

# CHAPTER SIX

## JOINT INTERVENTION, DIVERSION AND CASE MANAGEMENT

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### 1. JOINT INTERVENTION

We support the recommendations made in this regard<sup>1</sup>. However, it is submitted that joint intervention should include co-operation between the criminal justice process and the welfare process in particular cases concerning child victims of sexual offences who are also in need of care. Government officials involved in the prosecution of a sex offence should be obliged to co-operate with any social worker or Children's Court Commissioner dealing with an inquiry in terms of the Child Care Act 74 of 1983 (currently under review). As the two processes are different and involve different laws at present, there is little co-operation or information sharing between the two investigations. This should become mandatory and any orders made in relation to a child victim in either the sexual offences court or children's court should be noted in each of their respective records. This is of particular relevance where the alleged perpetrator is a family member and conditions are set for bail.

We therefore propose a provision be included in the Bill that reads something similar to the following:

**“ Any orders made by a sexual offences court and/or a children's court in relation to a matter involving the same child victim, should be communicated to the other court(s) and reciprocally noted in the other court's records”.**

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<sup>1</sup> contained in paragraph 4.6.2 of the discussion paper

## 2. DIVERSION, CASE MANAGEMENT CONSULTATION AND OUT OF COURT SETTLEMENTS

In general the Children's Rights Project sees the promotion of case management consultations and out of court settlements as necessary and appropriate in certain cases especially in light of the prioritisation of restorative alternatives as stated in section 2 of the Bill.

However, we note with concern that the discussion of case management consultations and out of court settlements does not differentiate between child and adult offenders. The Project Committee does however differentiate between adult and child offenders in relation to sentencing and in this case it notes that the Project Committee on Juvenile Justice has released a report and Child Justice Bill<sup>2</sup> and therefore refrains from making further recommendations in relation thereto.

The Child Justice Bill aims to provide a comprehensive and holistic criminal justice system for dealing with children accused of crimes<sup>3</sup>. We find it incongruous that the Sexual Offences Project Committee defers to the Child Justice Bill in relation to sentencing and not in relation to case management consultations or out of court settlements (obviously if the understanding of the Project Committee is that the Project Committee for the Simplification of the Criminal Procedure Act did not include child accused in its proposals, then this is acceptable).

In the Child Justice Bill these two procedures are dealt with by the preliminary enquiry<sup>4</sup> and diversion<sup>5</sup> respectively. The preliminary enquiry provides a mechanism whereby a probation officer submits certain recommendations relating to, *inter alia*, diversion and the presiding officer can then make a particular diversion order. The prosecutor remains *dominus litus* and can always refuse to allow a diversion. The Bill provides for various diversion options according to a three-tier approach – with level one diversion being less onerous and level three diversion options providing for, *inter alia*, residential diversion programmes.

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<sup>2</sup> SALC Project 106, July 2000

<sup>3</sup> paragraphs 1.25 and 1.28 of the SALC Report on Juvenile Justice, Project 106, July 2000

<sup>4</sup> Chapter 8 of the Bill

<sup>5</sup> Chapter 7 of the Bill

We therefore submit that both the Sexual Offences Bill and the Child Justice Bill are complimentary when dealing with these issues and it would be unreasonable for child sex offenders to be dealt with outside of the new proposed child justice system. The only exception is that whereas the Sexual Offences Project Committee recommends that only certain sexual offences can be subject to out of court settlements, diversion in terms of the Child Justice Bill is theoretically available for all crimes. It is submitted however that this is nevertheless in line with the guiding principles of the Sexual Offences Bill as section 2 (i) enshrines the “ best interests of the child “ approach without differentiating between victim or offender and section 2 (n)(iv) affords special considerations to a child sexual offender – albeit for sentencing purposes but it is submitted this should be extended to pre-trial procedures as well.