children were found to be not guilty/acquitted, the case was withdrawn or the case was struck off the roll. This should be probed further as it reflects that a high number of children enter the criminal justice system only to be released.

The 2013/14 figures reflect a slight increase in not guilty/acquitted in comparison to the previous year. The other three categories reflect a decrease resulting in a decreased total of trial outcomes to 3 957 (in comparison to 4 578 in 2012/13). This may need to be understood against the decline in the number of assessments and Preliminary Inquiries reported for 2013/14 (which in turn requires additional information including the number of children arrested, charged or issued with a written warrant or summons).

2.8. NON- CUSTODIAL SENTENCES

A variety of sentencing options (other than imprisonment) are contained in the Act and available to the courts if a case reaches the trial stage.

Table 8: Number of non-custodial sentences

Type of non-custodial Sentence	2010/11	2011/12	2012/13	2013/14	2012/13 compared to 2011/12 (%)	2013/14 compared to 2012/13 (%)
Community-based	60	795	687	753	13.58% Decrease	9.6% Increase
Restorative Justice	137	405	508	402	25.43% Increase	20.8% Decrease
Correctional supervision	804	302	179	188	40.72% Decrease	5% Increase
Compulsory residences in a CYCC	110	353	335	381	5.1% Decrease	13.7% Increase
Fines or alternatives to fines	34	37	78	93	110.8% Increase	19% Increase
Postponement or suspension of passing of sentence	Not reported	Not reported	296	206	-	30.4% Decrease
TOTAL	1 145	1 892	2 083	2 023	10% Increase	2.8% Decrease

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The above table reflects that:

- The total number of non-custodial sentences increased over the first three years (2010/11-2012/13). The largest increases in comparison to 2010 are in community-based sentences (1045% increase), restorative justice sentences (270.8% increase), and compulsory residence in a CYCC (204.5% increase).
- However in 2013/14, the total number of non-custodial sentences decreased by 2.8% in comparison with 2012/13. The largest decrease was in postponement or suspension of passing of sentence (30.4%) and the restorative justice sentence (20.8%).

COMMENT

There is a lack of reporting on recidivism in the Reports, which is important to measure the impact of the implementation of the CJA, especially in respect of diversion and rehabilitation programmes for children.

- *Are these figures being collected? What are the provincial and national recidivism rates per age, gender and crime category for the four-year period since the CJA's implementation?*

- What is the ideal scenario in terms of utilisation of the range of alternative sentencing options by the courts? Which of these options would one like to see increase (for example those that are least restrictive and punitive) and which of these options would one like to see decrease?
- The ISCCJ should explain the decline in the correctional supervision sentencing option (77% decrease in 2012/13 in comparison to 2010/11)?

2.9. CUSTODIAL SENTENCES

Custodial sentences or imprisonment must only be imposed on children as a measure of last resort and then only for the shortest appropriate period of time. The DCS is responsible for children under 18 serving custodial sentences in DCS facilities and children on remand in DCS facilities. No children under 14 years of age may be kept in prison.

Table 9: Number of custodial sentences

Number of custodial sentences (imprisonment)	2010/11	2011/12	2012/13	2013/14	2012/13 compared to 2011/12 (%)	2013/14 compared to 2012/13 (%)
536 (possibly inaccurate data- see Comment)	94	98	49		0.04% Increase	50% Decrease

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COMMENT

Number of children sentenced to imprisonment in 2010/11

Despite a 0.04% increase between 2012/13 and 2011/12, the overall decrease of 81.7% of children sentenced to imprisonment from 2010/11 to 2012/13 (and then a further 50% decline in 2013/14 in comparison to the previous year) continues to be highlighted as a success of the implementation of the CJA. However, the baseline figure of 536 (2010/11) provided by DCS is possibly inaccurate and should be queried.

In 2010/11 (the First Report) the DCS provided the figure of 536 as the number of children in prison **serving sentences** (as at March 2011) **not** the number of children that were **sentenced** to imprisonment during the reporting year.¹⁷

In 2011/12 (the Second Report) this same figure of 536 is now reported as the number of children that were **sentenced** to imprisonment in 2010/11 (instead of the number of children that were serving sentences of imprisonment).¹⁸

¹⁷ Page 32 of the First Report

¹⁸ Page 33 of the Second Report

*The baseline figure of 536 that is used in **all** subsequent Reports to refer to the number of children that received a sentence of imprisonment for 2010/11 is thus most probably factually incorrect.*

*The ISCCJ **must provide the correct figure for the number of children that received a sentence of imprisonment for 2010/11.** If they are unable to provide the actual number of children that were sentenced to imprisonment during 2010/11 then the Reports should refrain from using 536 as a baseline figure for the number of children that received a prison sentence in that year.*

It is thus misleading to continue to report the decline from 2010/11 to 2011/12 as a success of the CJA.

- *The Reports should differentiate between the number of children sentenced to imprisonment in a reporting year and the number actually serving sentences in DCS facilities (which is done in the Second and Third Reports). The Reports should provide clear information on the length of imprisonment periods in order to illustrate whether these are increasing, decreasing or remaining static.*

2.10. CHILDREN SERVING SENTENCES OF IMPRISONMENT AND ON REMAND

In contrast to most other categories of information, the Third Report only provides figures for 2012/13 and provides no comparative data (figures for 2010/11 and 2011/12) on children in remand detention or on children serving sentences of imprisonment in DCS facilities. The table below is compiled from information contained in all three Reports, as well as information provided to Parliament (by the ISCCJ and the Office of the Criminal Justice System Revamp (OCJSR)). It has been updated with information contained in the unconsolidated Report for 2013/14.

Table 10: Number of children serving sentences of imprisonment or remand

Reported numbers by date, average, admissions, releases or unspecified	2010/11	2011/12	2012/13	2013/14	2012/13 compared to 2011/12 (%)	2013/14 compared to 2012/13 (%)
Remand Children						
Children in Remand Detention (ISCCJ) ¹⁹	288	207	135	-	34% Decrease	-

¹⁹ ISCCJ Report to the Select Committee on Security and Constitutional Development on 23 October 2013. Note that no indication is provided as to whether these are average figures, or figures at a particular date etc.

Reported numbers by date, average, admissions, releases or unspecified	2010/11	2011/12	2012/13	2013/14	2012/13 compared to 2011/12 (%)	2013/14 compared to 2012/13 (%)
Average number of remand children in DCS facilities (Average for March) (OCJSR) ²⁰	590	444	304	-	31% Decrease	-
Number of remand children in DCS facilities on a particular date	298 ²¹	386 ²²	149 ²³	181 ²⁴	61% Decrease	21.5% Increase
Placement of children alleged to have committed offences in prison ²⁵	Not reported	565	733	789	29.7% Increase	7.6% Increase
Remand children admitted to DCS facilities	Not reported	2 441 ²⁶	3 058 ²⁷	2 074 ²⁸	25% Increase	32% Decrease
Remand children released from DCS facilities	Not reported	2 370 ²⁹	1 105 ³⁰	2 072 ³¹	53% Decrease	87.5% Increase
Sentenced Children						
Sentenced Children in DCS facilities (ISCCJ) ³²	538	410	Not reported	-	-	-

²⁰ OCJSR Briefing to the Portfolio Committee on Correctional Services on 11 February 2014.

²¹ Page 51 of First Report- As at 31 December 2010 (No figure for 31 March 2011 provided in the Report).

²² Page 37 of Second Report as at 31 March 2012

²³ Page 39 of Third Report as at 31 March 2013

²⁴ Page 9 of the DCS section of the 2013/14 unconsolidated Report as at 31 March 2014.

²⁵ Page 34 of the DOJ section of the 2013/14 unconsolidated Report

²⁶ Page 36 of Second Report

²⁷ Page 39 of Third Report

²⁸ Page 8 of the DCS section of the 2013/14 unconsolidated Report plus 224 brought forwards.

²⁹ Page 36 of Second Report

³⁰ Page 39 of Third Report

³¹ Page 8 of the DCS section of the 2013/14 unconsolidated Report

³² ISCCJ Report to the Select Committee on Security and Constitutional Development on 23 October 2013. Note that no indication is provided as to whether these are average figures, figures at a particular date etc.

Reported numbers by date, average, admissions, releases or unspecified	2010/11	2011/12	2012/13	2013/14	2012/13 compared to 2011/12 (%)	2013/14 compared to 2012/13 (%)
Number of sentenced children in DCS facilities on a particular date	536 ³³	740 ³⁴ (Probably not an accurate figure- see footnote)	328 ³⁵	243 ³⁶	55.6% Decrease	26% Decrease
Sentenced children admitted in DCS facilities	Not reported	729 ³⁷	1 026 ³⁸	560 ³⁹	40.7% Increase	45% Decrease
Sentenced children released from DCS facilities	Not reported	564 ⁴⁰	312 ⁴¹	478 ⁴²	44.6% Decrease	53% Increase

According to the 2013/14 unconsolidated Report:

- The **regions** with the highest number of detained children in 2013/14 (including both remand and sentenced) were Eastern Cape (31%) followed by KwaZulu-Natal (30%). It is interesting to note that this regional distribution of children does not reflect the overall regional distribution of inmates - Gauteng and Western Cape have the highest inmate populations.
- In 2013, the number of remand detainee children detained for **longer than 90 days** in DCS facilities increased from 141 in the first quarter, to 163 in the second quarter, decreased slightly to 161 in the third quarter and then increased sharply to 184 in the fourth quarter.
- Of the 181 remand detainee children as at 31 March 2014, five of them were detained with the option of **bail**.

COMMENT

Is the number of children entering the prison system decreasing or increasing?

The Third Report states that there is a 'significant decrease in the number of children held in DCS facilities' but provides no comparative data (i.e. figures for 2010/11 and 2011/12) to substantiate this statement. This is not surprising because (as reflected in the table above) it is extremely difficult to understand whether the number of remand children and sentenced

³³ First Report page 32- statistic is for March 2011/12 (no specific day specified).

³⁴ Second Report page 32 of the DCS Annexure stated as 740 as at 31 March 2012 but this is probably not an accurate figure (it is the total of admissions, releases and brought forwards for the year).

³⁵ Page 39 of Third Report as at 31 March 2013

³⁶ Table on pages 6 and 7 of DCS section of 2013/14 unconsolidated Report (added up totals (averages) per region).

³⁷ Second Report page 32 of the DCS Annexure

³⁸ Page 39 of Third Report

³⁹ DCS section of 2013/14 unconsolidated Report.

⁴⁰ Second Report page 32 of the DCS Annexure

⁴¹ Page 39 of Third Report

⁴² DCS section of 2013/14 unconsolidated Report.

children in DCS facilities is increasing or decreasing over this period - due to inaccuracies, and discrepancies in reporting on the statistics over the three Reports (and indeed in other sources of information including the reports to Parliament by the ISCCJ, and the Office of the Criminal Justice System Revamp (OCJSR)).

The ISCCJ needs to urgently address this problem. Comparative data on both children in remand detention and children serving sentences of imprisonment should be provided for the four year period (i.e. 2010/11-2013/14) utilising the reporting categories contained in the Third Report. These include:

- Number of children admitted to DCS facilities during the year
- Number of children released from DCS facilities during the year
- Number of children in DCS facilities as at 31 March of each year.

The ISCCJ should explain the basis for the selection of particular reporting categories and which reporting categories (i.e. on a particular date; admission and release totals for a year; brought forwards etc.) provide the most accurate picture of the status of children in remand detention and serving sentences of imprisonment.

Whichever categories are used, these must be used consistently in each Report (and all other reporting to Parliament and elsewhere) to ensure effective comparative analysis of progress.

Using admissions and releases

As stated, it is difficult to ascertain categorically whether the number of children in remand detention and serving sentences of imprisonment is increasing or decreasing (and if indeed decreasing- by how much) despite the assertion by the ISCCJ in all their Reports that considerable progress has been made. Using their own statistics it is a concern that:

- In terms of admissions, **MORE** children were admitted to both remand detention and to serve sentences of imprisonment in 2012/13 (in comparison to 2011/12)
- In terms of releases, **FEWER** children were released from both remand detention and from serving sentences of imprisonment in 2012/13 (in comparison to 2011/12). It should be explained, how this can be ascribed as a success and as 'a significant decrease on the number of children held in DCS facilities'.

It is recognised that one child may be admitted to or released from DCS a number of times. In addition it is imperative that this data is linked clearly to: Increases or decreases in the number of children charged; and the nature of the offences for which the children are charged, in order to ascertain whether the increases in admissions are related to more children being charged and that children who are charged for serious offences are the only ones that are placed in prison.

High admission and release figures for 2012/13

The 2013/14 unconsolidated Report projects an improved picture compared to the previous year. The number of admissions of remand detainees is much lower than for 2012/13 (by 984) and the number of releases is much higher than for the previous year (by 967). In addition, there is a clear correlation between admissions (2074) and releases (2072). If one

takes into account the 'brought forwards of 227 for 2013/14 then it is probably accurate that 'the population of RD children was lower than 200 throughout the financial year'.⁴³

However, this points to a serious problem that needs to be explained in terms of the figures for 2012/13 reflected in the Third Report.

The same applies to sentenced children. In 2013/14, the admissions are much lower than for 2012/13 (by 466) and the releases are higher than for 2012/13 (by 166) meaning that less children entered prison and more children were released from prison in 2013/14 in comparison to the previous year. In addition, the gap between admissions and releases is smaller than in 2012/13. Again, the problematic figures for 2012/13 need to be explained - with high admission numbers and low release numbers.

Why do the admissions and release figures for 2012/13 seem so much higher than those of the 2011/12 and the 2013/14 years?

The ISCCJ should explain these figures, especially those of sentenced offenders (taking into account that only 98 children were sentenced to imprisonment in 2012/13).

Services for children in correctional centres (remand and sentenced)

What the status is of sentenced and remand detainee children with regard to access to educational programmes (schooling) and social and psychological services in correctional centres country wide? What measures are been taken to prioritise delivery of educational and support services to all children? Neither the Third Report nor the unconsolidated Report for 2013/14 makes any mention of the number and percentage of children (remand and sentenced) that were provided with educational programmes.

The unconsolidated Report for 2013/14 states the following challenges for the provision of educational programmes:

- Refusal by children to attend school
- Preference of social work programmes to educational programmes
- Inadequate number of teachers, few full time schools and differing needs including a considerable number of children that have never been to school
- Short period spent by remand detainee children in detention (almost 90% spend less than 6 months).

Page 30 of the Third Report provides some figures for the number of children (remand and sentenced) involved in programmes for 2012/13. A total of 385 remand children were involved in programmes (stated as Spiritual Care and Social Work Services) in 2012/13 and 623 sentenced children attended 'social programmes'. It seems as if fewer children accessed these programmes (compared to 2011/12). (Previous Reports have stated the following: ATDS: 489 in 2011/12 rising from 176 in 2010/11; Sentenced: 1 682 in 2011/12 in terms of access to social and psychological services).

The unconsolidated Report for 2013/14 states that a total of 572 correctional programmes were run in 2013/14 (it is possible that one child would have attended more than one

⁴³ Page of the DCS section of the 2013/14 unconsolidated Report.

programme). Of these programmes 160 were for substance abuse; 150 for aggressive crimes and 45 for sexual offences.

- Reports should provide figures on the **percentage** of remand and sentenced children that participated in each programme or accessed each service (including schooling, psychological, and social work services) otherwise it is impossible to assess whether the number of children/proportion of children provided with rehabilitative and care services is increasing or not.

Key challenges facing DCS

The key challenges faced by the DCS in 2013/14 and proposed solutions include:⁴⁴

- Challenges in the provision of schooling (see above).
- Inadequate coordination within DCS (due to lack of role clarification) for implementation of the Act: a draft implementation and reporting framework has been developed which outlines the responsibilities of core branches and role players at national, regional and centre level.
- Lack of attendance at provincial Child Justice Fora meetings especially in amalgamated regions: Appointment of departmental representatives at regional level has been assigned to the Regional Commissioners.
- Inadequate provision of psycho-social programmes to RD children: DCS has stated that they will review operational policies so that policies are aligned with legislation and further discussed with DSD.
- DCS social workers are asked to do pre-sentence reports even though this is the responsibility of the DSD: Roles are outlined in the draft implementation framework which will be discussed with partners in the CJS. The matter will be escalated to the National Operations Committee of the National Efficiency Enhancement Committee chaired by the Judiciary and the South African Judicial Education Institute.
- Detention of single RD children in certain facilities in Gauteng: Courts should be informed so that they are, where possible, rather detained in DSD facilities.

2.11. CHILDREN IN CHILD AND YOUTH CARE CENTRES

A presiding officer may order that a child not yet diverted (and not released into the care of their parents or guardian) is held in a Child and Youth Care Centre (CYCC). CYCCs are former Secure Care facilities under the control of the Department of Social Development.

Table 11: Number of children awaiting trial in CYCCs

Children awaiting trial in CYCCs: Data provided by DSD ⁴⁵	2010/11	2011/12	2012/13	2013/14
	21 600	Not provided	12 412	

⁴⁴Page 15 of the DCS section in the 2013/14 unconsolidated Report.

⁴⁵ Department of Social Development (requested information)

Children placed in CYCCs alleged to have committed offences ⁴⁶	Not reported	1 534	1 721	1 440
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DSD: Written response to request for information and 2013/14 unconsolidated Report

The information in the first part of this table was requested from the DSD as the Third Report does not provide any figures on the number of remand children in CYCCs in 2012/13. It shows that the number of awaiting trial children (the terminology used by the DSD) in CYCCs declined by 42.53% in 2012/13 compared to 2010/11. The 2013/14 unconsolidated Report contains figures on the number of children placed in CYCCs while awaiting trial for 2011/12-2013/14. It is unclear why there is a large discrepancy between these two sets of figures.

The unconsolidated Report for 2013/14 also notes that there were a total of 632 **sentenced** children in CYCCs.⁴⁷

COMMENT

Information on the number of remand children in CYCCs as well as the number of sentenced children in CYCCs should be provided in the Reports.

In addition, information on the educational and social/psychological services provided to these children should be reported as well as challenges in the provision of these services.

2.12. TRAINING / CAPACITY-BUILDING

A total of 45 292 personnel in the various departments were trained between 2010/11 and 2012/13.

Table 12: Number of capacity building projects

Personnel Trained	2010/11	2011/12	2012/13	Total (2010/11-2012/13)	2013/14
SAPS	20 683	9 599	5 888	36 170	
DOJ&CD (Magistrates, Clerks of Court, Prosecutors)	962	695	517	2 174	594
NPA	349	214	54	617	185
DCS	146	112	72	330	330 ⁴⁸
DSD	854	1 190	747	2 791	
DBE	53	0	0	53	
LASA	1 302	1 855	0	3 157	
All role-player departments	24 349	13 665	7 278	45 292	

Third Consolidated Annual Report and 2013/14 unconsolidated Report

- The total number of personnel trained annually has declined significantly since 2010.

⁴⁶Page 34 of Department of Justice section of 2013/14 unconsolidated Report.

⁴⁷ Page 16 of the DSD section of the 2013/14 unconsolidated Report (unclear whether at a particular date or average for the year).

⁴⁸This included training of 327 officials on spiritual care services, family life and self-image programmes and only three social workers on trauma debriefing for children.

- The 2013/14 unconsolidated Reports states as a ‘breakthrough’ that the 113 posts of child justice clerks at the courts will be created as permanent posts.

COMMENT

It is not useful to merely provide figures on the number of personnel trained without providing any indication of how many personnel in each department still require training. In addition, some personnel may have undergone a few different training courses within a department which increases the total training figure for the department.

It is thus imperative that future Reports indicate:

- *How many and what percentage of personnel were trained?*
- *How many and what percentage of personnel still require training?*
- *The Reports should include a comprehensive training plan outlining the short, medium and long term time frames for ensuring that all relevant personnel within each department are trained.*

Selective sectors:

- **SAPS:** *Has the SAPS Training Plan been revised and implemented to focus on the training of various categories of ‘first responders’? What percentage of all Station Commanders, Cluster Commanders and Cluster Coordinators have been trained in the Vulnerable Children Learning Programme and have these been prioritised in the Training Plan (in line with the recognition that where these personnel are trained, the level of compliance with the Act is improved)?*
- **NPA:** *The NPA has decided to focus its training initiatives on Prosecutors that work in the Child Justice Courts (due to budget constraints). What percentage of all these Prosecutors have been trained? What are the implications of this limited focus?*
- **DOJ:** *The DOJ reported a decline in numbers trained in 2012/13 due to budgetary constraints. What percentage of all Clerks, Prosecutors and District and Regional Magistrates have been trained?*
- **DOH:** *No training has taken place for mental health practitioners responsible for conducting criminal capacity assessments. What is the status of the development of training material for guidelines on the determination of criminal capacity?*

2.13. INFORMATION TECHNOLOGY SYSTEMS

The Third Report acknowledges the challenge of continued lack of interconnectivity between information systems of the various departments and that this impacts negatively on data sharing and reporting as well as optimal implementation of the Act.

- There is still a lack of an (a) integrated information management system and (b) electronic intersectoral data collection system (Data/statistics are collected and submitted manually resulting in inaccuracies).
- Role-players have begun developing departmental and institutional systems of which four were in the process of being **integrated** into the IJS system.

It is not clear in the Third Report which four systems are being integrated into the IJS system. This should be clarified.

Various systems are referred to including:

- Pre-adjudication Docket Integration (SAPS-IJS-NPA): 'In operation' and applies to all cases (not just child justice related cases). Entails SAPs 'docket ready notifications' sent to the NPA.
- Docket Detail Request Notification (SAPS-IJS-DOJ): 'In operation'. Both of these integrations (Docket Detail Request Notification and Pre-adjudication Docket Integration) have been rolled out to selective magistrates courts in Gauteng (8 courts), KZN (5 courts) and Western Cape (7 courts).
- Charge Sheet Notification (NPA-IJS): Testing and rollout was planned for 2013/14.
- Postponement Date Integration (DOJ-IJS-SAPS): In operational use.
- Legal Aid Request Notification (SAPS-IJS-LASA): In operational use in 120 SAPS facilities. Preparations for further rollout are in progress.

SAPS departmental systems:

- Enhancement of CAS to capture information on children that have been issued with summonses and notices to appear in court.
- Enhancement of OPAM to capture information in respect of children under 10 (that cannot be charged). This system was piloted in Gauteng and is 'currently being tested in three Provinces'.

DSD departmental systems:

- Probation Case Management: Piloted and rolled out to six provinces excluding the Eastern Cape, Northern Cape and Free State due to IT related challenges.⁴⁹
- Accreditation of Diversion Systems: Piloted and rolled out.
- Child Youth Care Administration Systems: Not presently implemented.⁵⁰

LASA departmental system:

- Ad infinitum (case management): Modifications made.

DOJ departmental system:

- Integrated Case Management System (referred to as the Integrated Child Management System in the 2013/14 unconsolidated Report). The 2013/14 unconsolidated Report states that the ICMS Child Justice was piloted during 2013/14 in the Pretoria North and Tembisa Magistrates Courts. 68% of the courts have been trained on the system and the regions are responsible for ensuring that IT-Coordinators train the remaining courts. A total of 50% of courts are using the system.

COMMENT

The ISCCJ should provide an update on rollout of the various integrated systems. When will these be fully implemented/rolled out?

The following additional information was contained in the briefing to the Select Committee on Security and Constitutional Development on 23 October 2013 but is not contained in the Third Report. The ISCCJ should explain why this information is not contained in the Third Report and the current status of these systems:

- *SAPS-IJS-DSD: An Arrest Notification (Probation Officers) notifies probation officers of a child's arrest and thus that an assessment would need to be done by the probation officer.*

⁴⁹2013/14 unconsolidated Report.

⁵⁰2013/14 unconsolidated Report.

- *DCS: The Admissions and Release system captures warrants and other detention issues, while the Community Corrections System is used to capture all those placed in the non-custodial system.*
- *What is the status of the enhancement of the SAPS CAS system to capture additional information required?*
- *What is the status of rollout of the SAPS OPAM enhancement to capture information of children under 10?*
- *What is the status of rollout of the Probation Case Management System in the Eastern Cape, Northern Cape and Free State?*

2.14. ONE STOP CHILD JUSTICE CENTRES

There are three existing OSCJCs in:

- Nerina (Port Elizabeth: Eastern Cape- established in 2010)
- Mangaung (Bloemfontein: Free State- established in 2011)
- Matlosana (Klerksdorp: North West- established in 2013)

Attempts to establish another OSCJC in Mdantsane (Eastern Cape) failed due to budget constraints and high refurbishment costs.

COMMENT

The 2012/13 Report highlights the following challenges:

The availability of suitable government-owned buildings to convert affordably to OSCJCs remains a challenge and thus the process of establishment of additional OSCJCs has been halted. The DOJ is in the process of conducting a viability study on OSCJCs and amending the National Policy Framework and National Guidelines for the Establishment of OSCJSs.

*According to the 2013/14 unconsolidated Report, the **viability study** will be finalised in the 2014/15 financial year.*

- *Is the viability study completed and what are the recommendations? Do these recommendations target existing OSCJCs or only the establishment of additional Centres?*
- *What aspects of the National Policy Framework and National Guidelines are to be amended and why? What is the status of the amendments?*
- *The SAPS requires more space at the existing OSCJSs to fulfil its child justice related responsibilities. The SAPS conducted a work-study which recommended an increase in resource allocations to improve the functionality of the OSCJSs. This proposal is 'under consideration'.*
- *What is the current status of this proposal?*

2.15. PROGRESS IN TRANSFER OF REFORM SCHOOLS / SCHOOLS OF INDUSTRY

CYCCs

- Since 2011/12 (and as at March 2013) the number of fully operational CYCCs facilities increased from 28 to 30.

- The bed capacity was reduced from 3 272 to 2 100 to ensure compliance with DSD norms and standards (to avoid overcrowding).
- According to the Third Report, two centres that were under construction in Soshunguve (Gauteng) and QwaQwa (Free State) in 2011/12 were expected to be completed in the 2013/14 reporting period.
- According to the 2013/14 unconsolidated Report there were 31 CYCCs all of which were fully functional and an additional two CYCCs were under construction. The bed capacity was reported to have risen to 2 700.

Transfer of Reform Schools/Schools of Industry

- Reform schools and schools of industry were to have been transferred from the DBE to the DSD by 1 April 2012 where they would be converted to CYCCs. However, key challenges relating to the transfer of staff and facilities, and education provision for learners sentenced to these schools delayed the process. The Second Report did not report on the progress of the transfers and the transfers were still not finalised by March 2013.

The Third Report states the following:

- **Western Cape:** A moratorium on transfer was placed on the four earmarked schools in the Western Cape pending the outcome of discussions between the DBE and DSD (Die Bult, Ottery, Wellington and Eureka).
- **Mpumalanga:** With the exception of Vaalrivier (which remains with DoE), the rest of the schools in Mpumalanga (George Hofmeyer, Ethokomala and View) will be registered as CYCCs by DSD. Hostels and staff were transferred on 31 March 2013 and the DBE will be responsible for the provisioning of curriculum and educators.
- **KwaZulu-Natal:** In KwaZulu-Natal, the staff at the New Castle school will be transferred to DSD while the DBE will pay for education services and resources. A decision is still outstanding regarding Mimosadale. The Bersig School will remain with DBE and will cater for learners with special needs only.
- Regarding the schools in **Gauteng** (Emmasdal and JW Luckoff), **Free State** (Rosenhof and Jimmie Roos), **North West** (Wolmaransstad) and **Eastern Cape** (GaliTembani) - these will be registered as CYCCs with schools on the premises and Memorandums of Understanding for their transfer are in place. DSD will provide care and support functions and the DBE will deliver the curriculum.

COMMENT

In the briefing to the Select Committee on Security and Constitutional Development on 23 October 2013 a key limitation experienced in the implementation of the Act during 2012/13 is that 'not all reform schools or schools of industry have been transferred from the DBE to DSD' and that 'legislative amendments are required to allow the proposed transfers'. No mention is made of this challenge or corrective action in the Third Report. This should be explained.

- *What are the barriers to transfer and are any legislative amendments required?*
- *Are the two CYCCs that were under construction in Soshunguve (Gauteng) and QwaQwa (Free State) completed?*
- *Where are the two CYCCs reported as under construction in the 2013/14 unconsolidated Report situated?*
- *With regard to the transfer of schools from DoE to DSD:*

- *What is the status of the Western Cape moratorium?*
- *What is the status of Vaalrivier (Mpumalanga)?*
- *Has a decision been made on Mimosadale (KZN)?*

- *An additional limitation is noted in the Third Report as the need to establish special care facilities that comply with the detention requirements for 'mentally affected children'. It is reported that this matter is still under investigation. What is the status of resolution of this concern? What happens to these children in the meanwhile?*

Section C | **STATISTICS, ISSUES, CHALLENGES AND RECOMMENDATIONS**

This section provides a table with the statistics, issues, challenges and recommendations emanating from the First and Second Reports on the implementation of the Child Justice Act, 75 of 2008 (updated with information contained in the Third Report and the 2013/14 unconsolidated Report) divided into the various Departments involved in the child justice cycle.

3.1. GENERAL RECOMMENDATIONS		
ISSUE/STATUS	CHALLENGES	RECOMMENDATIONS AND PROGRESS UPDATE
Parliamentary oversight over implementation of the Act and the Annual Report of the ISCCJ	Currently, a number of different Portfolio and Select Committees are briefed on the findings contained in the Reports in separate and uncoordinated processes. This is not the most effective manner of oversight over this fundamentally intersectoral area.	<p>It is recommended that:</p> <ol style="list-style-type: none"> 1. Each Portfolio Committee schedules at least one meeting per year with its department and relevant civil society role-players on experiences and problems in this department's implementation of responsibilities in terms of the CJA. 2. The Select Committee on Social Services and the Select Committee on Security and Justice schedules at least one meeting per year with the departments and relevant civil society role-players to interrogate provincial implementation of the Act. 3. The Portfolio Committee on Justice and Correctional Services (as the lead Portfolio Committee) schedules an annual joint intersectoral meeting with all relevant portfolio committees and select committees and departments on the annual Reports of the ISCCJ. <p>In addition:</p> <ol style="list-style-type: none"> 1. The Portfolio Committee on Justice and Correctional Services should encourage the ISCCJ to table biannual reports for information purposes. This will improve the ability of the Committees to effectively oversee implementation. 2. The Portfolio Committee on Justice and Correctional Services should recommend that the ISCCJ compile an action plan (following the intersectoral meeting) to follow up on issues raised. This action plan should be tabled for information to the Portfolio Committee on

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ISSUE/STATUS	CHALLENGES	RECOMMENDATIONS AND PROGRESS UPDATE
		Justice and Correctional Services (and shared with the other Committees) within six months of each meeting.
<p>Review of the National Policy Framework</p> <p>The National Policy Framework must be reviewed within three years of its publication – i.e. by 1 August 2013- and at least once every five years thereafter- i.e. again by 1 August 2018.</p>	<p>The National Policy Framework has not been reviewed as per section 93 (2)(c) of the CJA by August 2013. This review should be completed by the ISCCJ after taking into account any challenges in implementation and reporting.</p> <p>The National Policy Framework has been used as the basis for reporting in the annual ISCCJ reports to Parliament.</p>	<p>It is recommended that:</p> <ol style="list-style-type: none"> 1. The first review of the National Policy Framework should be completed, and tabled in Parliament as a matter of urgency as it is already overdue. 2. Parliament should be encouraged to interrogate the review or the amendments made, including through public hearings. 3. The Portfolio Committee on Justice and Correctional Services should lead this intersectoral process and invite members of the relevant committees to participate. Alternatively, an intersectoral <i>Ad Hoc</i> Committee could be established for this purpose.
<p>Review of the age of criminal capacity</p> <p>Section 8 of the Act provides for a five year review of the age of criminal capacity. The deadline for the report on this review is 1 April 2015.</p> <p>The CJA raised the age of criminal capacity from 7 to 10 years and provides for a</p>	<p>There is very little information contained in the Reports that could be used to assist in the review of the age of criminal capacity. In addition, the statistics contained within the Reports are flawed.</p> <p>This review should be based on the following statistics as stipulated in section 96(4) of the CJA:</p>	<p>It is recommended that:</p> <ol style="list-style-type: none"> 1. Parliament should ascertain whether the ISCCJ is on track to table the report on the review of the age of criminal capacity by the stipulated date i.e. 1 April 2015. 2. Parliament should ensure that future Reports include all the statistics required to undertake this review and that these statistics are accurate, disaggregated and analysed. All subsequent Reports after the review should also contain these statistics (in case the age of criminal capacity requires future amendment). 3. The Portfolio Committee on Justice and Correctional Services should coordinate parliamentary oversight over the review or alternatively an intersectoral <i>Ad Hoc</i> Committee could be established for this purpose.

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ISSUE/STATUS	CHALLENGES	RECOMMENDATIONS AND PROGRESS UPDATE
<p>rebuttable presumption of criminal incapacity between the ages of 10-14.</p> <p>Children:</p> <ul style="list-style-type: none"> • Under 10 may not be arrested or prosecuted. • Aged 10-14 may be arrested and prosecuted if proved by the prosecutor that the child had criminal capacity when he or she committed the crime. • Under 14 may not be imprisoned • 14 years and older may only be imprisoned for serious offences. • 14 years and older year may not be imprisoned for more than 25 years 	<ul style="list-style-type: none"> • Statistics of the children alleged to have committed offences and the types of offences that they have committed for ages 10-13. • Sentences imposed on these children if they were convicted. • The number of children who did not go to trial because the prosecutor was of the view that they did not have criminal capacity. • The number of cases where expert evidence on the criminal capacity of the child was led and the outcome of these matters. <p>In addition, other constraints in current data contained in the Reports include, for example, lack of provision of SAPS statistics for children under the age of 10, no breakdown of types of offences for which children were charged; and a</p>	<ol style="list-style-type: none"> 4. Parliament should consider the recommendations in the report and conduct public consultations on the feasibility of amending the minimum age of criminal capacity and raise it to at least 12 years of age, in line with international recommendations and to ensure that the Act is easier to implement, in practice. 5. Parliament should consider arguments for and against the abolishment of the common law principle of <i>doli incapax</i> in line with international recommendations by the Committee on the Rights of the Child. Raising the age to at least 12 years would: <ul style="list-style-type: none"> • Ensure that fewer children enter the child justice system • Significantly reduce the number of criminal capacity assessments required. <p>Progress report 2012/13</p> <p>The Government is in the process of developing a brief for the research to inform its recommendations on the age of criminal capacity.⁵¹</p> <p>Progress report 2013/14</p> <p>The 2013/14 unconsolidated Report notes that 254 children under 10 years of age were assessed and placed in various intervention programmes in 2013/14.</p> <p>The Department of Justice has noted that a key challenge is the lack of data required for the review of the minimum age of criminal capacity.</p> <p>The NPA Sexual Offences and Community Affairs (SOCA) Unit was requested by the DGs ISCCJ to conduct research on:</p> <ul style="list-style-type: none"> • What informed the previous and current age of criminal capacity for children in conflict with the law in SA? • What were the social and constitutional factors that were taken into consideration?

⁵¹ Country Report on AU Charter Jan 2000-April 2013

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	<p>focus on charges rather than arrests, written notices and summonses..</p>	<ul style="list-style-type: none"> • What are international trends with a focus on Columbia, Brazil, United States, Nigeria and Kenya? • What is the situation in countries including Mozambique, Zimbabwe, Nigeria, Botswana, Lesotho and Swaziland? <p>According to the Report the research was finalised during the third quarter of 2013/14 and submitted to the DG's ISCCJ meeting held in February 2014.</p> <p>Legislative development: The Judicial Matters Amendment Act 14 of 2014 now provides that while psychiatrists and clinical psychologists are competent to conduct the evaluations of children's criminal capacity it is the inquiry magistrate or child justice court which must consider the cognitive, moral, emotional, psychological and social development of a child on the basis of all evidence placed before the court including the report of a person appointed to evaluate the criminal capacity of the child.</p> <p>The amendments also provide that the Minister may determine different tariffs for the different categories of persons who do the assessments.</p>
<p>Poor quality of the ISCCJ Annual Reports</p>	<p>The poor quality of the Reports mitigate against an evaluation of progress with implementation of the CJA. Key problems that prevail in the Reports include:</p> <ul style="list-style-type: none"> • Inaccurate and contradictory statistics • Inconsistent reporting 	<p>It is recommended that:</p> <ol style="list-style-type: none"> 1. Parliament should recommend that effective quality control processes are implemented within each department that submits statistics- to ensure accuracy of the statistics provided. These should be again verified by the ISCCJ before the Reports are finalised and tabled in Parliament. 2. Parliament should recommend a comprehensive review of the types of statistics contained in the Reports and an assessment of their usefulness in terms of a review of implementation. In addition, once a decision is made on the statistics that must be submitted, that these are reported uniformly across the reporting years to ensure ease of analysis.

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ISSUE/STATUS	CHALLENGES	RECOMMENDATIONS AND PROGRESS UPDATE
	<ul style="list-style-type: none"> • Lack of and inconsistent year on year reporting • Dearth of analysis • Gaps in information and statistics <p>The structure of the Reports, which follow the priority areas as laid down in the National Policy Framework, requires review.</p> <p>The statistics provided in the Reports are riddled with inaccuracies and cannot be used for comparative analysis as they are not uniform from year to year.</p> <p>In addition there are many statistics that are not reported on but should be, if an accurate picture of children in conflict with the law is to be presented.</p>	<ol style="list-style-type: none"> 3. Parliament should propose amendments to the National Policy Framework to ensure a more useful structure for reporting, if this will continue to be used as this basis for reporting. 4. Parliament should also recommend that: <ul style="list-style-type: none"> • Year on year progress should be benchmarked from one year to another. • The Reports should contain greater intersectoral analysis of the statistics with linkages and problems clearly identified. • Each subsequent Report should include a summary of recommendations and decisions emanating from the envisaged annual joint parliamentary oversight meeting on the Report. The following year's priorities should be identified and reported on in the subsequent Report. • The Report should include discussion on relevant developing case law. <p>Progress report 2013/14</p> <p>A section on amendments to Acts and developing case law has been included in the 2013/14 unconsolidated Report.</p>
Lack of effective Information Systems	Departmental specific systems and Integrated Justice System (IJS) systems to ensure coordinated action and	<p>It is recommended that:</p> <ol style="list-style-type: none"> 1. Parliament should recommend that, in the interim, each department needs to improve the accuracy of manually collected statistics. Better use should be made of the Case Review

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ISSUE/STATUS	CHALLENGES	RECOMMENDATIONS AND PROGRESS UPDATE
	<p>accurate statistics across the criminal justice system are not yet in place despite this being an essential component of the Act, specifically in terms of information management.</p> <p>The IT systems have been in development for many years and have cost the state billions-with few deliverables to date.</p> <p>Lack of electronic systems effects service delivery to children and the accuracy of reported information.</p>	<p>Committees to ensure that the local statistics are accurately relayed provincially and then eventually to the national structures.</p> <ol style="list-style-type: none"> 2. Parliament should call for an urgent and detailed briefing on: <ul style="list-style-type: none"> • Progress in establishing departmental systems. • Progress in establishing the Integrated Justice System projects in relation to children. 3. Parliament should recommend that implementation of the Child Justice component of the IJS systems must be prioritised and fast tracked for implementation. A clear and detailed project plan with stipulated and realistic time frames should be presented to National Treasury and to Parliament and monitoring of adherence to this plan should be undertaken by National Treasury and Parliament. 4. Parliament should recommend that all future Reports must include detailed progress reports on implementation of the department specific and integrated information systems. <p>Progress report 2012/13</p> <ul style="list-style-type: none"> • There is still a lack of an (a) integrated information management system and (b) electronic intersectoral data collection system (Data/statistics are collected and submitted manually resulting in inaccuracies). • Role-players have begun developing departmental and institutional systems of which four were in the process of being integrated into the IJS system.
<p>One Stop Child Justice Centres (OSCJC)</p> <p>Currently three OSCJCs are in operation:</p>	<p>It has been noted that the three existing Centres are:</p> <ul style="list-style-type: none"> • Few, • Urban based, and • Expensive. 	<p>It is recommended that:</p> <ol style="list-style-type: none"> 1. Parliament should ensure that the report on the commissioned investigation into the viability of the One Stop Centre concept (which was to be finalised in April 2013) but has not yet been finalised is tabled in Parliament. 2. Parliament should recommend that measures to increase the cost effectiveness of the Centres by, by for example their servicing of adjoining magisterial districts are considered

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ISSUE/STATUS	CHALLENGES	RECOMMENDATIONS AND PROGRESS UPDATE
<ul style="list-style-type: none"> • Nerina (Port Elizabeth: Eastern Cape) • Mangaung (Bloemfontein: Free State) • Matlosana Centre (Klerksdorp: North West). 	<p>In addition, in terms of the establishment of additional Centres, it has been stated that no existing government owned buildings are suitable for conversion into OSCJCs.⁵²</p>	<p>by the ISCCJ and that the provision of Regional Court jurisdiction at these Centres is fast tracked.</p> <p>3. Parliament should ensure that the annual Reports contain information on the number of children processed by these Centres.</p> <p>Progress report 2012/13</p> <ul style="list-style-type: none"> • The availability of suitable government-owned buildings to convert affordably to OSCJCs remains a challenge and thus the process of establishment of additional OSCJCs has been halted. The Department of Justice is in the process of conducting a viability study on OSCJCs and amending the National Policy Framework and National Guidelines for the Establishment of OSCJCs. • The SAPS requires more space at existing OSCJCs and conducted a works-study which recommended an increase in resources allocations for the OSCJCs. The proposal is 'under consideration'. <p>Progress report 2013/14</p> <ul style="list-style-type: none"> • The unavailability of existing buildings that can be converted to OSCJCs is identified as a key challenge. A baseline document has been drafted to assist in the execution of the viability study. The establishment of OSCJCs has been stopped pending the outcome of the viability study which will be finalised in 2014/15.
<p>Training</p> <p>It was indicated in 2011 that the ISCCJ would be establishing a training task</p>	<p>While the Reports contain information on training indicating the number of role-players trained each year, this information is not useful without</p>	<p>It is recommended that:</p> <p>1. Parliament should recommend that a comprehensive training plan for all relevant departmental officials must be provided as part of the ISCCJ annual Reports. These should include information of how many personnel still require training per category in</p>

⁵² A problem noted in the briefing to the Select Committee on Security and Constitutional Development (October 2013).

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<p>team to fast-track departmental and intersectoral training.</p>	<p>contextualising it in relation to how many personnel there are in total and how many of these still require training. The Reports do not provide:</p> <ul style="list-style-type: none"> • An indication of how many personnel in each department still require training. • The reasons for the decline in the number of personnel trained in each subsequent year since 2010/11 i.e. is it because most personnel that need training have already been trained or because training was not offered/delivered despite a need for it? • An analysis of the quality of the training provided. 	<p>each department, the percentage of all personnel trained and the percentage of all personnel that still require training.</p> <p>Progress report 2012/13</p> <p>A total of 45 292 personnel were trained from 2010-2013. Only 7 278 of these were trained in the 2012/13 period (in comparison to 24 249 trained in 2010/11 and 13 665 trained in 2011/12). Many departments reported the decline in training as due to budgetary constraints.</p>
<p>Budget</p>	<p>Allocated resources are insufficient to fully implement the Child Justice Act.⁵³</p>	<p>It is recommended that:</p>

⁵³Country Report on AU Charter Jan 2000-April 2013

3.1. GENERAL RECOMMENDATIONS

ISSUE/STATUS	CHALLENGES	RECOMMENDATIONS AND PROGRESS UPDATE
		<ol style="list-style-type: none"> 1. Parliament should ensure that funds are prioritised especially for vulnerable groups, such as children in conflict with the law, through oversight of: <ul style="list-style-type: none"> • Budget Votes, Strategic Plans and Annual Performance Plans of the relevant departments • Quarterly reporting on spending and performance • Recommendations contained in the Budgetary Review and Recommendation Reports (BRRRs). 2. Parliament should recommend that each department identifies their budget and expenditure for the various responsibilities in terms of the implementation of the Act. This information should be contained in the ISCCJ annual Reports. 3. Parliament should request a detailed breakdown of the budgetary requirements of the CJA over the 2014/15 MTEF. The Portfolio Committee on Justice and Correctional Services should also request a briefing by the Department of Justice (as Chair of the ISCCJ) on its engagements with Treasury around an intersectoral budget. 4. Parliament should recommend that the Department of Justice revisit the 2001 costing report which indicated that government stood to make considerable savings if the CJA was implemented effectively, but that this would require a substantial reallocation of resources particularly to the assessment process, the preliminary inquiry process and the provision of diversion and alternative sentencing options.⁵⁴ A report in this regard as to where funds are currently been spent and whether this is the most effective way to spend them, should be presented to a joint parliamentary Committee meeting. <p><i>Progress Report 2012/13</i></p> <p>The Third Report notes as a challenge that there are ‘no dedicated budgets for the implementation of the Act’ and that the ‘DG ISCCJ will consider this matter in the next reporting period’ i.e. 2013/14.</p>

⁵⁴ Barberton and Stuart (2001)

3.1. GENERAL RECOMMENDATIONS

ISSUE/STATUS	CHALLENGES	RECOMMENDATIONS AND PROGRESS UPDATE
Recidivism	No data is available on the number of recidivism or reoffending cases in the ISCCJ annual Reports.	<ol style="list-style-type: none"> 1. Parliament should recommend that a study is completed by the ISCCJ on recidivism of children over the first five year period in order to assess whether the objectives of the Act are being met. 2. In addition, the next annual Report and all subsequent Reports must contain statistics and information on reoffending of children.

3.2. SOUTH AFRICAN POLICE SERVICE (SAPS) RECOMMENDATIONS

STATISTICS AND CORE RESPONSIBILITY	KEY CHALLENGES	RECOMMENDATIONS AND PROGRESS UPDATE
<p>The number of charges decreased from 75 797 in 2010/11 to 68 078 in 2011/12.</p> <p>In 2010/11, a total of 795 children under 10 were reported as Section 9 referrals- to be handed over by SAPS to a probation officer. No figures are provided for 2011/12.</p>	<p>Statistics on the number of charges do not reflect the number of children charged as one child may face multiple charges. It is therefore impossible to ascertain how many children have been charged by the SAPS and whether there is an increase or decrease in these figures.</p>	<p>Parliament should recommend that SAPS should report in the ISCCJ annual Reports on:</p> <ul style="list-style-type: none"> • Number of children arrested • Number of children issued with written notices • Number of children issued with a summons • Total number of charges • Breakdown of charges in terms of age, gender, province, and type of crime • Number of children under 10 years • Number of children referred to probation officers <p>Progress report 2012/13</p> <p>The number of charges decreased further to 57 721 in 2012/13.</p> <p>Key initiatives undertaken during 2012/13 included:</p> <ul style="list-style-type: none"> • Measures to ensure that the SAPS notify probation officers timeously of the arrest or charge of a child to expedite the assessment report. This includes a copy of the SAPS 583(b) Forms sent to the probation officer, information of designated probation officers and CYCCs provided to all provinces and police stations, and information on CYCCs placed on the SAPS intranet. <p>No information from SAPS is contained in the 2013/14 unconsolidated Report</p>
<p>On suspicion of an offence the SAPS may:</p> <ul style="list-style-type: none"> • Issue a Written Notice • Issue a Summons • Arrest the child 	<p>SAPS members are unclear on what to do when confronted with a child who is suspected of having committed an offence. It is possible that they may be releasing some of</p>	<p>Parliament should recommend:</p> <ol style="list-style-type: none"> 1. National Instructions: Simplify the National Instructions to ensure that they are clear and easily understood by all SAPS members. 2. Child Justice champions: Consider appointing one or two child justice champions at each police station. These would be station members, who have been trained on

3.2. SOUTH AFRICAN POLICE SERVICE (SAPS) RECOMMENDATIONS

STATISTICS AND CORE RESPONSIBILITY	KEY CHALLENGES	RECOMMENDATIONS AND PROGRESS UPDATE
<p>The SAPS is responsible for the transport of all children Remand Detainees from police cells, correctional centres, and Child and Youth Care Centres (CYCC) to court, for Department of Health assessments and to meet with probation officers.</p>	<p>these children without any further interventions.</p> <p>This is resource intensive as children must be transported separately from adults and boys must be separated from girls.</p> <p>According to the SAPS National Instruction, it is preferable (but not obligatory) that children are transported in unmarked vehicles. These are not readily available.</p> <p>Health practitioners state that children are left unattended at assessments (for criminal capacity) and that sometimes the SAPS do not fetch them from these assessments. In addition, there is inadequate handover between role-players. This problem has been reflected by other stakeholders including the CYCCs.</p> <p>Because of the distances that may need to be travelled, the</p>	<p>implementation of the Act and understand how it works in practice. All station members would be able to defer to these persons if they are unsure on how to proceed in any case.</p> <p>Parliament should request:</p> <ol style="list-style-type: none"> 1. Transport Protocol: An update on the Transport Protocol and the implementation thereof. 2. Safe Houses: Consider the establishment of safe houses where children in transit can sleep overnight and which only need to be staffed when children are actually there.

3.2. SOUTH AFRICAN POLICE SERVICE (SAPS) RECOMMENDATIONS

STATISTICS AND CORE RESPONSIBILITY	KEY CHALLENGES	RECOMMENDATIONS AND PROGRESS UPDATE
	SAPS sometimes fetch children from correctional centres and CYCCs very early in the morning (e.g. at 4am) or the night before, in which case, they are required to sleep over in the police cells.	
Capacity/Training	Only 45% of all operational members had received training by the end of 2012/13. It is unclear how effective the training is in creating certainty on how to handle children in conflict with the law.	<p>Parliament should recommend:</p> <ol style="list-style-type: none"> 1. Training: Increase the number of police members trained; ensure that relevant members receive training (especially frontline services and detectives); ensure high quality training that increases knowledge of members on what to do in practice; ensure monitoring of training; and ensure that training is ongoing through refresher courses. <p>Progress report 2012/13</p> <p>The SAPS has proposed that a reviewed SAPS Training Plan for the next five years should focus on:</p> <ul style="list-style-type: none"> • Training of First Responders on the 5-day programme (These include Community Service Centre members, Emergency services, Visible policing members who conduct patrols and Border police.) • Refresher course for trainers and ongoing training of new intakes. • Station lectures • Inclusion of Vulnerable Children Learning Programme in the Basic Training programme. <p>The Third Report also notes that, where Station Commanders, Cluster Commanders and or Cluster Coordinators have completed the Vulnerable Children Learning Programme, higher level of compliance with the Act at station level is clearly visible.</p>

3.2. SOUTH AFRICAN POLICE SERVICE (SAPS) RECOMMENDATIONS

STATISTICS AND CORE RESPONSIBILITY	KEY CHALLENGES	RECOMMENDATIONS AND PROGRESS UPDATE
<p>Information Management and Systems</p>	<p>The current information management systems have limitations in providing information on the number of children arrested, provided with a written notice or summoned.</p> <p>The system can provide information on securing attendance at court, as well as an age, gender and provincial breakdown of charges against children. However, this information is not provided in the Reports.</p> <p>Enhancements are required to capture information for children under 10 years as well as information on children issued with summonses/notices.</p>	<p>Parliament should request and recommend:</p> <ol style="list-style-type: none"> Progress Report: Parliament should receive a detailed report on progress in modification and implementation of internal information systems such as CAS/OPAM. Parliament should recommend that the SAPS should fast track enhancements to the CAS system to ensure that information on under 10s and the number of children issues with summonses/notices can be captured. Under 10 years: Parliament should ensure that the capturing of information on children under 10 is separated from the charges which SAPS might normally record. <p>Progress report 2012/13</p> <p>The Third Report states the following measures that are underway in relation to SAPS departmental systems:</p> <ul style="list-style-type: none"> Enhancement of CAS is underway to capture information on children that have been issued with summonses and notices to appear in court. The new ICDM system will be able to capture information for children where cases have been registered. Enhancement of OPAM was developed to capture information in respect of children under 10 (that cannot be charged but must be referred to probation officers). This system was piloted in Gauteng and is 'currently being tested in three Provinces'.
<p>Parliamentary Oversight</p>		<p>The PC on Police could consider:</p> <ol style="list-style-type: none"> Expansion of the Station Monitoring Took to include more questions related to implementation of the CJA. Developing mechanisms to ensure more systematic follow up on progress made by police on recommendations contained in Committee Reports related to implementation of the CJA.

3.2. SOUTH AFRICAN POLICE SERVICE (SAPS) RECOMMENDATIONS

STATISTICS AND CORE RESPONSIBILITY	KEY CHALLENGES	RECOMMENDATIONS AND PROGRESS UPDATE
		<p>3. Recommending that the Civilian Secretariat of Police reports annually in its report on cell inspections on problems related to children held in police cells.</p> <p>4. Interrogate whether the Turnaround Strategy (a SAPS strategy to ensure more effective implementation of the legislation at station level) is reaping benefits for children in conflict with the law.</p>

3.3. DEPARTMENT OF SOCIAL DEVELOPMENT RECOMMENDATIONS

STATISTICS AND CORE RESPONSIBILITY	KEY CHALLENGES	RECOMMENDATIONS AND PROGRESS UPDATE
ASSESSMENT PHASE		
<p>The number of assessments decreased from 32 500 in 2010/11 to 18 334 in 2011/12.</p>	<p>Why did the number of assessments decrease so substantially in 2011/12 if all children (bar certain exemptions) who are arrested; issued with a summons or a written notice must be assessed? Note that the number of charges against children decreased only slightly (from 75 797 in 2010/11 to 68 078 in 2011/12).</p>	<p>Parliament should recommend that:</p> <p>1. The Reports contain information on the number of children exempted from the assessment process and reasons for this exemption.</p> <p>Progress report 2012/13</p> <p>The number of assessments increased to 32 125 in 2012/13.</p> <p>The Third Report attributes this increase to interventions taken during 2012/13 to improve interdependencies including speedy notification of probation officers by SAPS of children charged. The Report also notes that until integrated information systems are developed there will always be a variance between the number of charges against children reported by SAPS and the number of assessments conducted by the Department of Social Development.</p> <p>Progress report 2013/14</p> <p>The number of assessments decreased to 29 280 in 2013/14.</p>
<p>Probation officers are responsible for compiling Assessment Reports for all</p>	<p>The shortage of Probation Officers (POs) and the lack of clarity on the role of the</p>	<p>Parliament should recommend:</p>

3.3. DEPARTMENT OF SOCIAL DEVELOPMENT RECOMMENDATIONS

STATISTICS AND CORE RESPONSIBILITY	KEY CHALLENGES	RECOMMENDATIONS AND PROGRESS UPDATE
<p>children (except for defined exceptions). These Reports must be completed:</p> <ul style="list-style-type: none"> • Within 48 hours for children kept in police cells • Within 10 days for children given a Written Notice • Within the date stipulated in the Summons <p>Reports include recommendations based on time spent with the child, observation of the home environment and other factors.</p> <p>Recommendations include that:</p> <ul style="list-style-type: none"> • The child is in need of care, and the case will be sent to the Children's Court • The child should be diverted and under what option • The child should go forward to the Preliminary Inquiry 	<p>Assistant Probation Officers (APO) results in high caseloads for POs and may compromise the quality and detail of the assessment reports.</p> <p>There is a lack of professional recognition of probation services.</p>	<p>1. Role definition for APOs: Provide clarity on the function and role definition of APOs which could include functions such as:</p> <ul style="list-style-type: none"> • Family finding • Monitoring <p>It should be noted that these functions should not include conducting assessment or pre-sentence reports.</p> <p>2. Use NGOs: Outsource assessments to NGOs with Probation Officers on staff.</p> <p>3. Legislation: Track progress with the draft Social Services Professions and Occupations Bill.</p> <p>4. Training: Ensure ongoing training for Probation Officers and APOs</p> <p>5. Modify the Assessment Form: Restructure the set Form/Template to ensure that it is easier to complete and that uniformity in essential information is captured.</p> <p>Progress report 2012/13</p> <p>The Third Report notes that development of standard assessment reports and the training of Probation Officers on the completion and presentation of assessment reports have ensured the improved quality of reports to courts.</p>

3.3. DEPARTMENT OF SOCIAL DEVELOPMENT RECOMMENDATIONS

STATISTICS AND CORE RESPONSIBILITY	KEY CHALLENGES	RECOMMENDATIONS AND PROGRESS UPDATE
<p>Probation officers may also refer children for assessment to the Department of Health:</p> <ul style="list-style-type: none"> For age determination when it is unclear whether the child is under 14 years of age To assess criminal capacity for children between the ages of 10-14 	<p><i>Discussed under Department of Health</i></p>	
DIVERSION		
<p>The total number of diversions decreased from 16 462 in 2010/11 to 9 192 in 2011/12.</p> <p>Diversion can occur:</p> <ul style="list-style-type: none"> Before the Preliminary Inquiry (Schedule 1 offence) During the Preliminary Inquiry During the proceedings at a court 	<p>The decrease in the number of children diverted (between 2010/11 and 2011/12) is still unexplained despite an attempt by the Department of Justice to do so.</p> <p>While the number of diversions increased in 2012/13 the total number of diversions for that year (11 420) is still substantially less than the cases diverted in 2010/11 (16 462).</p>	<p>Parliament should recommend:</p> <ol style="list-style-type: none"> Research: Outsource a detailed study on reasons for the decrease in the number of diversions since 2010/11. Report on the number of diversions at each stage where diversion may occur i.e. <ul style="list-style-type: none"> Before the Preliminary Inquiry (Schedule 1 offence) During the Preliminary Inquiry During the proceedings at a court <p>Report on the rate of diversions at court stage that were successfully completed. Report on the number of children that were diverted and later recommitted an offence.</p> <p>Progress report 2012/13</p>

3.3. DEPARTMENT OF SOCIAL DEVELOPMENT RECOMMENDATIONS

STATISTICS AND CORE RESPONSIBILITY	KEY CHALLENGES	RECOMMENDATIONS AND PROGRESS UPDATE
<p>Diversion by the prosecutor before the Preliminary Inquiry: Decreased from 2 444 diversions in 2010/11 to 1 577 in 2011/12.</p> <p>Diversion by the magistrate at the Preliminary Inquiry: Decreased from 4 630 in 2010/11 to 2 608 in 2011/12.</p> <p>Diversion at the trial stage: Decreased from 8 539 in 2010/11 to 3 946 in 2011/12</p>	<p>The reduction in the number of children diverted has resulted in the closing of the offices of diversion service providers as funding is dependent on the number of children utilising the services.</p>	<p>In 2012/13 the number of diversion cases increased (in comparison to the previous year) to 11 420. Progress report 2013/14</p> <p>In 2013/14 the number of diversion cases decreased (in comparison to the previous year) from 11 420 to 10 809. Note that this figure is provided in the NPA section of the unconsolidated Report. In contrast, the Department of Social Development section states that 11 647 diversions occurred in 2013/14.</p> <p>The NPA section of the unconsolidated Report provides a number of reasons for the decrease in diversions as relayed from the provincial nodal points. These include that social worker reports take very long and thus mediation is used as an alternative tool, decrease in funds to NGOs means that service providers for diversion programmes are not readily available, fewer cases of children are enrolled, shortage of probation officers and length of time that probationers to finalise reports impacts on finalisation of statistics, non-completion of diversion programmes by children, and more children committing serious offences who are repetitive offenders.</p>
<p>The Department of Social Development has the responsibility to accredit and run diversion programmes.</p> <p>Total Accredited programmes in 2011/12: 191 with full accreditation and 32 in candidacy status. 20 programmes were declined.</p>	<p>Accreditation of diversion service providers is not applied uniformly across provinces.</p> <p>There is disparity between provinces in terms of access to diversion service providers.</p> <p>Procedures for applications are labour intensive, complex and costly.</p>	<p>Parliament should recommend:</p> <ol style="list-style-type: none"> 1. Framework: A national policy framework for accreditation of diversion service providers is available and should be utilised by all provinces objectively and uniformly. 2. Report: Report on the distribution of diversion programmes across provinces and in rural versus urban areas. Ensure the equitable distribution of programmes and service providers in this regard. 3. Assess: Conduct an assessment on how the accreditation process impacts of NGOs including the experiences and challenges faced by service providers in this process. 4. Use APOs for monitoring: APOs could be given the responsibility of monitoring the attendance of children in diversion programmes for all Preliminary Inquiry cases as well as trial cases to ensure effective completion of diversion programmes.

3.3. DEPARTMENT OF SOCIAL DEVELOPMENT RECOMMENDATIONS

STATISTICS AND CORE RESPONSIBILITY	KEY CHALLENGES	RECOMMENDATIONS AND PROGRESS UPDATE
<p>Total Accredited Services providers in 2011/12: 55 fully accredited and 38 in candidacy status. 9 service providers were declined.</p>	<p>The decline in the number of children diverted impacts negatively on the future sustainability of service providers whose funding is dependent on sufficient number of children enrolled in their programmes.</p> <p>There is insufficient monitoring of attendance of children in diversion programmes when diverted as part of the trial.</p> <p>Lack of attendance of diversion programmes especially in the trial phase may result in eventual imprisonment of the child</p>	<p>Progress report 2012/13</p> <ul style="list-style-type: none"> Total Accredited programmes in 2012/13: 89 with full accreditation and 20 in candidacy status. 16 programmes were declined. Total Accredited Services providers in 2011/12: 19 fully accredited and 5 in candidacy status. 6 service providers were declined. <p>The Third Report notes that the Department of Social Development is reviewing the minimum norms and standards for diversion orders.</p> <p>Progress report 2013/14</p> <ul style="list-style-type: none"> 19 service providers and 89 programmes were accredited in 2013/14. 5 service providers and 20 programmes received candidacy status in 2013/14. 6 service providers and 16 programmes received declined / non-accredited status in 2013/14. 63 quality assurance panel members were appointed on 2 July 2013 to conduct quality assurance processes for all accredited diversion service providers and programmes and 59 of these members were trained. From October 2013 to February 2014, they had completed the accreditation of two organisations in each province <p>The electronic system for the accreditation of diversion services was developed and is completed. Provinces have been trained and the capturing of information is ongoing.</p> <p>Legislative development: The Judicial Matters Amendment Act 14 of 2014 allows that the Minister of Social Development can delegate certain powers relating to the accreditation of diversion programmes and diversion service providers in terms of the CJA to the provincial level.</p> <p>This will hopefully speed up the accreditation process.</p>

3.3. DEPARTMENT OF SOCIAL DEVELOPMENT RECOMMENDATIONS

STATISTICS AND CORE RESPONSIBILITY	KEY CHALLENGES	RECOMMENDATIONS AND PROGRESS UPDATE
HOLDING CHILDREN IN CHILD AND YOUTH CARE CENTRES (CYCCS)		
<p>Relevant statistics: Child and Youth Care Centres – Remand Detainees and Sentenced Children</p> <p>Number facilities: 30 in March 2013 (increasing from 26 as at March 2010).</p> <p>Bed spaces declined from 2 229 to 2 025 during this period.</p> <p>Children not yet diverted (and not released into the care of their parents or guardian) are held in CYCCs (former Secure Care facilities). 12 412 children were awaiting trial in CYCCs in 2012/13 in comparison to 21 600 in 2010/11.⁵⁵</p> <p>Children can also be sentenced to a CYCC. 353</p>	<p>Number of centres and quality of care:</p> <p>The key question is whether there are sufficient centres for remand and sentenced children and whether these are distributed effectively across the country?</p> <p>There is a disparity in the location of CYCCs across provinces. This may impact negatively on girl children and children in rural areas.</p> <p>Inadequate security infrastructure has been identified as a problem, especially the lack of proper fencing. This may result in children ‘escaping’ (often merely to visit home and then later return to the facility).</p>	<p>Parliament should recommend:</p> <ol style="list-style-type: none"> 1. Monitor: Progress towards the implementation of the Minimum Norms and Standards in CYCCs including the standard of infrastructure (and security infrastructure), equipment and services rendered. 2. Additional information: Additional information could be requested on the location of the CYCCs, the occupancy rate per facility, the average length of stay, the number of centres/beds for sentenced only and the number for remand only, and those that are mixed. 3. Needs analysis: A needs analysis should be completed by the Department of Social Development to identify the needs with regard to the distribution of CYCCs for children in remand detention across provinces. 4. Former Reform Schools and Schools of Industry: The Department of Social Development should report on progress with the transfer for these facilities. Not all Reform schools and Schools of Industry have been transferred from the Department of Basic Education to the Department of Social Development. It is reported that legislative amendments are required to effect the proposed transfers.⁵⁶ It is unclear what these are and more information should be provided on the nature of the legislative changes required. 5. Infrastructure: Security infrastructure should be improved. 6. Escapes: All ‘escapes’ should be handled and addressed on a case by case basis to ensure that not all so called escapes result in a contempt of court charge, (depending on the motivation for the ‘escape’). 7. Education and social services: Access to education is a right of all children and should be provided especially when children are held in state facilities, irrespective of the length of time that they are there, or whether they have previously attended school. Social and psychological services should be provided. Information on access to services should be included in the Reports.

⁵⁵ Department of Social Development (requested information)

⁵⁶ Briefing to the Select Committee on Security and Constitutional Development (October 2013).

3.3. DEPARTMENT OF SOCIAL DEVELOPMENT RECOMMENDATIONS

STATISTICS AND CORE RESPONSIBILITY	KEY CHALLENGES	RECOMMENDATIONS AND PROGRESS UPDATE
<p>children were sentenced to compulsory residence in a CYCC in 2011/12.</p> <p>The number of children in Home-based supervision decreased from 8 182 in March 2010 to 4 570 in March 2013.</p>	<p>These 'escapes' may result in a contempt of court charge. Inadequate staff for provision of education programmes is noted. This problem is compounded by the presumption that especially remand detainee children will not be in the facility for extended periods of time. However, because of delays in court hearings children may in fact be in the facility for longer periods of time.</p> <p>The due date for finalisation of the transfer of Reform Schools and Schools of Industry from the Department of Basic Education to the Department of Social Development was 1 April 2012. This transfer has been problematic and there has been no uniformity in this transfer.</p> <p>There are no plans at present to build more CYCCs.</p>	<p>Progress report 2012/13</p> <p>Former Reform Schools and Schools of Industry In terms of the Third Report:</p> <ul style="list-style-type: none"> • A moratorium was placed on the four earmarked schools in the Western Cape pending the outcome of discussions between the DBE and DSD. • With the exception of Vaalrivier, all earmarked schools in Mpumalanga will be registered as CYCCs. Hostels and staff were transferred on 31 March 2013 and the DBE will be responsible for the provisioning of curriculum and educators. • In KwaZulu-Natal the staff at the New Castle school will be transferred to DSD while the DBE will pay for education services and resources. A decision is still outstanding regarding Mimosadale. The Bersig School will remain with DBE and will cater for learners with special needs only. • Regarding the earmarked schools in Gauteng, Free State, North West and Eastern Cape - these will be registered at CYCCs with schools on the premises and MOUs for their transfer are in place. DSD will provide care and support functions and the DBE will deliver the curriculum. <p>'Mentally affected children'</p> <ul style="list-style-type: none"> • An additional limitation is noted as the need to establish special care facilities that comply with the detention requirements for mentally affected children. (It is reported that this matter is still under investigation). <p>Progress report 2013/14</p> <ul style="list-style-type: none"> • 31 CYCCs were fully functional in 2013/14 and two were under construction. Bed spaces were at 2 700. • 632 sentenced children are 'currently' in the CYCCs.

3.3. DEPARTMENT OF SOCIAL DEVELOPMENT RECOMMENDATIONS

STATISTICS AND CORE RESPONSIBILITY	KEY CHALLENGES	RECOMMENDATIONS AND PROGRESS UPDATE
PRE- SENTENCE REPORTS		
<p>Probation officers are responsible for writing pre-sentence reports for all children whose cases are before court</p>	<p>Magistrates have complained about the poor quality and insufficient detail of the pre-sentence reports.</p> <p>There is a concern about the capacity of Probation Officers to write these reports.</p> <p>There is insufficient time provided to Probation Officers to write detailed reports.</p>	<p>Parliament should recommend:</p> <ol style="list-style-type: none"> 1. Training: Intensive and targeted training should be provided to Probation Officers to ensure that they have the skills to write detailed, high quality reports. 2. Standardisation: The Template for writing the report should be standardised in terms of the type of information that must be contained in the reports. 3. Responsibility: This responsibility must be retained by the Probation Officers (i.e. no delegation) as the outcome of these reports has very serious consequences for the child. 4. Time: Set practice standard time in Regulations.
MONITORING OF NON-CUSTODIAL SENTENCES		
<p>Adherence and non-adherence to non-custodial sentences and results of non-compliance.</p>	<p>No information is contained in the annual Reports on the number of children that did not complete or adhere to the requirements of their non-custodial sentences and what happened in these cases.</p> <p>There is no monitoring of adherence or non-adherence to non-custodial sentences.</p>	<p>Parliament should recommend:</p> <ol style="list-style-type: none"> 1. Include these statistics: The Report should include statistics on the number of children that did not complete or adhere to the requirements of their non-custodial sentences and what happened in these cases. 2. Responsibility: Assistant Probation Officers under the supervision of the Probation Officers could be trained to fulfil this function. 3. Guidelines: Guidelines should be developed on how to effectively monitor adherence of a child to these sentences. Probation officers/APOs should be responsible for monitoring adherence of the child to all non-custodial sentences including: <ul style="list-style-type: none"> • attendance and completion of programmes

3.3. DEPARTMENT OF SOCIAL DEVELOPMENT RECOMMENDATIONS

STATISTICS AND CORE RESPONSIBILITY	KEY CHALLENGES	RECOMMENDATIONS AND PROGRESS UPDATE
	<p>There is insufficient capacity amongst Probation Officers to fulfil this function.</p> <p>There are no set guidelines/templates on how, who and where to monitor.</p>	<ul style="list-style-type: none"> • payment of fines • community service • symbolic and monetary compensation • home-based sentences
<p>Capacity</p> <p>The number of Probation Officers increased from 484 in March 2010 to 643 in March 2013.</p> <p>The number of Assistant Probation Officers decreased from 360 in March 2010 to 320 in March 2013.</p>	<p>Shortage of Probation Officers and APOs</p>	<p>Parliament should recommend:</p> <ol style="list-style-type: none"> 1. Offer bursaries for specialisation in probation practice to encourage social workers to specialise in this area. 2. Professionalism of the probation officer to attract additional capacity should be addressed in the Social Services Professions and Occupations Bill, which has not yet been tabled in Parliament. 3. Define and delegate certain functions from Probation Officers to Assistant Probation Officers. 4. Ideal number: Ascertain the ideal number of Probation Officers and APOs required. Increase in both PO and APO is desirable. 5. Report on the targets set for the employment of POs and APOs per annum in the annual Reports.
<p>Children in conflict with the law that are drug addicts</p>	<p>Many children in conflict with the law may have substance addictions and do not have access to necessary and suitable treatment programmes.</p>	<p>Parliament should request:</p> <ol style="list-style-type: none"> 1. A briefing from the Departments of Health (as the treatment provider) and Social Development (as the referral stakeholder) on the number of referrals of children in conflict with the law to treatment programmes, the number of programmes available, and the location of these programmes.

3.4. DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT RECOMMENDATIONS

STATISTICS AND CORE RESPONSIBILITY	KEY CHALLENGES	RECOMMENDATIONS AND PROGRESS UPDATE
PRELIMINARY INQUIRY		
<p>The number of Preliminary Inquiries increased from 14 471 in 2010/11 to 17 822 in 2011/12.</p>	<p>It must be noted that all children that are assessed must go forward to a Preliminary Inquiry unless:</p> <ul style="list-style-type: none"> • They are diverted by a prosecutor before the Preliminary Inquiry in terms of Chapter 6 (section 41) of the Act. This can only be applied to children that are alleged to have committed a Schedule 1 offence. These decisions must be made an order of court (section 42) • The case is withdrawn • The case involves a child of between 10 and under 14 years of age where it is unlikely that criminal capacity would be proved. <p>There is closer correlation in 2011/12 between the number of assessments and Preliminary Inquiries held. (i.e.</p>	<p>Parliament should recommend that:</p> <ol style="list-style-type: none"> 1. There should be provincial, age and gender breakdown of statistics 2. More information should be included on cases where children are being used by adults to commit crimes. 3. The Report must include data on the number of children diverted in terms of Chapter 6 (before a Preliminary Inquiry) <ul style="list-style-type: none"> - the number of cases withdrawn after assessment - the number of cases where criminal capacity is unlikely to be proved - a breakdown of the nature of charges of all children, arrested, issued with a written notice or summons <p>(See also relevant section under Department of Social Development: Diversion)</p> <p>Progress report 2012/13</p> <p>Preliminary Inquiries increased in 2012/13 to 25 517.</p> <p>Progress report 2013/14</p> <p>Preliminary Inquiries decreased in 2013/14 to 21 563.</p> <p>The 2013/14 unconsolidated Report notes that the decrease in Inquiries will be compared to the number of charges and assessments to ascertain if this decrease is in line with these numbers.</p>

3.4. DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT RECOMMENDATIONS

STATISTICS AND CORE RESPONSIBILITY	KEY CHALLENGES	RECOMMENDATIONS AND PROGRESS UPDATE
	<p>in 2011/12 there were 18 344 assessments and 17 822 Preliminary Inquiries) versus in 2010/11 where there were 32 500 assessment and 14 471 Preliminary Inquiries).</p> <p>The desirability of close correlation is debatable and difficult to ascertain without additional statistics. For example, it is possible that this could be a result of caution on the part of the NPA where prosecutors decide not to divert before a Preliminary Inquiry for children that have committed Schedule 1 offences.</p>	
<p>3 216 children went to trial in 2010/11 rising to 6 526 in 2011/12.</p> <p>The majority of the trials occurred in the Eastern Cape.</p>	<p>An explanation is required as to why the number of referrals to trial are increasing (as well as the percentage of these referrals out of all Preliminary Inquiry outcomes). Diversion can occur, and is desirable, before the trial stage even for more serious offences.</p>	<p>Parliament should recommend that:</p> <ol style="list-style-type: none"> 1. Statistics on the nature of charges: In order to understand the increase in the number of children referred to trial additional data should be reported including a breakdown of the nature (and severity) of charges. 2. Research: Research should be undertaken to ascertain (using the additional data such as nature of offences, provincial breakdown etc.) why there is an escalating increase in the number of children who go to trial. 3. Referrals to Children's Court: The reports should contain statistics on the number of children in need of care and court orders made.

3.4. DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT RECOMMENDATIONS

STATISTICS AND CORE RESPONSIBILITY	KEY CHALLENGES	RECOMMENDATIONS AND PROGRESS UPDATE
	<p>No statistics are included in the earlier Reports on the number of children ascertained by magistrates to be in need of care and the number of these court orders that are made. It is noted that 2012/13 statistics (Third Report) and the 2013/14 unconsolidated Report do provide this information.</p>	<p>Progress report 2012/13</p> <p>In 2012/13 a total of 3 856 Preliminary Inquiries were referred to the Children’s Court and 10 821 were referred to court for trial.</p> <p>Progress report 2013/14</p> <p>In 2013/14 a total of 3 169 Preliminary Inquiries were referred to the Children’s Court. No information is included on referrals to court for trial.</p>
Preliminary Inquiry	<p>There is no official standard national template for magistrates to use in the Preliminary Inquiry resulting in inconsistent application.</p> <p>However, the Standard Form and Uniform Procedure for Conducting Preliminary Inquiries was developed by magistrates (subsequent to the two Reports) to address this problem.</p> <p>There is possible reluctance by prosecutors to divert (other than for Schedule 1 or first offences).</p>	<p>Parliament should recommend that:</p> <ol style="list-style-type: none"> 1. Regulations: The Standard Form and Uniform Procedure for Conducting Preliminary Inquiries should be included in the Regulations to the Act which currently lacks detail and thus may result in disparate practices. 2. Standardised Procedures: The standardised procedures for diversion orders (both in Preliminary Inquiries and at court) should include for example: <ul style="list-style-type: none"> • Time frames for diversion programmes • Identification of particular programmes for attendance • When withdrawal of charges can occur • Reports on completion of diversion • Return to court after completion of diversion 3. Case Study on good practice: A case study to identify standard best practice models for the Preliminary Inquiry should be conducted which may include, for example, that the Inquiry is held in Chambers, that no robes are worn, etc. <p>Progress report 2012/13</p>

3.4. DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT RECOMMENDATIONS

STATISTICS AND CORE RESPONSIBILITY	KEY CHALLENGES	RECOMMENDATIONS AND PROGRESS UPDATE
	There is a lack of clarity on where these Inquiries should be held and how.	The Third Report notes as a challenge that there are no specialised rooms to hold Preliminary Inquiries; and available courtrooms are not designed to conduct Preliminary Inquiries. To address this problem, the Report states that a process was initiated to develop a blueprint for Preliminary Inquiry Rooms and that the blueprint will be finalised in the 2013/14 and piloted in selective courts.
DIVERSION ORDERS		
<p>The total number of diversion orders decreased from 16 462 in 2010/11 to 9 192 in 2011/12.</p> <p>Diversion by the prosecutor before the Preliminary Inquiry: Decreased from 2 444 diversions in 2010/11 to 1 577 in 2011/12.</p> <p>Diversion by the magistrate at the Preliminary Inquiry: Decreased from 4 630 in 2010/11 to 2 608 in 2011/12.</p> <p>Diversion at the trial stage decreased from 8 539 in 2010/11 to 3 946 in 2011/12.</p>	<p>The number of diversion orders decreased substantially from 2010/11 to 2011/12. It is noted that they increased slightly from 2011/12 to 2012/13 but still remain far below the 16 462 diversion orders made in 2010/11.</p> <p>There are no statistics provided in the Reports on the number of children issued court diversion orders that come back to court due to inadequate completion of the diversion order; and the outcome of the return to court.</p>	<p>Parliament should recommend:</p> <p>1. Reason for drop in diversions: The ISCCJ should report on the research study undertaken by the National Operations Committee into diversions and explain how the Department/NPA/LASA will address the findings of the report. If it is still unable to account for the reasons for the decline in diversions then a commissioned research study by an independent research agency should be initiated.</p> <p>2. Non-completion of diversion orders: The reports should include statistics on the number of children issued court diversion orders that returned to court due to non-completion and the outcome of the return to court cases.</p> <p>Progress report 2012/13</p> <p>In 2012/13 the total number of diversion orders increased (in comparison to 2011/12) to 11 420.⁵⁷</p> <ul style="list-style-type: none"> - 4 815 of these cases were diverted after enrolment (at the trial stage) - 6 605 of these cases were diverted before enrolment (before or at the Preliminary Inquiry) <p>Progress report 2013/14</p>

⁵⁷ Briefing to the Select Committee on Security and Constitutional Development (October 2013).

3.4. DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT RECOMMENDATIONS

STATISTICS AND CORE RESPONSIBILITY	KEY CHALLENGES	RECOMMENDATIONS AND PROGRESS UPDATE
		<p>In 2013/14 the number of diversion cases decreased (in comparison to the previous year) to 10 809. Note that this figure is provided in the NPA section of the unconsolidated Report. In contrast, the Department of Social Development section states that 11 647 diversions occurred in 2013/14.</p> <p>The NPA section of the unconsolidated report provides a number of reasons for the decrease in diversions as relayed from the provincial nodal points. These include that social worker reports take very long and thus mediation is used as an alternative tool, decrease in funds to NGOs means that service providers for diversion programmes are not readily available, fewer cases of children are enrolled, shortage of probation officers and length of time that probationers to finalise reports impacts on finalisation of statistics, non-completion of diversion programmes by children and more children committing serious offences who are repetitive offenders.</p>
<p>Diversion can occur:</p> <ul style="list-style-type: none"> • Before the Preliminary Inquiry (Schedule 1 offence) • During the Preliminary Inquiry • During the proceedings at a court 	<p>There is a lack of systematization around procedures for diversion.</p> <p>It is important to note that in line with the spirit of the Act diversions should actually occur before (and not during) the court process.</p>	<p>Parliament should recommend that:</p> <p>1. Systematic procedures: Systematic procedures around diversion should be developed and implemented including:</p> <ul style="list-style-type: none"> • Use of a standard form of referral and include period for participation • Include assessment reports with diversion orders • Standardise when charges can be withdrawn i.e. on completion of programme • Require report on completion of programme • Standardise when a file can be concluded i.e. on successful completion of programme. <p>Progress report 2012/13</p> <p>The Third Report notes as a challenge the ‘prescriptive nature of the Act, particularly for diversion service providers and programmes requires children to be referred to accredited service providers and programmes’ and that to address this challenge the ‘DSD is reviewing</p>

3.4. DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT RECOMMENDATIONS

STATISTICS AND CORE RESPONSIBILITY	KEY CHALLENGES	RECOMMENDATIONS AND PROGRESS UPDATE
		the minimum norms and standards for diversion orders in order to align them with the relevant legislation’.
NON- CUSTODIAL AND CUSTODIAL (IMPRISONMENT) SENTENCES		
<p>Total non-custodial sentences increased from 1 145 in 2010/11 to 1 892 in 2011/12</p> <p>These include:</p> <p>Community based sentences increased from 60 in 2010/11 to 795 in 2011/12.</p> <p>Restorative justice sentences increased from 137 in 2010/11 to 405 in 2011/12.</p> <p>Correctional supervision sentences decreased from 804 in 2010/11 to 302 in 2011/12.</p> <p>Compulsory residence in a CYCC increased from 110 in 2010/11 to 353 in 2011/12.</p>	<p>Note that the 536 baseline figure provided for the number of imprisonment sentences handed out in 2010/11 is possibly inaccurate and includes children serving sentences of imprisonment during that year. If this baseline figure (which is continuously used in the Reports) is indeed inaccurate it is impossible to ascertain whether fewer children are indeed been sentenced to imprisonment or not since 2010.</p>	<p>Parliament should recommend:</p> <ol style="list-style-type: none"> 1. Differentiate and report on correctional supervision sentences in terms of section 276(1)(h) and 276(1)(i) of the CPA- 276(1)(i) that have a custodial component. 2. The Reports should indicate the nature of offence for which particular sentences were delivered. 3. Clarity should be provided on the accuracy of the 2010/11 baseline figure for imprisonment sentences. <p>Progress report 2012/13</p> <p>Total non-custodial sentences increased to 2 083 in 2012/13.</p> <ul style="list-style-type: none"> • Community based sentences decreased to 687 • Restorative justice sentences increased to 508 • Correctional supervision sentences decreased to 179 • Compulsory residence in a CYCC decreased to 335 • Fines/alternatives to fines increased to 78 <p>Imprisonment sentences increased slightly to 98 in 2012/13.</p> <p>Progress report 2013/14</p> <p>Total non-custodial sentences decreased to 2 023 in 2013/14 (from 2 083 in 2012/13).</p> <ul style="list-style-type: none"> • Community based sentences increased to 753 • Restorative justice sentences decreased to 402

3.4. DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT RECOMMENDATIONS

STATISTICS AND CORE RESPONSIBILITY	KEY CHALLENGES	RECOMMENDATIONS AND PROGRESS UPDATE
<p>Fines/alternatives to fines increased from 34 in 2010/11 to 37 in 2011/12.</p> <p>Imprisonment sentences decreased from 536 in 2010/11 to 94 in 2011/12.</p>		<ul style="list-style-type: none"> • Correctional supervision sentences increased to 188 • Compulsory residence in a CYCC increased to 381 • Fines/alternatives to fines increased to 94 <p>Imprisonment sentences decreased to 49 in 2013/14.</p>
<p>Courts and sentencing</p>	<p>The Act stipulates that the identity of the child may not be revealed during court procedures but does not specifically prohibit the media from being present.</p> <p>Magistrates are not giving proper warning to the children that non or inadequate completion of their diversion order may result in their return to court for resentencing (and possible imprisonment).</p> <p>Sometimes the non-completion of the diversion order is not the fault of the child but of the parent, guardian or caregiver.</p>	<p>Parliament should recommend that:</p> <ol style="list-style-type: none"> 1. Media: The Department of Justice should create guidelines for magistrates on what to take into account when considering whether the media should be present or not during court procedures. These guidelines should be based on case law. 2. Non-completion of diversion orders: Guidelines should be provided to magistrates on non-completion of diversion orders in terms of the warning that should be given to the child or guardian; as well as how to deal with non-completion of diversion orders when these occur. 3. Child Justice clerks: An assessment should be done to assess the services provided by dedicated child justice clerks as compared with 'ordinary' clerks. In addition, information should be provided on how many clerks of the criminal court still require training on the Act. 4. Magistrates: Training of magistrates should be prioritised. <p>Legislative development: The Judicial Matters Amendment Act 14 of 2014 provides for the following:</p> <ul style="list-style-type: none"> • Deletion of section 77(2). (Section 77(2) originally provided that a child who was 16 years or older at the time of committing a schedule 2 offence (in terms of the Criminal Law Amendment Act) <i>must if convicted be dealt with in terms of section 51 of the Minimum Sentencing Act</i>. However, the section has been declared unconstitutional and invalid by the Constitutional Court in the case of Centre For Child Law v Minister Of Justice And Constitutional Development (2009 (6) SA 632 (CC)) (The Constitutional Court in the majority judgement ruled that the Constitution prohibits minimum sentencing legislation from being applied to children between the ages of 16 and 17 years old.)

3.4. DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT RECOMMENDATIONS

STATISTICS AND CORE RESPONSIBILITY	KEY CHALLENGES	RECOMMENDATIONS AND PROGRESS UPDATE
		<ul style="list-style-type: none"> • substituting section 77(3) to provide that a child who is 14 years or older at the time of being sentenced may only be sentenced to imprisonment, if the child is convicted of an offence referred to in (i) Schedule 3; (ii) Schedule 2, if substantial and compelling reasons exist for imposing a sentence of imprisonment; (iii) Schedule 1, if the child has a record of relevant previous convictions and substantial and compelling reasons exist for imposing a sentence of imprisonment. • Substituting section 77(4) to provide that such a child referred to (in section 77(3)) may be sentenced to a sentence of imprisonment—(a) for a period not exceeding 25 years; or (b) envisaged in section 276(1)(i) of the Criminal Procedure Act.” • Providing in section 77(5) that a child justice court imposing a sentence of imprisonment must take into account the number of days that the child has spent in prison or a child and youth care centre prior to the sentence being imposed.” • Amending Section 78 - to bring the CJA in line with the Criminal Procedure Act - by providing for the provisions of section 297 of the Criminal Procedure Act apply in relation to the postponement or suspension of passing of sentence by a child justice court in terms of the Act. (Note that section 297 refers to the Conditional or unconditional postponement or suspension of sentence, and caution or reprimand.)In addition: • the Judicial Matters Amendment Act 42 of 2013 which provides for amendments to section 85 of the Child Justice act in respect of automatic review to bring the Act in line with a number of special review cases have come before the courts which have emphasised the need to ensure there is a high degree of scrutiny over sentences imposed on child offenders and that matters emanating from regional courts should be subject to automatic review in a high court.
<p>Training and Capacity</p> <p>Number of personnel trained by the Department of Justice including clerks and other court officials:</p>		<p>Parliament should recommend and request that:</p> <ol style="list-style-type: none"> 1. A comprehensive training plan must be provided as part of the reports. 2. Facilitate a meeting with the South African Judicial Education Institute, Office of the Chief Justice and request input from the Magistrates Commission (training committee) on training of magistrates. Input from the Judicial Officers Association of South Africa and the Association of

3.4. DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT RECOMMENDATIONS

STATISTICS AND CORE RESPONSIBILITY	KEY CHALLENGES	RECOMMENDATIONS AND PROGRESS UPDATE
2010/11: 692 2011/12: 695 2012/13: 517 2013/14: 594		<p>Regional Magistrates of South Africa could assist in understanding better the challenges facing magistrates in the implementation of the Act.</p> <p>Progress report 2012/13 and 2013/14</p> <ul style="list-style-type: none"> • 517 court personnel were trained in 2012/13 including 97 clerks and 160 prosecutors. 594 court personnel were trained in 2013/14. • 54 prosecutors were trained by the NPA • The Third Report notes a 'serious decline' in the number of personnel training in 2012/13 due to budgetary constraints. • A workshop on Child Justice was held with 60 District Magistrates and a Justice Resource Guide for District Magistrates was developed to ensure uniformity in the execution of the judicial role in child justice. • A Colloquium on Child Justice was held for 200 Regional Magistrates. • A work study for Child Justice Clerk posts has been conducted and the creation of 113 posts (created over the four year period) has been approved. The Department is in the process of filling these posts.
LEGAL AID SOUTH AFRICA (LASA)		
LASA assisted in 25 586 matters in 2010/11 decreasing to 22 215 matters in 2011/12.	<p>It is unclear whether the statistics in the Reports are for Preliminary Inquiry briefings only or all matters, though it is likely that it is for all matters.</p> <p>There is a discrepancy in the statistics for 2011/12 as</p>	<p>Parliament should receive a report on:</p> <ol style="list-style-type: none"> 1. The number and percentage of children receiving assistance from LASA at the Preliminary Inquiry stages as well in the child justice court. 2. Whether all children who require this assistance have access to it and are receiving it, especially at the Preliminary Inquiry stage. 3. Identification of challenges that LASA might have in this regard.

3.4. DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT RECOMMENDATIONS

STATISTICS AND CORE RESPONSIBILITY	KEY CHALLENGES	RECOMMENDATIONS AND PROGRESS UPDATE
	reported in the 2011/12 Report and the briefing given to the Select Committee in 2013.	<p>Progress report 2012/13</p> <p>Legal Aid services were offered in 15 295 of the 25 517 Preliminary Inquiries in 2012/13. No information is contained in the Third Report on assistance during the court stage.</p>
Representation of children at Preliminary Inquiry and court stages	The Act does not prescribe that a child must be legally represented in the Preliminary Inquiry. However LASA does provide services in cases where it is deemed necessary.	<p>Parliament should ensure:</p> <ol style="list-style-type: none"> 1. That LASA progressively rollout legal aid for all children at Preliminary Inquiry stage (in addition to at court stage). <p>Progress report 2012/13</p> <p>Legal Aid services were offered in 15 295 of the 25 517 Preliminary Inquiries in 2012/13.</p>

3.5. DEPARTMENT OF HEALTH RECOMMENDATIONS

STATISTICS AND CORE RESPONSIBILITY	KEY CHALLENGES	RECOMMENDATIONS AND PROGRESS UPDATE
ASSESSMENT OF CRIMINAL CAPACITY AND AGE DETERMINATION		
<p>Statistics (obtained from the Department of Justice) reflect that 1 584 criminal capacity assessments of children between the ages of 11-14 years were completed in 2011/12.</p> <p>The Department of Health has a database of 51 psychologists and psychiatrists that are able to conduct these evaluations.</p> <p>Assessments take on average 13 hours to complete.</p> <p>10 out of the 64 designated psychiatric hospitals and care and rehabilitation centres are capable of conducting psychiatric evaluations of children.</p>	<p>No information is provided in the Report on the number of children that were evaluated or assessed for criminal capacity.</p> <p>Commentators note an increase in the number of requests from magistrates for assessment of criminal capacity.</p> <p>Some provinces, such as Northern Cape and Mpumalanga have no psychologists or psychiatrists on the database.</p>	<p>Parliament should recommend that:</p> <ol style="list-style-type: none"> Information on the number of children assessed for criminal capacity should be included in the reports, and the outcome of these assessments. <p>Progress report 2012/13</p> <p>In 2012/13 a total of 54 clinical psychologists and 32 psychiatrists (private) were on the database of the Department as prepared to conduct evaluations for the courts.</p>
<p>The Department of Health is responsible for ascertaining:</p>	<p>The NPA has reported that delays in the evaluation of criminal capacity is an ongoing problem mainly</p>	<p>Parliament should recommend that:</p> <ol style="list-style-type: none"> Responsibility: Criminal capacity assessments should be broadened to be able to be undertaken by other professionals such as social workers with a certain amount of experience

3.5. DEPARTMENT OF HEALTH RECOMMENDATIONS

STATISTICS AND CORE RESPONSIBILITY	KEY CHALLENGES	RECOMMENDATIONS AND PROGRESS UPDATE
<ul style="list-style-type: none"> the criminal capacity of children between the ages of 10-13 The age of a child when there is uncertainty as to the age of a child i.e. whether the child is under 10 years or under 14 years. 	<p>due to scarcity of resources (insufficient professionals) and the lengthy time it takes to complete an evaluation.</p> <p>There are too few psychologists and psychiatrists in the employ of the Department of Health. Private professionals are reluctant to do these time consuming assessments because the tariffs are relatively low compared to their private rates.</p> <p>State practitioners are overused because the Department of Justice does not want to pay private practitioners because of high private rates and inadequate budget for these payments.</p> <p>There are no standard guidelines or specialised training to complete these assessments of criminal</p>	<p>in child behaviour. The focus should also be on building internal capacity within the Department of Health.</p> <p>2. Guidelines and training: Standard guidelines and training for these assessments should be developed.</p> <p>3. Funding: A budget should be made available from the Department of Justice to pay professional rates. The gazetted tariff has not being revised since 2010 and is well below the medical aid rate. Information on the amount allocated by the Department of Justice to pay the Department of Health for these assessments should be indicated in the Reports. Agreement on inter-departmental billing for this service needs to be reached. The Department should report on the outcome of the discussions with the Department of Justice with regard to reasonable fee rates or provide time frames for the conclusion of the engagement with Department of Justice.</p> <p>4. Infrastructure: Ensuring sufficient mental health infrastructure, particularly in those provinces where none currently exists, should be prioritised.</p> <p>Progress report 2012/13</p> <ul style="list-style-type: none"> Policy guidelines have been developed for the determination of criminal capacity to promote uniformity in procedures. No training has been provided on these guidelines as the training material is still being developed. The process to revise tariffs is still under consideration. <p>The Third Report notes as a limitation the following:</p> <ul style="list-style-type: none"> Lack of adequate capacity within the Department of Health to conduct criminal capacity evaluations. (The Department periodically invites private clinical psychologists and psychiatrists to register with the Department to offer these services).

3.5. DEPARTMENT OF HEALTH RECOMMENDATIONS

STATISTICS AND CORE RESPONSIBILITY	KEY CHALLENGES	RECOMMENDATIONS AND PROGRESS UPDATE
	<p>capacity. This results in lack of standardisation of assessments. Remuneration for these assessments is set but not paid. The Department of Justice is paying for assessments done in terms of the CPA but not those done in terms of the CJA.</p> <p>There are very few forensic health units country wide and some locations have no access to these units.</p> <p>Health practitioners have complained about reluctance of the SAPS to transport children and guardians to and from assessments as these assessments are lengthy and entail numerous visits. In addition, some SAPS members leave the child and guardian unattended outside the ward without making arrangements for their collection.</p>	<ul style="list-style-type: none"> • 'Exorbitant' fees claimed by private practitioners for the criminal capacity evaluations that are much higher than the current tariffs. (The Department of Justice is negotiating for an affordable tariff). <p>An additional limitation is noted as the need to establish special care facilities that comply with the detention requirements for mentally affected children. (It is reported that this matter is still under investigation). (See also under Social Development: CYCCs).</p> <p>Progress report 2013/14</p> <ul style="list-style-type: none"> • A National Mental Health Policy and Strategic Framework (2013-2020) was adopted. • Regulations regarding subspecialties in forensic psychiatry and psychology were implemented. • The Board of Psychology revised and submitted categories of personnel that can conduct evaluations for criminal responsibility. • A list of psychologists and psychiatrists in the private sector that were willing to conduct evaluations was submitted to Department of Justice but there are a limited number of clinicians that are willing to do the work as the tariffs paid by Department of Justice are not attractive. The matter has been referred to Department of Justice to review the tariffs.

3.6. DEPARTMENT OF CORRECTIONAL SERVICES RECOMMENDATIONS

STATISTICS AND CORE RESPONSIBILITY	KEY CHALLENGES	RECOMMENDATIONS AND PROGRESS UPDATE
<p>Remand Detainees:</p> <p>According to the 2011/12 Report an average of 491 children were in remand detention in 2010/11 decreasing to an average of 414 in 2011/12.</p> <p>Provincial breakdowns are provided for 2011/12 and reflect the highest number of admissions in Eastern Cape, followed by KwaZulu-Natal.</p> <p>In the 4th quarter of 2011/12 202 children in total were awaiting trial for longer than 90 days.</p>	<p>At present it is almost impossible to assess whether more or fewer children are entering the prison system on remand.</p> <p>If the figures provided in the reports are averaged, they reflect an average of 491 children in remand detention in 2010/11 decreasing to an average of 414 in 2011/12.</p> <p>However, in the progress report provided at the end of 2013⁵⁸, the number of children in remand detention is said to have decreased from 288 in 2010/11 to 207 in 2011/12. The number of children further decreased to 135 children in 2012/13.</p>	<p>Parliament should recommend that:</p> <ol style="list-style-type: none"> 1. A decision is made on how to report the figures: A decision needs to be made on what the best way is to report the figures of children in remand detention. This decision needs to be made based on what measure would provide the most accurate picture of whether more or fewer children are been sent to correctional centres while on remand and whether the length of time that they are spending in correctional centres is increasing or decreasing. Current reporting does not allow for this picture to emerge. 2. Standardised reporting: Once this decision is made, a standardised reporting format must be followed which includes year on year comparisons 3. Additional statistics: Additional statistics should be provided on the nature of offence charged and length of time spend in remand. 4. Report on number of children in remand detention: A report on the number of children in remand detention in DCS facilities from 2010/11-to date should be provided using brought forwards, admissions and releases in order to provide a more accurate picture of whether this figure is decreasing, static or increasing. <p>Progress report 2012/13</p> <p>The number of children in remand detention in DCS facilities decreased from 288 in 2010/11 to 207 in 2011/12. The number of children further decreased to 135 children in 2012/13.⁵⁹</p>

⁵⁸Briefing to the Select Committee on Security and Constitutional Development (October 2013).

⁵⁹ Briefing to the Select Committee on Security and Constitutional Development (October 2013). Also note that the 2013 Country reports states that 326 children were in remand detention as at 31 December 2010 decreasing to 178 as at 31 December 2012. Note that the figures differ because they are not averaged out throughout the year. Another example, the Office of the Criminal Justice System Revamp in its presentation to the PC on Correctional Services dated 11 February 2014 indicated the following for child remand detainees: 590 in 2010, reduced to 444 in 2011, to 304 in 2012 and 242 in 2013 (average for the months of March).

3.6. DEPARTMENT OF CORRECTIONAL SERVICES RECOMMENDATIONS

STATISTICS AND CORE RESPONSIBILITY	KEY CHALLENGES	RECOMMENDATIONS AND PROGRESS UPDATE
	<p>These figures do not correlate with the figures provided in the Reports because they reflect the number of remand children on a particular day, rather than the average figure. Averaging out the figures would point to higher figures of remand detainee children, depending of course on which day is chosen.</p>	<p>In contrast the Third Report does not provide comparative figures for the preceding years. It states that in 2012/13 (in terms of remand children):</p> <ul style="list-style-type: none"> • 3058 children were admitted to DCS facilities and 1105 were released • 149 children were in DCS facilities as at 31 March 2013 of which 35 were charged with sexual offences • A total of 469 children were in remand over the year charged for sexual offences and 137 children allegedly committed the 'Top Five Crimes'. <p>The Third Report provides figures for the average period of custody for children awaiting trial as follows:</p> <ul style="list-style-type: none"> • 54 children for 30 days and less • 39 children for 31-90 days • 31 children for 91-180 days • 6 children for 181-270 days • 5 children for over 270 days <p>Why do the admissions and release figures for 2012/13 seem so much higher than those of the preceding years?</p> <p><i>Progress report 2013/14</i></p> <p>The number of remand detainee children:</p> <ul style="list-style-type: none"> • Brought forward from 2012/13 was 227 • Admitted was 2 074 • Released was 2 072 • As at 31 March 2013/14 was 181 (of which five-all in the Eastern Cape- were detained with the option of bail). Of these: 59 were in Eastern Cape; 49 in KwaZulu-Natal; 35 in Free State and Northern Caperegion; 25 in Western Cape; nine in Limpopo, Mpumalanga and North West region and only four in Gauteng.

3.6. DEPARTMENT OF CORRECTIONAL SERVICES RECOMMENDATIONS

STATISTICS AND CORE RESPONSIBILITY	KEY CHALLENGES	RECOMMENDATIONS AND PROGRESS UPDATE
		<p>Figures are provided only for the number of RD children detained for more than 90 days: 141 in first quarter; 163 in second quarter; 161 in third quarter and 184 in fourth quarter. A total of 52 remand children charged with sexual crimes were brought forward from 2012/13 and 239 children charged with sexual crimes were admitted during 2013/14.</p>
<p>Children serving sentences of imprisonment:</p> <p>The number of children sentenced to imprisonment decreased from 536 in 2010/11 to 94 in 2011/12.</p> <p>As at April 2010/11 a total of 717 children were serving sentences of imprisonment. This figure increased to 740 in 2011/12 (if one totals up all children who were admitted, released and brought forwards for the entire year).</p> <p>Provincial breakdowns are provided for 2011/12 and reflect highest admissions in Kwazulu-Natal, followed by Gauteng and Eastern Cape.</p>	<p>The number of children sentenced each year to imprisonment has decreased considerably if the baseline figure of 536 is presumed to be accurate. However, it has been stated that this figure is not accurate and includes children that were already serving sentences in prison during that period.</p> <p>It is difficult to ascertain whether the number of children serving sentences of imprisonment has decreased over the past three year because of poor, arbitrary and unsystematic reporting on these figures. There is no uniformity in how the number is reported or interpreted resulting sometimes in arbitrary dates been chosen to</p>	<p>Parliament should recommend that:</p> <ol style="list-style-type: none"> 1. A decision is made on how to report the figures: A decision needs to be made on what the best way is to report the figures of children serving sentences of imprisonment. This decision needs to be made based on what measure would provide the most accurate picture of whether more or fewer children are serving sentences in correctional centres. Current reporting does not allow for this picture to emerge. 2. Standardised reporting: Once this decision is made, a standardised reporting format must be followed which includes year on year comparisons. 3. Additional statistics: Additional statistics should be provided on: <ul style="list-style-type: none"> • Length of sentence • Nature of offence 4. Report on number of children serving sentences of imprisonment: A report on the number of children serving sentences of imprisonment in DCS facilities from 2010/11-2012/13 is provided using brought forwards, admissions and releases in order to provide a more accurate picture of whether this figure is decreasing, static or increasing. <p>Progress report 2012/13</p> <p>Children sentenced to imprisonment: The number of children sentenced to imprisonment increased slightly to 98 in 2012/13.</p> <p>Children serving sentences of imprisonment: The Third Report does not provide comparative figures for the preceding years. It states that in 2012/13 (in terms of children serving sentences of imprisonment) that:</p> <ul style="list-style-type: none"> • 1026 sentenced children were admitted to DCS facilities and 312 were released

3.6. DEPARTMENT OF CORRECTIONAL SERVICES RECOMMENDATIONS

STATISTICS AND CORE RESPONSIBILITY	KEY CHALLENGES	RECOMMENDATIONS AND PROGRESS UPDATE
	<p>serve the purposes of the particular report.</p> <p>It should be kept in mind that even if less children are sentenced to imprisonment each year, depending on the length of prison sentences, the number of children actually in prison may not decrease in line with those figures.</p> <p>The number of children servicing sentences of imprisonment is said to have decreased from 538 in 2010/11 to 410 in 2011/12 according to a briefing provided to the Select Committee on 23 October 2013. These figures do not correlate with the figures provided in the Reports.</p>	<ul style="list-style-type: none"> • 328 sentenced children were in DCS facilities as on 31 March 2013 • 197 children were admitted to DCS facilities for sexual offences and 62 were released • An average of 101 children were serving sentences for sexual offences <p>Why are the admission figures so high (only 98 children were sentenced to imprisonment)? Why is there such a discrepancy between admissions and releases?</p> <p>Progress report 2013/14</p> <p>The number of sentenced children:</p> <ul style="list-style-type: none"> • Brought forward from 2012/13 was 228 • Admitted was 560 • Released was 478 <p>The highest admissions were in KwaZulu-Natal (149), followed by Eastern Cape (131), Western Cape (93), Free State (47), Gauteng (45), Mpumalanga (35), North West (28), Northern Cape (20) and Limpopo (12).</p> <p>A total of 71 children sentenced for sexual offences were brought forward from 2012/13 and 228 children sentenced for sexual offences were admitted during 2013/14.</p>
<p>Children sentenced to correctional supervision declined from 804 in 2010/11 to 302 in 2011/12.</p>	<p>As there is no differentiation between correctional supervision sentences with a custodial or non-custodial element, it is not possible to ascertain whether the number</p>	<p>Parliament should recommend:</p> <ol style="list-style-type: none"> 1. The Reports need to distinguish between those correctional supervision sentences with a custodial component and those without. <p>Progress report 2012/13</p>

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STATISTICS AND CORE RESPONSIBILITY	KEY CHALLENGES	RECOMMENDATIONS AND PROGRESS UPDATE
<p>Children servicing correctional supervision: Declined from 736 in 2010/11 to 431 in 2011/12.</p>	<p>of children sentenced to correctional supervision with a custodial component is decreasing.</p>	<ul style="list-style-type: none"> • Children sentenced to correctional supervision decreased substantially to 179 children in 2012/13. • No information is provided in the Third Report on the number of children servicing correctional supervision during 2012/13. <p>Progress report 2013/14</p> <ul style="list-style-type: none"> • Children sentenced to correctional supervision increased slightly to 188 children in 2013/14. • A total of 321 children were servicing sentence of correctional supervision as at 31 March 2014.
<p>Services provided to children that are remand detainees and sentenced children</p>	<p>There is a marked disparity in the scope and availability of services for remand in comparison to sentenced children.</p> <p>In particular, the lack of provision of education and social psychological support for remand children is a major concern.</p> <p>Figures in the Third Report seem to point to a decrease in the number of children (both remand and sentenced) accessing social work services</p>	<p>Parliament should recommend:</p> <ol style="list-style-type: none"> 1. That the disparities in services provided to remand detainee children and sentenced children is reduced. A detailed briefing on disparities in service provision between remand children and sentenced children should be requested. 2. The Reports should highlight the following additional information: <ul style="list-style-type: none"> • The percentage of children (for both remand and sentenced children) that were offered each service (e.g. social work access, spiritual care, educational programmes, health services etc.), in order to assess how many children benefited from services and how many did not. • The number and percentage of children that do not have access to education, where they are based and how these problems will be addressed. • The number and percentage of children that do not have regular access to social work and psychological services, where they are based and how these problems will be addressed. • The number and percentage of children that do not have access to effective health care, where they are based and how these problems will be addressed.

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STATISTICS AND CORE RESPONSIBILITY	KEY CHALLENGES	RECOMMENDATIONS AND PROGRESS UPDATE
	<p>in 2012/13 in comparison to 2011/12.</p> <p>The following are some of the common challenges affecting both remand detainees and sentenced children:</p> <ul style="list-style-type: none"> The Reports provide a list of health-care related services for children but do not highlight any problems in the provision of these services to children in prison, even though it is likely that these exist. The Reports provide figures on the number of children participating in social work and psychological related programmes (ATDS: 489 in 2011/12 rising from 176 in 2010/11; Sentenced: 1 682 in 2011/12) but provide no means of identifying the number of children that are not having their social and psychological needs 	<ul style="list-style-type: none"> Infrastructure needs at particular centres where there are problems (lack of libraries/recreational facilities/insufficient cell space/ problems in meal time provision etc.) and what is being done to address these. The number and percentage of staff in DCS who work with children that still require training in the CJA and Children's Act and additional training needs. <p>2. Education: Prioritise the implementation of accredited schools in all correctional centres and ensure that all children (sentenced and remand) are provided with education as a priority. A full briefing on this should be provided to the Portfolio Committee on Justice and Correctional Services. All future Reports should highlight the number of children that do not have access to education, where they are based and how these problems will be addressed.</p> <p>3. Social and Psychological Support: Ensure that all sentenced and remand children have access to social work and psychological services as a matter of course (and not just on request or on an ad hoc basis).</p> <p>4. Information sharing: the Department of Correctional Services should ensure that relevant state departments (such as Social Development) are informed of the movement of children in their care.</p> <p>5. JICS: The Annual Report of the Judicial Inspectorate for Correctional Services should include a dedicated section on children in correctional centres.</p> <p>Progress report 2012/13</p> <p>The Third Report notes that:</p> <ul style="list-style-type: none"> A total of 385 remand children were involved in programmes (stated as Spiritual Care and Social Work Services) in 2012/13. 623 sentenced children accessed Social Work services Mental Health care was provided to 2397 children (including remand children) <p>Progress report 2013/14</p> <ul style="list-style-type: none"> 572 programmes and services were rendered in 2013/14

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STATISTICS AND CORE RESPONSIBILITY	KEY CHALLENGES	RECOMMENDATIONS AND PROGRESS UPDATE
	<p>met while in correctional centres.</p> <ul style="list-style-type: none"> • While the Report states that children and adults do not mix there are times (e.g. while in hospital; and during transportation to and from court) that this occurs. • Notification by DCS to the Department of Social Development of the transfer of a child to prison is not occurring. • The Reports identify the number of staff trained per year in the CJA but do not highlight how many staff that work with children still require training or assess the quality of the training and additional needs of these staff. A study has found that in 85% of centres surveyed that hold remand children, the staff had not received any training to work with children. 	<ul style="list-style-type: none"> • The number of children that received 'the psychological services will be reported in the next financial year because the figures for 2013/14 are inclusive of juveniles, i.e. inmates from 14 to 20 years'. <p>DCS noted in this unconsolidated report that it faces a number of challenges including:</p> <ul style="list-style-type: none"> • Provision of schooling: Which includes the refusal by children to attend school, preference of social work programmes to educational programmes, inadequate number of teachers, few full time schools and differing needs including a considerable number of children that have never been to school and short period spent by remand detainee children in detention (almost 90% spend less than 6 months). • Inadequate provision of psycho-social programmes to RD children: DCS will review its operational policies so that they can be aligned with legislation and further discussed with DSD. • DCS social workers are asked to do pre-sentence reports even though this is the responsibility of the DSD: Roles are outlined in the draft implementation framework which will be shared with partners in the CJS. The matter will be escalated to the National Operations Committee of the National Efficiency Enhancement Committee chaired by the Judiciary and the South African Judicial Education Institute. • Detention of single RD children in certain facilities in Gauteng: Courts should be informed so that they are, where possible, rather detained in DSD facilities.

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STATISTICS AND CORE RESPONSIBILITY	KEY CHALLENGES	RECOMMENDATIONS AND PROGRESS UPDATE
	<ul style="list-style-type: none"> Lack of libraries is a problem in correctional centres. <p>Remand detainees:</p> <ul style="list-style-type: none"> The majority are not provided with access to educational services. Mealtimes are inconsistently applied. Infrastructure for recreational use by children is generally limited and physical exercise is generally limited to internal courtyards. Inconsistency in the provision of social work services- sometimes no social worker at all and in other cases access is provided only on request. Limited access to psychological services. <p>Sentenced children:</p> <ul style="list-style-type: none"> Inconsistent practices in respect of access to education e.g. sometimes 	

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	depending on length of sentence.	
Capacity and Training	<p>The Reports provide no indication of the percentage of staff that work with children that still require training.</p> <p>No specific staff are appointed to deal with inmates who are children.</p> <p>A 2012 study found that in 85% of centres surveyed, staff working with remand detainee children had not received any training to work with children.</p>	<p>Parliament should recommend that:</p> <ol style="list-style-type: none"> 1. Statistics: Statistics on the percentage of staff (in the various categories) that work with children (sentenced and remand) that remain untrained should be included in the Reports. 2. Training prioritised: DCS should prioritise training for all staff that work with remand detainee and sentenced children including training on the CJA (as well as other training needs) that would enable them to work effectively with children. 3. Social work and psychological services: Efforts to attract and retain these professionals should be intensified and these scarce resources should be prioritised for children. <p>Progress report 2012/13</p> <p>A total of 72 correctional services officers were trained in 2012/13 in Spiritual Care services/Family Life and Self Image. A total of 327 personnel have been trained over the past 3 years in these programmes and only 3 on Trauma debriefing. Seemingly, none have been trained on the CJA explicitly.</p>

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