

**Child Justice Alliance Court Monitoring Project, Phase Two:
Consolidated research on the criminal justice system
pertaining to children in Three Magisterial Districts from
September to December 2006 and from January to February
2007**

**Report compiled by
Julie Berg with Ricky Röntsch¹
Institute of Criminology, University of Cape Town**

May 2007



¹ With permission from the authors, parts of this report have been extracted from Gallinetti, J. and Kassan, D. (eds) (2006) *Consolidated research on the criminal justice system pertaining to children in three magisterial districts*. Child Justice Alliance Driver Group Working Paper, Community Law Centre, UWC.

Contents

CONTENTS	2
ACKNOWLEDGEMENTS	3
1. INTRODUCTION.....	4
1.1 BACKGROUND TO THE CHILD JUSTICE ALLIANCE.....	4
1.2 BACKGROUND TO THE PROJECT	5
2. PHASE TWO OF THE MONITORING PROJECT.....	6
2.1 METHODOLOGY	6
2.1.1 Tools and research indicators.....	6
2.1.2 Appointment of organizations to undertake the research and selection of research sites	7
2.1.3 Access to courts – permission process	7
2.1.4 Training.....	8
2.1.5 Piloting of research tools	8
2.1.6 Commencement of field work	9
2.1.7 Database and capturing of data.....	9
2.1.8 Methodological challenges and obstacles impacting on the data.....	10
2.2 RESEARCH FINDINGS	12
2.2.1 Total number of charge sheets collected and those rejected.....	12
2.2.2 Profile of the children whose information appeared on charge sheets	12
2.2.3 Detention of children	25
2.2.4 Assessment.....	30
2.2.5 Court proceedings	31
2.2.6 Probation records.....	49
2.3 FIELD WORKER OBSERVATIONS: THE FUNCTIONING OF THE COURTS.....	52
3. CONCLUDING REMARKS	54
4. RECOMMENDATIONS.....	55
ANNEXURE 1:	57
ANNEXURE 2:	65
ANNEXURE 3:	70

Acknowledgements

The Open Society Foundation for South Africa and the members of the Child Justice Alliance driver group are hereby acknowledged for input and contributions during the monitoring project. Appreciation is also extended to those persons in the courts for their cooperation and support as well as to those responsible for collecting the data and their supervisors for their efforts during the time of the research. Thank you to Flatspin for their tireless efforts in amending the database.

1. INTRODUCTION

1.1 BACKGROUND TO THE CHILD JUSTICE ALLIANCE

The Child Justice Alliance was formed in February 2001 largely in response to the release of the Child Justice Bill in July 2000 by the South African Law Commission. The Alliance consists of over 400 members and friends, who are either civil society organisations or concerned individuals. The Alliance is run by a driver group that was formed with a core of eight organisations that has now expanded to thirteen. Since January 2004 driver group members have attended meetings to discuss advocacy strategies and develop research projects. The main purpose of the Alliance is to create awareness around, and gather support for, the enactment of the Child Justice Bill. The Bill is innovative in its interpretation and handling of children in conflict with the law and conforms to the principles of the United Nations Convention on the Rights of the Child. However, although the Bill (49 of 2002) came before Parliament in 2002, at the time of writing the Bill had not yet been enacted. It was debated at length in 2003; however, nothing more has happened since then. During the Parliamentary debates certain key issues in the Bill were changed, such as the age of imprisonment and the age of children who may be detained in prison awaiting trial. However, most of the core provisions of the Bill that provide for a new and separate child justice system remain, such as, diversion, assessment, the preliminary inquiry and alternative sentences.² These changes are, however, not final and may yet be revisited once the Bill continues to be deliberated upon in Parliament. In response to this process and the belated enactment of the Bill, the driver group of the Alliance – although not deviating from its original purpose – has subsequently committed itself to conducting research with respect to the enactment and implementation of the Child Justice Bill. The current membership of the driver group consists of:

- The Restorative Justice Centre (RJC)
- The Children's Rights Project at the Community Law Centre University of the Western Cape (CLC)
- The Defence, Peace, Safety and Security (DPSS) Crime Prevention (CP) Research Group (formerly the Crime Prevention Centre) at the Council for Scientific and Industrial Research (CSIR)
- The Chapter 2 Network at IDASA
- Lawyers for Human Rights (LHR)
- NICRO National Office
- The Institute of Criminology, University of Cape Town
- The Centre for Child Law, University of Pretoria
- The Institute for Security Studies
- The Campus Law Clinic, University of KwaZulu-Natal
- The Civil Society Prison Reform Initiative (CSPRI)
- Resources Aimed at the Prevention of Child Abuse and Neglect (RAPCAN)

² However, the actual content of these provisions has been radically reworked by the Portfolio Committee on Justice and Constitutional Development during the Parliamentary debates.

- The Social Development Department at the Faculty of Humanities, University of Cape Town

Each organisation was selected based on expertise and interest in the field of child rights, research experience and / or resource capacity. The CLC is primarily responsible for the administration and running of the Child Justice Alliance and houses the Programme Coordinator.

1.2 BACKGROUND TO THE PROJECT

As mentioned, it was decided by the Child Justice Alliance driver group to conduct research related to the monitoring of the implementation of the Child Justice Bill. It was subsequently agreed that a long-term research project would be developed consisting of a number of phases. The first phase entailed the monitoring of current practices in the management of children who have come into conflict with the law.³ The purpose was to gather baseline information as to the *status quo* of the child justice system in terms of whether there is any adherence to the Child Justice Bill (despite not yet being enacted). The Bill is aimed at protecting the rights of children accused of committing crimes as well as regulating the system that deals with children and ensuring that the roles and responsibilities of all those involved in the process are clearly defined in order to provide effective implementation. The Bill recognises the fact that children do commit serious offences and that they must be held accountable for their actions and take responsibility for its effects on the human rights and fundamental freedoms of others. This is achieved through the provision that allows for children to be imprisoned, however only after certain prerequisites have been met. Generally the proposed legislation deals with issues such as police powers and duties, arrest and court procedures. It also creates a child justice court, which is a court at district court level that will deal with all matters pertaining to children in conflict with the law. The Bill also regulates the detention and release of children, providing definite guidelines for the exercise of judicial discretion in detaining children in prison while awaiting trial.

This first phase commenced in April 2005 and consisted of the collection of baseline data at three sites – Wynberg (Cape Town), Pretoria and Pietermaritzburg – for a period of four months. On completion of the first phase of research and in light of the fact that the Child Justice Bill still had not been enacted, it was agreed to conduct a similar, second phase of research. The second phase was essentially a repeat of the first phase as the same three sites were selected. The purpose of the second phase was to collect comparative data for the first phase, and also to serve as a validation of the first phase.

³ See first phase report which is a compilation of the three reports (these three reports were drafted by the three organisations at the various sites): Gallinetti, J. and Kassan, D. (eds) (2006) *Consolidated research on the criminal justice system pertaining to children in three magisterial districts*. Child Justice Alliance Driver Group Working Paper, Community Law Centre, UWC.

The intention of this report is to outline the findings of the second phase of the research project.⁴

2. PHASE TWO OF THE MONITORING PROJECT

2.1 METHODOLOGY

It was decided in May 2006 by the driver group to conduct a second baseline study at Wynberg (Cape Town), Pretoria and Pietermaritzburg courts. Anticipating the problems and challenges experienced in the first baseline study, some aspects of phase two were amended. In order to ensure a fair degree of comparability between the two data sets, much of the methodology employed was the same as that of phase one.

2.1.1 Tools and research indicators

The scope of the research was aimed at monitoring the current practice of the criminal justice system in relation to children, in order to obtain baseline information regarding the management of child offenders in the criminal justice system in relation to:

- The general principles and objects of the Child Justice Bill, in so far as there is adherence thereto in the absence of the Act,
- methods of securing attendance of the child at the first court appearance,
- placement of the child awaiting trial,
- assessment of the child by a probation officer,
- access to diversion, and
- sentencing of children convicted of an offence.

Phase two made use of the same indicators that were developed by the Gender, Health and Justice Research Unit at the University of Cape Town for phase one. The indicators were used to develop four research tools by means of which quantitative and, to a lesser extent, some qualitative information could be gathered from the three sites. The research tools or templates were: 1) the charge sheet template 2) the police docket template 3) the probation records template and 4) the observational template. Only three templates were used for phase two: the charge sheet, probation records and observational templates. As with phase one, permission was not secured (in time) from the South African Police Service to view police dockets at the courts. However, there were minor amendments made to all three templates in an attempt to elicit information that phase one omitted and to give clearer instruction to those collecting the data to avoid some of the ambiguities field workers in phase one experienced. For example, additional instructions were included in the charge sheet templates to gain insight into the delays between first appearance and plea, judgement or sentence and the reasons for this, as well as the reasons children were sent to prison or reform school. The templates are attached as Annexures 1-3. All changes made to the templates are included in bold and italic

⁴ It is not the intention of this report to compare phase one and phase two results – the final report compiled by the Community Law Centre, UWC, will include a comparison of the two data sets.

typeface (these are inclusions and omissions as compared to the templates used in phase one).

2.1.2 Appointment of organizations to undertake the research and selection of research sites

For the sake of comparability the same three magisterial districts at which the field research was conducted during phase one were selected for phase two – namely, Wynberg court (Cape Town), Pietermaritzburg court and Pretoria court. Three organisations were again chosen to undertake the research and included:

- the Institute of Criminology, University of Cape Town conducting research at Wynberg court;
- the Defence, Peace, Safety and Security (DPSS) Crime Prevention (CP) Research Group (formerly the Crime Prevention Centre) at the Council for Scientific and Industrial Research (CSIR); and
- the Campus Law Clinic, University of KwaZulu-Natal (UKZN) conducting research at Pietermaritzburg court.

It should be noted that Lawyers for Human Rights originally conducted research at Pietermaritzburg during phase one, however, this task was assigned to the Campus Law Clinic, UKZN for phase two. It was also decided by the Community Law Centre (CLC) and supported by the driver group that the Institute of Criminology (UCT) take up the role of supervising and co-ordinating phase two, housing all the data and, on completion of the research, compiling a consolidated report on the findings at all three courts. This decision was based on difficulties in merging the findings of phase one, as each site had compiled a separate report which the CLC was then assigned to merge into a consolidated report. Attempting to merge the different styles and content proved to be a very difficult task, hence assigning the housing, collation and consolidation of the data to one site in the production of a single report.

2.1.3 Access to courts – permission process

The CLC gained permission from the national government departments affected by the research, including the National Prosecuting Authority and the Department of Justice and Constitutional Development. Permission was also secured from the provincial social development departments in Gauteng and the Western Cape. However, permission was not obtained from the provincial Department of Social Development in KwaZulu-Natal.

Wynberg court

Once official permission was obtained from the national and provincial authorities, the co-ordinator of the Wynberg Court research site secured permission from the Chief Magistrate, the Senior Public Prosecutor and the child court magistrate and prosecutor, as well as the probation officer. Meetings with the court officials prior to the pilot phase ensured that the field workers obtained an *a priori* commitment from all the officials to assist them whenever possible. During October 2006 the magistrate dedicated to the

child court went on leave. The field workers and co-ordinator made an appointment to meet with the 'stand in' magistrate to ensure a smooth transition during this period.

Pietermaritzburg court

Similarly permission was obtained on a local level to conduct the research at Pietermaritzburg, however, the field workers initially struggled to get a copy of the court roll from the court book, but after the Campus Law Clinic contacted the court manager, the book was made available. As mentioned, permission was not obtained from the provincial Department of Social Development. The inability to gain permission from this Department was due to the difficulties in securing an audience with the relevant person rather than an outright refusal on the part of the Department to allow the research to go ahead. Permission was obtained from this Department in phase one, thus this has had implications for the research process in that probation officer reports were not accessed by field workers at the Pietermaritzburg court, whereas the other courts were able to secure permission from their respective provincial social services departments. Therefore this has implications in terms of the comparability aspect of the research.

Pretoria court

Ultimately permission was gained from the relevant local role-players, however, there were difficulties experienced in terms of accessing the probation officers. The problem was resolved by the field workers who found alternative ways to obtain information from the probation officers, such as going to court early and attending court more often during the week.

2.1.4 Training

Two field workers were assigned to each site and were selected by the co-ordinators at each of the sites. A one-day training workshop with the field workers was conducted by Jacqui Gallinetti and Daksha Kassin of the CLC on 12 September 2006. The training provided background information on the purpose of the research, the basics of the United Nations Convention on the Rights of the Child (which South Africa has signed and ratified) as well as a broad outline of the Child Justice Bill. Each field worker received printed material in support of the content of the training workshop. The afternoon session was exclusively devoted to explaining the use and content of the three monitoring tools.

2.1.5 Piloting of research tools

The data collection tools were tested during the week of 18 September 2006 to assess the suitability and effectiveness of the research templates, familiarise the field workers with the court atmosphere, pace and functioning, as well as to provide an opportunity to identify potential difficulties.

Wynberg court

The pilot conducted on 21 and 22 September 2006 allowed the field workers, who had not attended court proceedings before, to acclimatise themselves to both the proceedings

and the demands of capturing information on the templates. The field workers at first found *viva voce* administrative requests to the Bench baffling and fast.

Pietermaritzburg court

The pilot conducted at Pietermaritzburg on 21 September was reportedly successful, according to the co-ordinator.

Pretoria court

A pilot was conducted at the Pretoria court on 20 and 21 September 2006. Feedback from the Pretoria field workers on their pilot phase indicated that gathering and capturing of data was largely successful, however they only had limited access to the probation officer during the pilot.

2.1.6 Commencement of field work

The field work took place for two days per week from 25 September 2006 to 15 December 2006 and then re-commenced on 15 January 2007 to 16 February 2007. The fact that the field workers at the sites were university students paid to conduct the monitoring had to be taken into account as well as the impact that the seasonal holidays would have on court proceedings hence the one-month suspension of the research during this time. It must be noted that some of the research was conducted at Pietermaritzburg court after 16 February (concluding on 21 February) due to a change in personnel undertaking the research (see below *Methodological challenges and obstacles impacting data*) and the need to make up for the times when court was not attended during the research period. In total 97 days were spent in court at the three sites for the duration of the research.

2.1.7 Database and capturing of data

The Alliance made arrangements for the design and development of a database on which all the information gathered by the field workers could be captured. It was intended to be a resource that would allow for consistent data capturing and which would generate similar reports for all three sites to allow for the continuous formulation and interpretation of the research information. The database had changed hands during phase one and it was decided that UCT would be responsible for managing the database for phase two. Flatspin was commissioned by UCT to take over the running of the database and assigned the task of ensuring that the database would allow for more user-friendly and accurate retrieval of data reports. Thus various changes have been made to the database since phase one to eliminate the need for a manual count of research templates.

The capturing of data onto the Child Justice Alliance database commenced in early November 2006, but by mid-January 2007 all of the 2006 data had been captured by the Institute of Criminology (UCT), with the exception of the Pietermaritzburg-December 2006 data that was delayed by unforeseen disruptions to the research experienced at the UKZN Campus Law Clinic in December / January (see below *Methodological challenges and obstacles impacting data*). Data was entered weekly and information from the other

two sites were couriered to UCT. All-in-all this system worked except for occasional delays in receiving data. To counter occasional backlogs, a student intern was also hired and trained to assist the Cape Town co-ordinators to enter the data onto the database and keep records of pertinent information for the purposes of report-backs.

2.1.8 Methodological challenges and obstacles impacting on the data

Before the findings of phase two are outlined, the various difficulties during the research process need to be taken into account as this may have impacted on the research. Although every attempt was made to ensure the comparability of phase one and phase two, the use of different field workers, co-ordinator experiences with phase one, database changes, research template changes and so forth necessarily impacted on the research product of phase two, even though many of the changes were for the purposes of improving the quality of the research. Some of the main challenges related to methodology are listed below:⁵

- *Organisational factors*

A major obstacle during the research period was the fact that the UKZN co-ordinator and the two field workers responsible for monitoring the Pietermaritzburg court resigned in the beginning of January 2007. Thus a new co-ordinator and new field workers had to be assigned to ensure continuity. This has necessarily impacted on the consistency of findings from Pietermaritzburg as the field workers and co-ordinator were not given the same degree of input and training as was provided at the outset of the research period. Notwithstanding these setbacks court monitoring recommenced in Pietermaritzburg on 15 January as planned (although, as noted, the research concluded later than originally planned).

- *Field worker misinterpretation and research template inadequacies*

Despite the training, it was clear that there were misunderstandings on the part of some of the field workers in term of sections two and three of the charge sheet template (see Annexure 1). In particular, at one site, if the accused was not released by the police into the custody of a parent / guardian, it was noted under sections two and three that the accused was placed into the custody of the relevant police station. After consultation with the field workers the data was correctly captured in the database to avoid the misrepresentation that the magistrate ordered children (not released into the custody of the parent / guardian) back to police custody.

Field workers at the various sites filled in a charge sheet for every case appearing before court. Very often there would be more than one accused appearing, thus, at times, the details of all the accused would be entered onto one charge sheet or a separate charge sheet filled out for every accused. During the data capturing process separate entries were inputted for every child, thus the database reflects the number of children appearing

⁵ Aspects affecting the research related to the functioning of the court system (as opposed to methodological difficulties in terms of the functioning of the organizations and participants conducting the research) will be outlined below under the section entitled *Field worker observations: the functioning of the courts*

at court over the research period (some case numbers therefore appear more than once to cater for more than one accused). However, due to ambiguities in the charge sheets, incomplete information and / or contradictory information many of the charge sheets collected from the various sites were excluded from the research.

It was also problematic that the charge sheet template does not indicate why young offenders are not released into the custody of the parent / guardian and thus field workers were unable to fill in the appropriate information block. Similarly there is no appropriate space on the charge sheet template for a change of charge.

There was also ambiguity in terms of a case being drawn to another court, some of the field workers chose to indicate that a case was not transferred to another court if the case was not erroneously on the child court role. They wrote the information regarding the case transfer under the block regarding postponements.

Some of the field workers did not fill in an observation template if the accused was not in court and / or did not number the observational templates with the same number as the corresponding charge sheet templates. This slowed down computerized data capturing as the case number and date had to be used to link templates 1 and 3.

- *Language*

The previous research phase of this project had made evident the desirability of appointing field workers for the Wynberg court who were conversant in Afrikaans. During this second phase of monitoring it was regrettably not possible to appoint two Afrikaans-speaking field workers, since only two students applied for the job. This negatively impacted on the gathering of information. To minimise the impact, the field worker who is non-conversant in Afrikaans, was assigned to probation hearings, with the understanding that his colleague would help him look over probation reports that were in Afrikaans. Although the lesser of the two evils, this resulted in a heavily skewed workload and inevitable tensions.

- *Access to data*

Access to data was hampered due to the following reasons:

- permission was not obtained from the South African Police Service to view police dockets at the courts
- permission was not obtained from the UKZN Department of Social Development to view probation records at Pietermaritzburg court
- field workers at Wynberg and Pretoria had difficulty in acquiring accurate and complete information from probation officer records⁶
- at Pretoria, in particular, incomplete charge sheets resulted in incomplete template information
- also at Pretoria no charge sheet is made out if a copy of the summons is available (when this was the case the field workers were unable to obtain all data)

⁶ This is largely due to inadequate probation records but has resulted in a large number of research templates being excluded from the research due to missing and incomplete or ambiguous information.

- charge sheets at Pietermaritzburg court did not indicate whether the case of a child who was diverted was withdrawn or postponed at the date of ordering the diversion and if the accused was charged with two or more charges

2.2 RESEARCH FINDINGS

What follows is a review of the main findings for phase two of the research. Incorporated into this review will be a commentary on the findings of phase two. Please note that in phase one of the research the age categories used for the purposes of the research included the following:

- Under 10 years: up to and including 9 year olds
- Aged 10-14: including 10 year olds up to and including 14 year olds
- Over 14 : including 15 year olds and over

A decision was subsequently made by the driver group that phase two would instead reflect the following age categorisation:

- Under 10 years: up to and including 9 year olds
- *Aged 10-14: includes 10 to 13 year olds*
- Over 14: includes 14 to 17 year olds

Thus, previously, in phase one, 14 year olds were included in the category 'aged 10-14', whereas it was decided that the 'aged 10-14' category should not include 14 year olds. Therefore data from phase one had to be re-assessed and re-counted to cater for this change. Thus the following age categorisation used in this report will be as follows:

- Under 10 years: up to and including 9 year olds
- Aged 10-13: including 10 year olds up to and including 13 year olds
- Over 14: including 14 year olds up to and including 17 year olds

2.2.1 Total number of charge sheets collected and those rejected

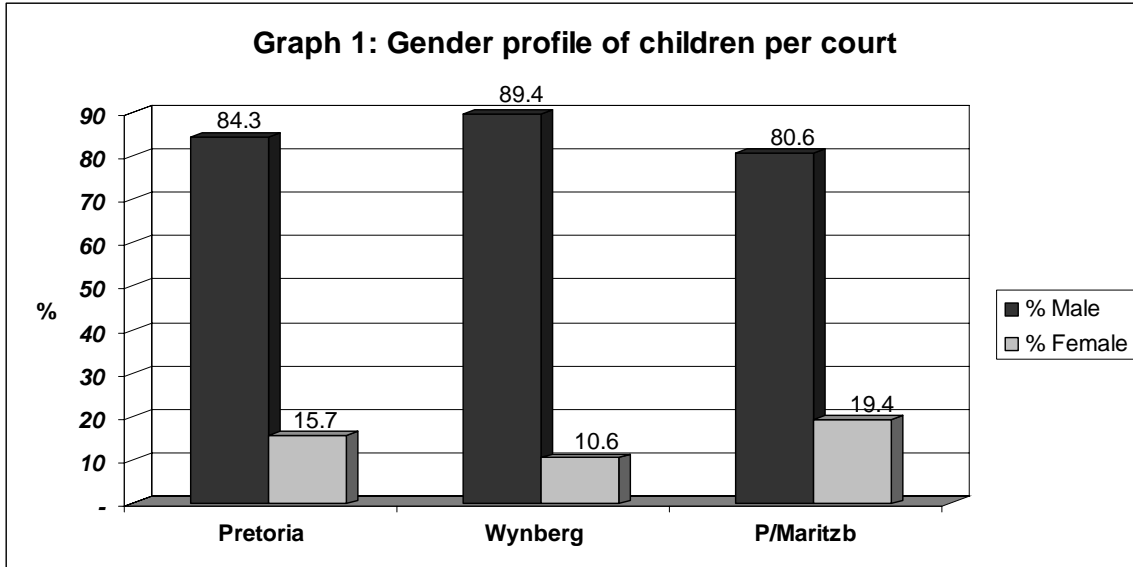
At Pietermaritzburg court 278 cases were recorded in total during the research period. Of those 278 cases, 125 were entered onto the database (153 rejected) and these 125 cases involved 216 children.

At Wynberg court 408 cases were recorded in total during the research period. Of those 408 cases, 285 were entered onto the database (123 rejected) and these 285 cases involved 473 children.

At Pretoria court 489 cases were recorded in total during the research period. Of those 489 cases, 301 were entered onto the database (188 rejected) and these 301 cases involved 504 children.

2.2.2 Profile of the children whose information appeared on charge sheets

- **Total number of children**



Graph 1 represents a gender profile of the children appearing at each court (Pretoria n=504, Wynberg n=473, Pietermaritzburg n=216). It is clear that all three courts deal with far more male children than female children and this conforms to adult male-female offending trends in South Africa and globally.

- **Age profile of children**

The following table shows the age profile of children appearing at all three sites.

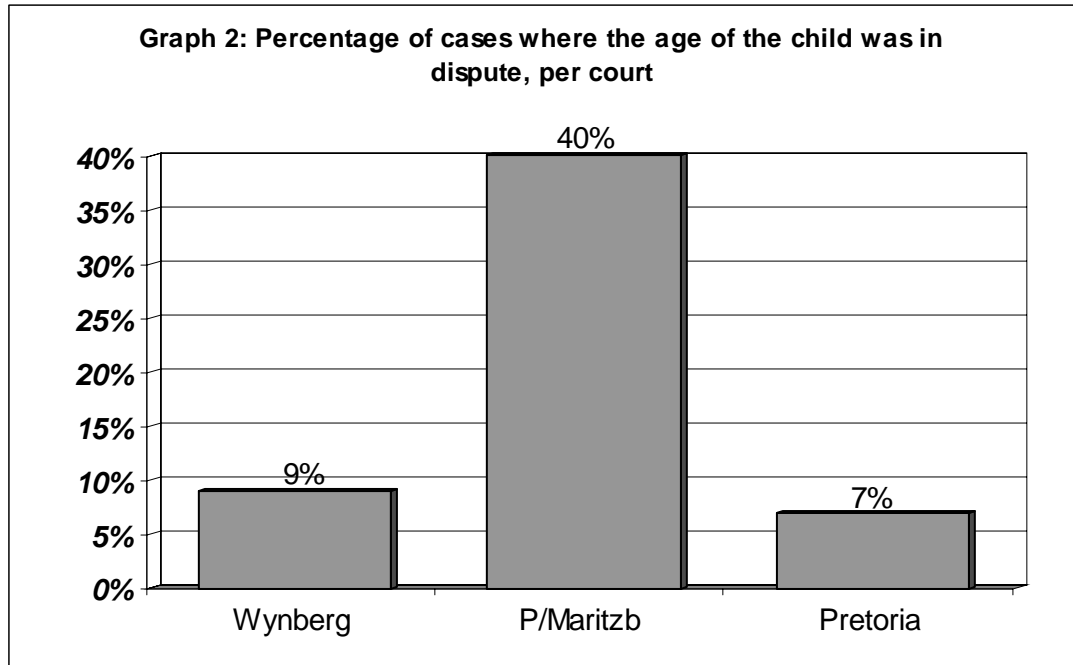
	Wynberg	P/Maritzb	Pretoria	<i>Total</i>
Males under 10	0	0	0.1%	<i>0.1%</i>
Females under 10	0	0	0	<i>0</i>
Males 10-13	3.6%	5.6%	3.4%	<i>3.9%</i>
Females 10-13	1.3%	4.6%	1.4%	<i>2%</i>
Males 14 – 17	85.8%	75%	80.8%	<i>81.7%</i>
Females 14- 17	9.3%	14.8%	14.3%	<i>12.4%</i>
N=	473 (100%)	216 (100%)	504 (100%)	<i>1193 (100%)</i>

The vast majority of children offending are males between 14 and 17 years (81.7%) – this conforms to the findings of phase one, in that only three children of all the sites were below the age of 10 for phase one.

- **Age of the child in dispute**

The Discussion Paper of Project 106 of the South African Law Reform Commission noted that it is not uncommon for South African children to be unaware of their ages and dates of birth and in some cases even the parents are unable to give particulars in this

regard.⁷ The Discussion Paper also points out that where legislation provides different provisions for different ages, the issue of age determination is placed firmly on the agenda. Therefore, various proposals were made that culminated in specific provisions in the Child Justice Bill to assist with age determination at the assessment stage. The information obtained in this study as to the numbers of cases where age is in dispute is intended to form the basis against which the success of the provisions of the Child Justice Bill can be measured once enacted. Graph 2 shows a per site comparison of instances where the age of the child was in dispute.



Of all the cases appearing at Wynberg 9% of these entailed a dispute over age, 40% at Pietermaritzburg and 7% at Pretoria. These figures are largely similar to phase one findings (which were Wynberg at 2%, Pietermaritzburg at 49.3% and Pretoria at 7.5%). The report for phase one⁸ attributed the high number of cases at the Pietermaritzburg court to two factors: that the court was unusually concerned with the child's age or that the court's assessments are not being completed properly – the latter of the two is the most likely scenario.

- **Race profile⁹**

Table 2 provides the race profile of children recorded.

⁷ Discussion Paper 79, Project 106, 1998, paragraph 6.52.

⁸ Gallinetti, J. and Kassan, D. (eds) (2006) *Consolidated research on the criminal justice system pertaining to children in three magisterial districts*. Child Justice Alliance Driver Group Working Paper, Community Law Centre, UWC.

⁹ Please note that the race categories used are essential for the study in that they contextualise the treatment of children in South Africa particularly since socio-economic factors are known to correlate with race in light of South Africa's apartheid past.

Table 2: Race profile of children per court

	Wynberg	P/Maritzb	Pretoria	Total
Coloured ¹⁰	372	10	63	445 (37.3%)
White	14	1	82	97 (8.1%)
Black	81	183	349	613 (51.4%)
Indian	1	17	4	22 (1.8%)
Asian	0	5	0	5 (0.4%)
Unknown	5	0	6	11 (0.9%)
<i>Total</i>	<i>473</i>	<i>216</i>	<i>504</i>	<i>1193 (100%)</i>

The majority of children appearing at court are black (51.4%), these figures seem to be proportionally similar to race demographics of the country. However, one exception to this is the total number of coloured children which seems to be disproportionately higher compared to the other race groups in the research. There are a number of factors impacting on this, for instance, it may be a reflection of the extent to which children in this race group actually commit crimes (tying in with criminogenic factors within the Western Cape context – long-standing drug and gang activities for instance) and / or it may be a reflection of the racial profiling of criminal justice agencies and / or the socio-demographic circumstances of the coloured population as a whole and / or it may simply be that there are more coloured persons than white or black persons living in the Western Cape.

- **Reasons for matter being placed on the court roll**

There have been many reports of delays in court that result in children’s matters not being dealt with expediently and children being held in detention awaiting trial for long periods of time. The field workers were therefore requested to record the reason for the cases appearing in court on the days that they attended court in order to determine the nature of court proceedings that most frequently occurs on any particular day. Table 3 represents the reasons children appeared at court per site and the total number of children.

Table 3: Reasons for children appearing in court

	Wynberg	P/Maritzb	Pretoria	Total
First appearance	96	31	80	207 (17.4%)
Bail application	25	5	0	30 (2.5%)
Age determination	4	3	20	27(2.3%)
Postponement	60	37	111	208(17.4%)
Withdrawal of charge	2	10	39	51 (4.3%)
Plea	68	55	47	170 (14.2%)
Trial	7	12	10	29 (2.4%)
Judgement	0	2	0	2 (0.2%)
Sentence	9	2	3	14 (1.2%)
Unknown	5	2	3	10 (0.8%)
Other	197	57	191	445 (37.3%)

¹⁰ Notwithstanding the ambiguity of the term ‘coloured’, the term is used in current South Africa studies to define a group of people with a similar history and common identity.

TOTAL 473 216 504 1193 (100%)¹¹

It must be noted that the large ‘other’ category is most likely a direct reflection of the fact that often more than one reason is cited on the charge sheet for a child appearing at court.¹² On perusing some of the charge sheets it is clear that some of these ‘other’ categories also include reasons which do not appear on the database. Some of these reasons for appearing in court as cited on the charge sheets include for instance:

- to trace guardian
- for docket
- for assessment
- trial part-heard
- probation officer report
- disclosure
- return date of warrant of arrest

Apart from the ‘other’ category it is apparent that the main reasons for appearing at court at all three sites were for first appearance or for postponement (both at 17.4% of the total reasons for appearing at court). The Child Justice Bill lengthens the remand time for children in custody from 14 days to 30 days for children in prison and 30 days to 60 days for children in welfare facilities. The lengthening of the time periods will hopefully ensure a speedier finalisation of trials (as this will ensure more time for police investigation and subpoenaing witnesses for example) as well as a less congested court roll. It will be interesting to see the effect of the enactment of the Child Justice Bill on these figures. What will also be interesting is whether the amount of children appearing for plea or trial will decrease once the preliminary inquiry and the regulation of diversion is introduced.

Tables 4.1 to 4.3 show the offence sets for which children appeared at court at each site. Each table provides the number of offences for which children were appearing at the court (ranked from the highest number of offences committed at the court to the lowest number) and the percentage that the offence constituted in comparison to the total number of that offence for all three sites. These include multiple offences as very often children appeared at court for committing the same offence more than once or for a number of different offences.

Table 4.1: Offences for which children appeared at Wynberg court		
	No. of offences at Wynberg	% of total offences
Theft	114	35% (n=326)
Assault with intent to do grievous bodily	61	44% (n=138)

¹¹ It must be noted that some of the cases (and children) appeared at court on more than one occasion, these are included in the total count, for every repeat appearance at court counted in the research the child would usually be appearing for another reason.

¹² For instance, many children would appear for ‘plea and trial’ as stipulated on the charge sheet. It is unfortunately a feature of the quantitative nature of the research that the various sub-categories have been subsumed into an ‘other’ category due to database restrictions.

harm		
Housebreaking and theft	60	50% (n=120)
Robbery	47	34% (n=138)
Rape	41	98% (n=42)
Assault common	36	32% (n=114)
Possession of drugs	34	43% (n=79)
Malicious damage to property	27	42% (n=65)
Indecent assault	24	89% (n=27)
Theft out of a motor vehicle	13	65% (n=20)
Attempted murder	11	79% (n=14)
Armed / aggravated robbery	11	42% (n=26)
Theft of a motor vehicle	10	77% (n=13)
Possession of stolen property	10	43% (n=23)
Kidnapping	8	100% (n=8)
Trespassing	7	88% (n=8)
Attempted robbery	6	86% (n=7)
Fraud	6	60% (n=10)
Possession unlicensed firearm	5	38% (n=13)
Attempted theft	5	71% (n=7)
Housebreaking with intent to commit offence unknown to prosecutor	4	50% (n=8)
Attempted housebreaking and theft	3	50% (n=6)
Driving motor vehicle without owner permission	3	60% (n=5)
Negligent driving	3	50% (n=6)
Unknown (charge not listed on charge sheet)	3	43% (n=7)
Murder	3	100% (n=3)
Possession of a dangerous weapon	2	100% (n=2)
Pointing of a firearm	1	100% (n=2)
Possession of illegal ammunition	1	100% (n=1)
Assault when a dangerous wound is inflicted	1	100% (n=1)
Crimen injuria	1	17% (n=6)
Attempted theft out of a motor vehicle	1	100% (n=1)
Arson	1	33% (n=3)
Shoplifting	1	2.4% (n=41)

At Wynberg the main type of offence for which the children were appearing at court was theft, followed by assault with the intent to commit grievous bodily harm, housebreaking and theft, robbery and rape. The rape rate at Wynberg constitutes 98% of all the rape offences children were charged with and is thus disproportionately higher than the rape rate at Pretoria and Pietermaritzburg. Indecent assault also constitutes 89% of the total number of indecent assault charges for the children at all three courts. The murder rate too constitutes 100% of all the murder charges at all three courts – in other words no children were appearing at Pretoria or Pietermaritzburg on a murder charge. This level of sexual violence and other violent crimes for which children appeared at court is a

disturbing trend and as mentioned, could be related to specific socio-demographic problems in the Western Cape with gang activities being particularly problematic and the fact that children are increasingly becoming involved in gangs in the absence of effective support mechanisms and institutions.

Table 4.2: Offences for which children appeared at Pietermaritzburg court		
	No. of offences at P/Maritzb	% of total offences
Assault with intent to do grievous bodily harm	53	38% (n=138)
Theft	48	15% (n=326)
Robbery	32	23% (n=138)
Housebreaking and theft	29	24% (n=120)
Assault common	20	18% (n=114)
Armed / aggravated robbery	10	38% (n=26)
Malicious damage to property	7	11% (n=65)
Theft out of a motor vehicle	5	25% (n=20)
Crimen injuria	5	83% (n=6)
Possession of drugs	4	5% (n=79)
Housebreaking with intent to commit offence unknown to prosecutor	4	50% (n=8)
Possession of stolen property	3	13% (n=23)
Possession unlicensed firearm	2	15% (n=13)
Contravention of general law amendment act (s36) act 62 of 1955	2	100% (n=2)
Perjury	2	50% (n=4)
Stock theft	1	100% (n=1)
Attempted robbery	1	7% (n=7)
Theft of a motor vehicle	1	8% (n=13)
Unknown (charge not listed on charge sheet)	1	7% (n=7)
Non compliance with sentence	1	100% (n=1)
Threats of violence	1	100% (n=1)

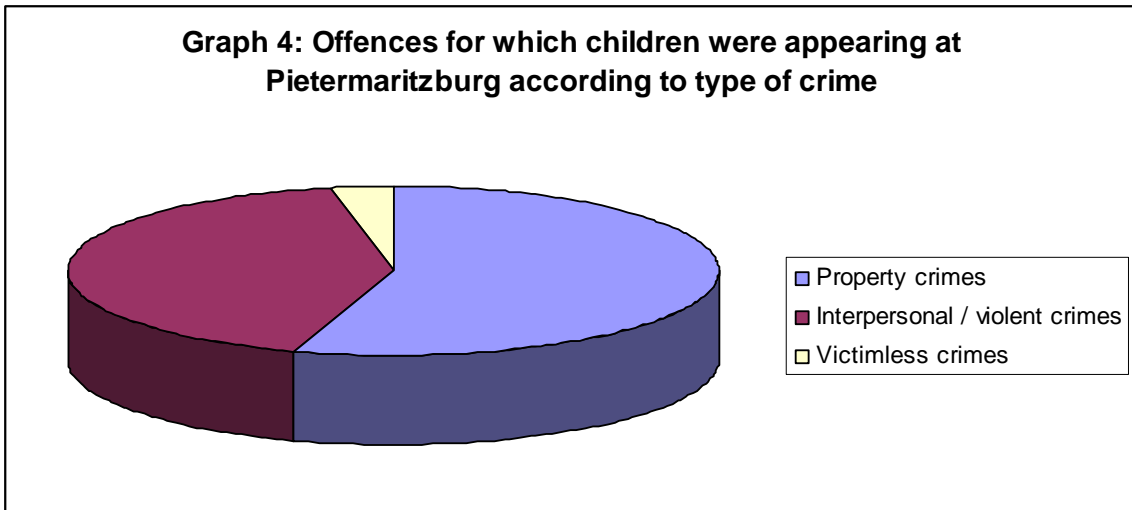
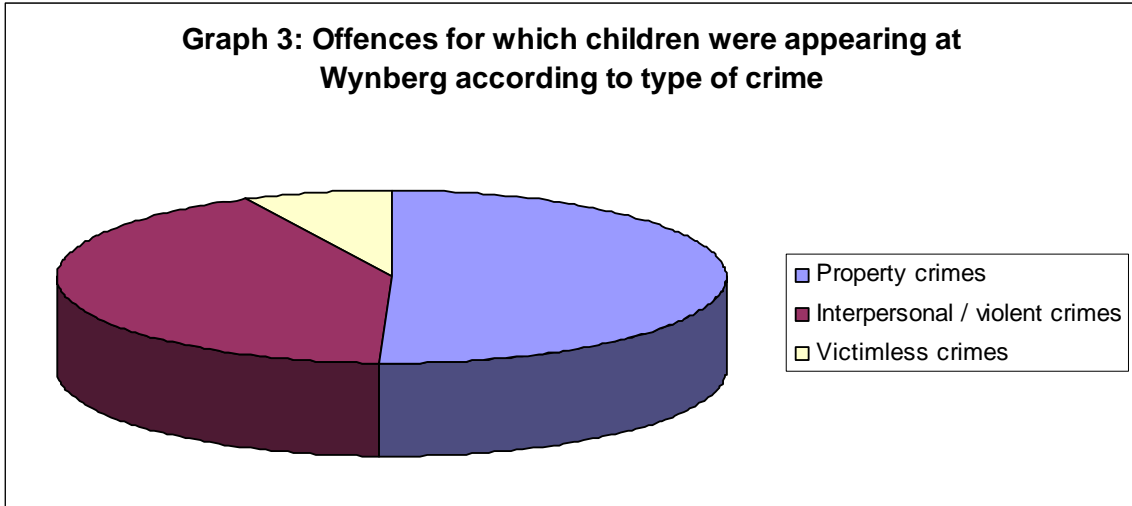
The main offences for which children were appearing at Pietermaritzburg included: assault with the intent to commit grievous bodily harm, followed by theft, robbery, housebreaking and theft and common assault. These offences (apart from rape) are largely similar to Wynberg's findings, showing not only that economic offences are prevalent but that there seems to be a trend towards more violent crimes as well as compared to phase one's results.

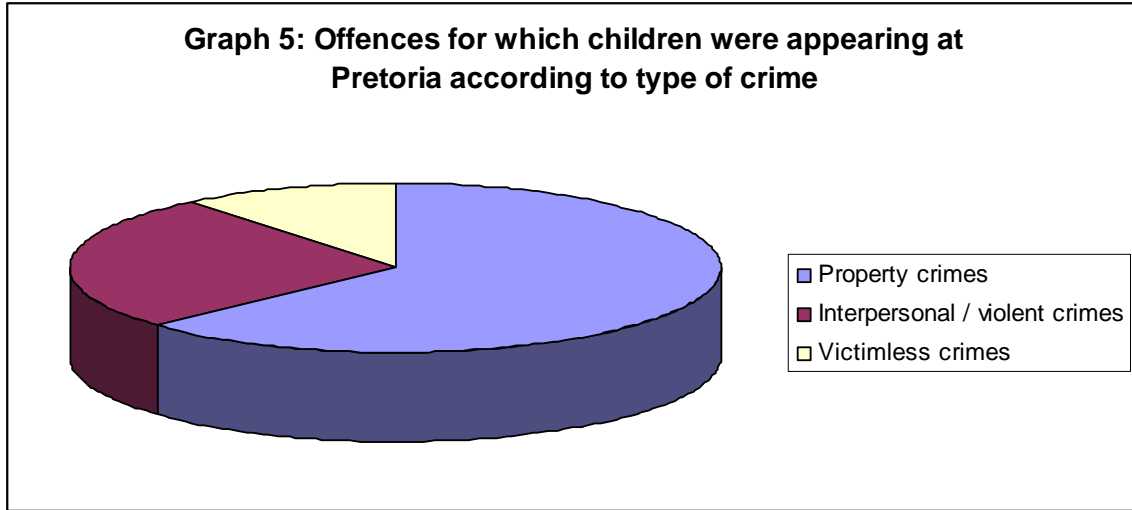
Table 4.3: Offences for which children appeared at Pretoria court		
	No. of offences at Pretoria	% of total offences
Theft	164	50% (n=326)
Robbery	59	43% (n=138)
Assault common	58	51% (n=114)

Possession of drugs	41	52% (n=79)
Shoplifting	40	98% (n=41)
Malicious damage to property	31	48% (n=65)
Housebreaking and theft	31	26% (n=120)
Assault with intent to do grievous bodily harm	24	17% (n=138)
Possession of stolen property	10	43% (n=23)
Possession unlicensed firearm	6	46% (n=13)
Armed / aggravated robbery	5	19% (n=26)
Dealing in drugs	5	100% (n=5)
Fraud	4	40% (n=10)
Possession of motor vehicle breaking equipment	3	100% (n=3)
Attempted murder	3	21% (n=14)
Unknown (charge not listed on charge sheet)	3	43% (n=7)
Indecent assault	3	11% (n=27)
Negligent driving	3	50% (n=6)
Attempted housebreaking and theft	3	50% (n=6)
Attempted theft	2	29% (n=7)
Intimidation	2	100% (n=2)
Theft of a motor vehicle	2	15% (n=13)
Theft out of a motor vehicle	2	10% (n=20)
Perjury	2	50% (n=4)
Theft of a firearm	2	100% (n=2)
Possession of housebreaking implements	2	100% (n=2)
Housebreaking with intent to steal	2	100% (n=2)
Arson	2	67% (n=3)
Attempted rape	2	100% (n=2)
Driving motor vehicle without owner permission	2	40% (n=5)
Driving under the influence of alcohol or a narcotic substance	1	100% (n=1)
Pointing of a firearm	1	50% (n=2)
Culpable Homicide	1	100% (n=1)
Rape	1	2.4% (n=42)
Resisting arrest	1	100% (n=1)
Failure to attend court / contempt of court	1	100% (n=1)
Trespassing	1	13% (n=8)
Contravention of section 120(6)(b)	1	100% (n=1)
Illegal hawking	1	100% (n=1)
Tampering with a public phone	1	100% (n=1)

The majority of crimes for which children were appearing at Pretoria court were theft, robbery, common assault, possession of drugs and shoplifting. These offences are mostly economic crimes, but it is interesting to note that possession of drugs is one of the top five offences committed and that all children during the research appearing for dealing in drugs were at Pretoria court. Also 98% of all the shoplifting charges at the three courts took place at Pretoria.

Graphs 3, 4 and 5 below show a breakdown of the offences for which the children were appearing at court according to three broader categories – violent crimes (such as murder, rape, assault), property-related crimes (such as housebreaking and theft) and victimless crimes (such as possession of drugs).





From the above pie graphs it seems that in all three courts the most common type of crime for which the children were appearing at court were property-related, followed by violent crimes and then victimless crimes. But it seems that more children were being charged with property crimes at Pretoria court than at the other courts.

- **Offence according to age and gender**

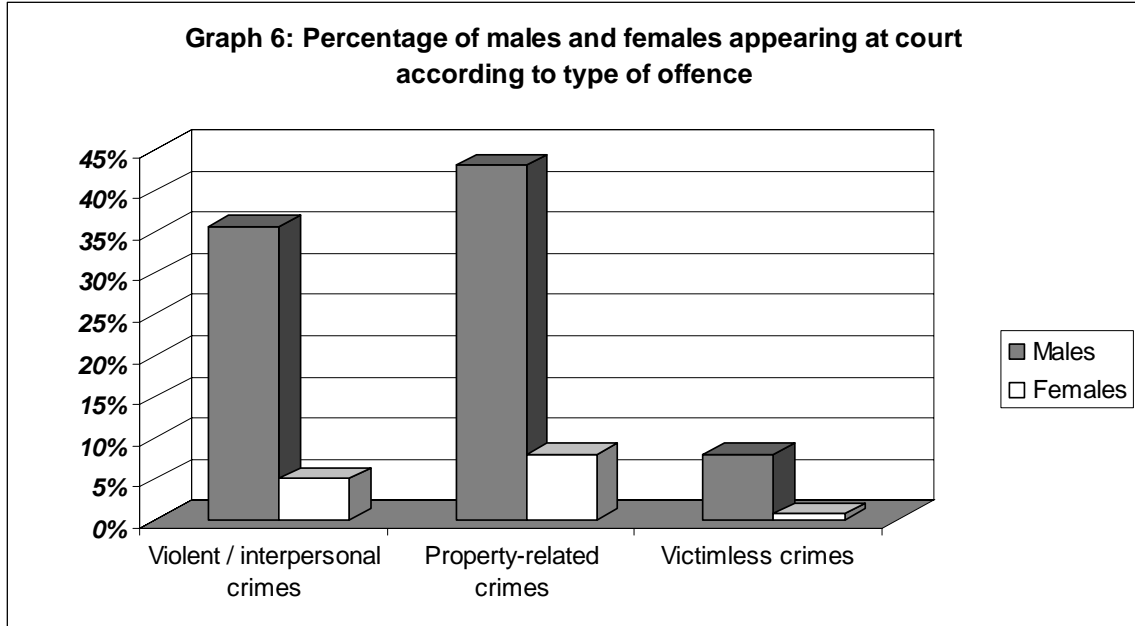
Table 5 provides a gender and age breakdown of the offences that were committed at all three courts.

Table 5: Offence disaggregated by age and gender							
	Males under 10 yrs	Females under 10 yrs	Males 10-13 yrs	Females 10-13 yrs	Males 14- 17 yrs	Females 14- 17 yrs	<i>Total</i>
Theft	1	0	7	11	247	60	326
Attempted theft	0	0	0	0	7	0	7
Theft of a motor vehicle	0	0	0	0	10	3	13
Theft out of a motor vehicle	0	0	0	0	18	2	20
Attempted theft out of a motor vehicle	0	0	0	0	1	0	1
Theft of a firearm	0	0	0	0	2	0	2
Shoplifting	0	0	0	0	31	10	41
Possession of stolen property	0	0	0	0	22	1	23
Possession of housebreaking implements	0	0	0	0	2	0	2
Possession of motor vehicle breaking	0	0	0	0	3	0	3

equipment							
Housebreaking and theft	0	0	6	2	110	2	120
Housebreaking with intent to commit offence unknown to prosecutor	0	0	2	0	6	0	8
Housebreaking with intent to steal	0	0	0	0	2	0	2
Attempted housebreaking and theft	0	0	0	0	6	0	6
Fraud	0	0	0	0	2	8	10
Malicious damage to property	0	0	6	0	57	2	65
Arson	0	0	0	0	3	0	3
Driving motor vehicle without owner permission	0	0	1	0	4	0	5
Negligent driving	0	0	0	0	6	0	6
Driving under the influence of alcohol or a narcotic substance	0	0	0	0	1	0	1
Pointing of a firearm	0	0	0	0	1	1	2
Possession unlicensed firearm	0	0	0	0	13	0	13
Possession of illegal ammunition	0	0	0	0	1	0	1
Possession of a dangerous weapon	0	0	0	0	2	0	2
Possession of drugs	0	0	0	0	74	5	79
Dealing in drugs	0	0	0	0	5	0	5
Assault common	0	0	16	4	67	27	114
Assault with intent to do grievous bodily harm	0	0	3	3	114	18	138
Assault when a dangerous wound is inflicted	0	0	0	0	1	0	1
Murder	0	0	0	0	3	0	3
Attempted murder	0	0	2	0	10	2	14
Culpable Homicide	0	0	0	0	1	0	1
Robbery	0	0	2	0	132	4	138
Armed / aggravated robbery	0	0	0	0	26	0	26

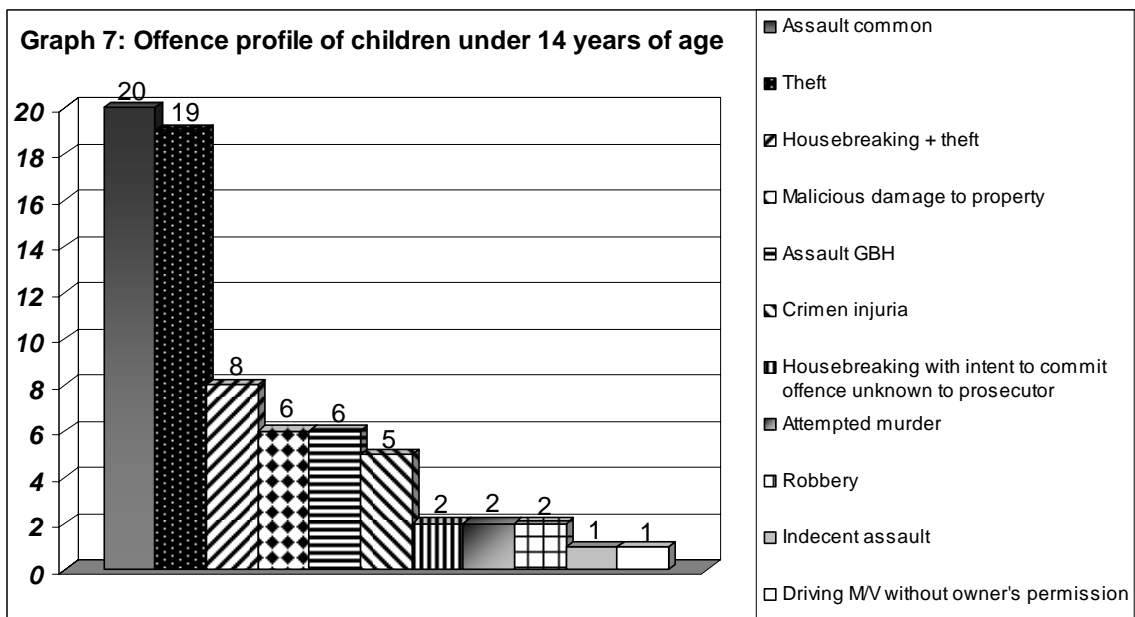
Attempted robbery	0	0	0	0	7	0	7
Indecent assault	0	0	1	0	26	0	27
Rape	0	0	0	0	42	0	42
Attempted rape	0	0	0	0	2	0	2
Resisting arrest	0	0	0	0	1	0	1
Crimen injuria	0	0	0	5	1	0	6
Unknown (charge not listed on charge sheet)	0	0	0	0	6	1	7
Failure to attend court / contempt of court	0	0	0	0	1	0	1
Perjury	0	0	0	0	0	4	4
Stock theft	0	0	0	0	1	0	1
Trespassing	0	0	0	0	8	0	8
Contravention of general law amendment act (s36) act 62 of 1955	0	0	0	0	2	0	2
Contravention of section 120(6)(b)	0	0	0	0	1	0	1
Non compliance with sentence	0	0	0	0	0	1	1
Threats of violence	0	0	0	0	1	0	1
Kidnapping	0	0	0	0	8	0	8
Illegal hawking	0	0	0	0	1	0	1
Intimidation	0	0	0	0	2	0	2
Tampering with a public phone	0	0	0	0	1	0	1

Graph 6 below represents a summary of table 5 and shows the type of offences for which male and females were appearing at court.



It is clear that the majority of offences are property-related crimes committed by males, followed by interpersonal / violent crimes. Proportionally females seem to commit more property-related offences than violent and victimless crimes and far more males committed victimless crimes such as possession and dealing in drugs than females.

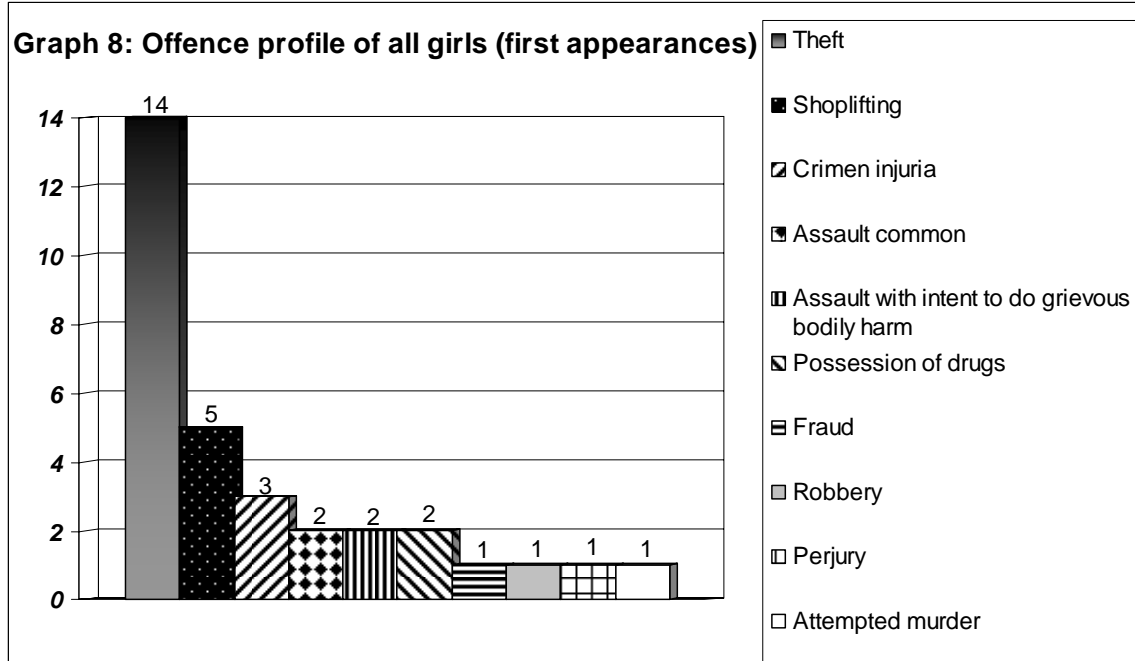
Below is a graphical representation of the types of offences for which children under the age of 14 (from 13 years of age and less) were appearing at court derived from table 5 above.



There is a disturbing trend in the number of common assaults committed by children under 14 years of age. On closer inspection it appears that many of the children who

committed this offence were involved in a gang incident and appeared at court as a large group – thus explaining the high rate of offences for this category. The violent crimes perpetrated by this group – although in small numbers is concerning, particularly assault with intent to do grievous bodily harm, common assault, attempted murder and indecent assault.

Graph 8 below provides a breakdown of the types of offences for which girls (all ages) were appearing at court for *first appearances*.



It is clear that a large portion of these are economic offences, but again there is a disturbing trend of violent crimes such as assault with the intent to commit grievous bodily harm, common assault and attempted murder (although only one girl was appearing at court for the latter offence and two girls for each of the former offences).

2.2.3 Detention of children

- **Placement of the child**

Table 6 represents the placement of the child after arrest and includes the total percentages of children being placed at the various locations for all the sites.

	Wynberg	P/Maritzb	Pretoria	Total
Care of parent / guardian	284	130	367	781 (65%)
Place of safety	58	17	73	148 (12%)
Police cells	5	33	3	41 (3.4%)
Prison	120	17	51	188 (15.8%)

Secure care facility	3	0	6	9 (0.8%)
Unknown	3	19	4	26 (2.2%)
TOTAL	473	216	504	1193 (100%)

What is apparent from Table 6 is that the majority of all children (65%) are placed in the care of their parent / guardian at all three sites. However, there is a disturbing trend at Wynberg in that a large portion of children are being held in prison. This may be due to the lack of available spaces for children in alternate facilities or the fact that Wynberg has a slightly higher rate of violent / interpersonal crimes than the other sites (see Graphs 3, 4 and 5) with more children appearing at court for rape than at the other courts. This may have resulted in the court opting for prison due to the seriousness of the offence. Please note also that UKZN field workers were told by the prosecutor that, although not noted on the charge sheet or court book, children who are still in custody after first appearance and who are not in a Place of Safety are held in New Prison.

Table 7 represents a gender and age breakdown of the placements of children for all three sites.

Table 7: Placement of child after arrest and awaiting trial disaggregated by age and gender					
	Care of parent/ guardian	Place of safety	Police cells	Secure care facility	Prison
Females under 10	0	0	0	0	0
Males under 10	1	0	0	0	0
Females 10-13	18	3	0	0	0
Males 10-13	38	4	1	0	2
Females 14 - 17	116	11	14	0	7
Males 14 – 17	608	130	26	9	179
<i>Total</i>	<i>781</i>	<i>148</i>	<i>41</i>	<i>9</i>	<i>188</i>

No child may be held in prison awaiting trial if they are below 14 years of age. However, two children below the age of 14 were held in prison awaiting trial and one child was held in a police cell. The two children held in prison appeared at Wynberg court and were accused of theft and indecent assault. The child held in a police cell appeared at Pietermaritzburg court and was charged with housebreaking with the intent to commit an offence unknown to the prosecutor. After first appearance the child was then moved to Excelsior Place of Safety. The majority of children under the age of 14 years of age were placed in the care of a parent / guardian or a place of safety.

• **Change in placement of the child**

At Wynberg there were 105 changes of placement made by the court after the child’s first appearance. The reasons for the changes as appearing on the charge sheets included the following reasons (although it is not clear from which institutions they were released):

- Accused released on warning: 1
- Accused sent to Bonnytoun place of safety: 13

- Accused released into custody of parent / guardian: 49
- Accused sent to De Novo rehabilitation centre: 1
- Accused sent to prison: 10
- Accused sent to Horizon place of safety: 31

At Pietermaritzburg there were 60 changes of placement of the child made by the court. The reasons for the changes as appearing on the charge sheets included the following reasons (although it is not clear from which institutions they were released):

- Accused released on warning: 12
- Accused released into custody of parent / guardian: 28
- Accused sent to Excelsior place of safety: 6
- Warrant of arrest issued: 4
- Released on bail: 4
- Accused taken into custody: 2
- Accused sent to Greenfields place of safety: 4

At Gauteng there were 170 changes of placement of the child made by the court. The reasons for the changes as appearing on the charge sheets included the following reasons (although it is not clear from which institutions they were released):¹³

- Tutela place of safety: 5
- Walter Sisulu place of safety: 1
- Protem place of safety: 8
- Jabulani: 29
- Accused sent to prison: 46
- Custody of guardian: 75
- Sterkfontein Hospital: 2
- New location for another matter: 1
- Nieuwfontein: 1
- Drug rehabilitation centre: 1
- Magaliesoord rehabilitation centre: 1

• Bail

Wynberg

In Wynberg 92 children were released on court bail. Ten children were girls of whom two were under the age of 14. Of the 82 boys released on court bail, five were under the age of 14. The offences for which the children were released on bail included:¹⁴

Aggravated / armed robbery: 2

Assault common: 7

Assault with the intent to commit grievous bodily harm: 4

Attempted murder: 5

¹³ Note that at times children would experience multiple changes of placement (for instance a child could be sent from a guardian to prison to a place of safety and then back to the guardian), whereas at the other two courts the children would experience a change in placement only once.

¹⁴ Note that at times children were being charged with more than one offence therefore the number of offences exceeds the number of children appearing for bail purposes.

Attempted theft: 2
Fraud: 1
Housebreaking and theft: 13
Indecent assault: 2
Kidnapping: 3
Malicious damage to property: 9
Possession of stolen vehicle: 1
Possession of a firearm: 1
Possession of ammunition: 1
Possession of drugs: 6
Rape: 4
Robbery: 10
Theft of a motor vehicle: 2
Theft out of a motor vehicle: 6
Theft / Theft where the value is unspecified: 23

The reasons for granting of bail as cited on the charge sheets included (please note that at times more than one reason was cited for bail being granted):

- Bail supported by parent / guardian or the parent / guardian attended court: 38
- Magistrate's discretion: 1
- Charges were withdrawn: 1
- First offence of the accused: 1
- Accused met bail conditions: 1
- No pending cases / prior convictions / outstanding warrants of arrests: 14
- Probation officer recommendations: 5
- Accused not a flight risk: 1
- State did not oppose: 3

The reasons for denial of bail according to the reasons cited on the charge sheets included:¹⁵

- Parent / guardian unavailable: 33
- Parent / guardian and child absconded, warrant of arrest issued: 1
- Accused absconded previously: 1
- Accused already released on warning: 2
- Accused is a flight risk: 23
- Accused committed another offence while in custody / place of safety: 4
- Accused released on warning: 1
- Accused serving a sentence already: 1
- Bail application still underway: 21
- Charges withdrawn: 3
- Parent / guardian does not want custody of accused: 6
- No space at place of safety available: 5
- Accused had been charged with serious offences: 13
- State opposed bail: 1
- Lack of parental control over the accused: 1

¹⁵ Note that sometimes there were multiple reasons.

- Parent / guardian address is contested: 1
- Probation officer recommendation: 5
- Probation officer not at court: 1
- Accused to be sent to place of safety instead: 5
- Ottery Youth School did not want child back (too unruly): 1
- Child has Tuberculosis and sent to Pollsmoor prison for treatment: 1¹⁶
- Accused had previous charges: 1

The conditions of bail as cited on the charge sheets included:¹⁷

- Accused be placed under house arrest: 33
- Accused to refrain from communicating with witness / plaintiff: 7
- Accused to appear at next court date: 1
- No conditions: 19
- Accused to pay fine: 18
- Accused placed under parental supervision: 1

Pietermaritzburg

At Pietermaritzburg eight children were released on court bail – one girl and seven boys. All the children released on court bail were over the age of 13. Please note that at Pietermaritzburg the reasons for denying or granting bail were often merely that the state either opposed or did not oppose a bail application. The details of the state's objection to granting bail was not noted anywhere and could thus not be captured by the field workers. The offences for which the children were released included:¹⁸

Assault with the intent to commit grievous bodily harm: 3

Housebreaking and theft: 2

Possession of stolen property: 1

Robbery: 1

Theft where the value is unspecified: 2

Some of the reasons for granting bail as cited on the charge sheets at Pietermaritzburg court included:

- Guardian not present
- No previous convictions
- Not a flight risk
- State did not oppose bail

Reasons for denial of bail as cited on the charge sheets included:

- Accused had previous convictions: 1
- Bail application not heard that day: 2
- Accused ignored summons and had to be arrested to appear at court: 1
- Parent / guardian unavailable: 6

¹⁶ This is an unusual reason for denying bail and is most likely a direct reflection of the lack of available care for children in conflict with the law in that sending a child to prison is the only way for the child to receive medical treatment while in custody.

¹⁷ Note that sometimes there were multiple conditions imposed.

¹⁸ Note that sometimes children were charged with more than one offence.

- State opposed bail: 1

The conditions of bail as cited on the charge sheets included:

- Accused to pay a set fine: 4
- Accused to re-appear at court on a set date: 2
- Accused not to communicate with witnesses: 3
- Accused to report to South African Police Service on a set day: 1
- Accused must remain under parent's supervision at home: 1

Pretoria

At Pretoria court, 12 children were released on court bail, all of whom were boys over the age of 13 years (that is, 14 years and older). The offences for which the boys were released included:¹⁹

Armed robbery: 2

Attempted housebreaking and theft: 2

Housebreaking and theft: 1

Negligent driving: 1

Possession of a firearm: 1

Possession of drugs: 1

Shoplifting: 2

Theft of a motor vehicle: 1

Theft where the value is unspecified: 2

Some of the reasons for granting bail as cited on the charge sheets at Pretoria court included:

- Guardian available
- State did not oppose bail

The reasons for denial of bail as cited on the charge sheets at Pretoria court included:

- Accused mentally impaired: 1
- Accused absconded, warrant of arrest issued: 1
- Parent / guardian absent: 20
- Parent / guardian did not want to take responsibility for child: 3
- Accused lied about age – court had no jurisdiction to grant bail to non-minors: 1
- Accused committed serious offences: 1
- Warrant of arrest issued and executed a number of times: 1

The conditions of bail as cited on the charge sheets at Pretoria court were as follows:

- Accused to appear at court on every occasion: 2
- No conditions: 4
- Accused to pay a set fine: 3

2.2.4 Assessment

• Release of children from court prior to assessment

¹⁹ Note that sometimes children were charged with more than one offence.

In terms of the proposed child justice legislation, children should be assessed within 48 hours of arrest. As children have to appear in court within 48 hours of arrest, they should be assessed prior to the first court appearance. This can largely be facilitated by the fact that the child is initially in police custody and if assessed and then released, for example into his or her parent's care, this practice would assist in averting further delays at court when the child would have to be assessed before appearing for the first time.

The study showed, however, that children are released by the police before being assessed. The intention is that the mechanisms provided in the Child Justice Bill would stop this practice and require police and probation officers to ensure that the child is assessed as early as possible.

At Wynberg court 72 children (15%) were released from court before a probation officer assessment was made, in Pietermaritzburg 98 children (45%) were released and in Pretoria 356 children (70%) were released prior to assessment. The high numbers of children being released before an assessment, particularly at Pretoria and Pietermaritzburg indicates that there is a problem with assessments at these courts.

2.2.5 Court proceedings

The Child Justice Bill creates a new procedure to facilitate the management of children in conflict with the law, namely, the preliminary inquiry, which makes use of current resources and personnel. This inquiry has a number of objectives, which include establishing whether a child can be diverted and if so identifying a suitable diversion option and determining the release or detention of a child. As the current child justice system has no similar procedure, this study was unable to collect information against which to measure the future implementation of the preliminary inquiry. Instead the research sought to assess the current functioning and practice of the three courts.

- **Plea**

Table 8: Status of pleas at all sites				
	Wynberg	P/Maritzb	Pretoria	<i>Total</i>
How many children entered a plea	63	57	25	145
No. of guilty pleas	49	28	16	93
No. of not guilty pleas	13	28	9	50
Nature of plea unknown	1	1	0	2

Please note that the total number of children who entered a plea is 145 – a figure which is lower than that cited in Table 3 which states that the number of children appearing at court for plea purposes was 170. Many of the children may have appeared at court for the purposes of a plea, but due to a number of reasons such as reports outstanding, guardians not appearing at court, or the accused themselves not being at court, for instance, the actual number of children who eventually entered a plea is lower. This is a

reflection of the operation of the courts in that reasons for appearing at court do not correlate with what actually takes place due to postponements and delays.

Guilty plea

Table 9: Children who pleaded guilty disaggregated by age, gender and site				
	Wynberg	P/Maritzb	Pretoria	Total
Females under 10 yrs	0	0	0	0
Males under 10 years	0	0	0	0
Females 10-13	0	0	1	1
Males 10-13	0	0	0	0
Females 14 - 17	6	6	0	12
Males 14 – 17	43	22	15	80

One child below the age of 14 years pleaded guilty at Pretoria court. In this instance the state bears the onus of proving that children below 14 years of age have criminal responsibility. It is unclear from the research whether the state proved this in that case or whether the court established criminal capacity from the guilty plea itself. This is an issue that has not really been addressed in the Child Justice Bill as the issue relates to common law principles of criminal capacity. It will be interesting to see the outcome of the application for leave to appeal the decision that has been lodged.

Not guilty plea

Table 10: Children who pleaded not guilty disaggregated by age, gender and site				
	Wynberg	P/Maritzb	Pretoria	Total
Females under 10 yrs	0	0	0	0
Males under 10 years	0	0	0	0
Females 10-13	0	3	0	3
Males 10-13	0	1	0	1
Females 14 – 17	1	1	0	2
Males 14 – 17	12	23	9	44

- **Time period between first appearance and plea**

There are ongoing concerns expressed about lengthy delays experienced in the criminal justice system. Therefore the following information should illustrate the time delays involved between first appearance and plea for the random sample that this study used.²⁰

Table 11: Delays between first appearance and plea per site				
	Wynberg	P/Maritzb	Pretoria	Overall
Average no. of days	80	61	220	101
Median no. of days	41	41	132	69

²⁰ The findings of phase one did not include the reasons for the lengthy delays at the courts, it was thus decided that phase two research would gather information on these reasons to provide further insight into the functioning of the courts.

N =	35	32	17	68
-----	----	----	----	----

What is evident is that some matters are taking a long time to be resolved in the district courts. What is of concern is the fact that the offences are not serious ones. For instance Pretoria's average number of days between first appearance and plea is much higher than the other two courts. The reason for this is most likely due to the fact that one case, involving a 16 year old male accused of theft, had been on the roll for approximately four and a half years. It seems that the reason for the lengthy delay was simply due to postponements as stated below:

- 1) legal aid
- 2) disclosure
- 3) accused absent
- 4) for guardian
- 5) not brought from prison
- 6) accused absent
- 7) plea and trial (2006)
- 8) trial
- 9) for attorney
- 10) plea and trial
- 11) further hearing

There was also one other case which had been on the roll for 367 days, involving two children. One of the children was a 15 year old male who had been accused of theft and the other child was a 17 year old male accused of shoplifting. It appears that their case was postponed on three occasions for the following reasons:

- 1) legal aid
- 2) disclosure
- 3) disclosure, in custody of guardian
- 4) for attorney
- 5) accused absent
- 6) guardian and accused absent
- 7) accused absent
- 8) trial and plea
- 9) guardian absent

The other cases at Pretoria were less than a year on the court roll.

None of the cases analysed at Pietermaritzburg were on the roll for longer than approximately half a year.

The longest case on the roll at Wynberg was one case involving a 15 year old female, charged with theft which had been on the roll for approximately a year and a half. It appears that the reason for the case being on the roll for so long is that the child had been absent from court, a warrant of arrest had been issued and it had taken approximately 18 months to locate and arrest the child. The rest of the cases at Wynberg had been on the roll for less than a year.

- **Time period between first appearance and judgement**

Because of the lengthy delays in the criminal justice system at present, the research investigated time delays between all the key procedural stages in a matter so as to determine whether the new child justice laws will have prevented such delays.

It should be noted that in this category, it is possible to have a judgement on first appearance if the accused has pleaded guilty on that date. For children, it is submitted that this may not be the best option, as it begs the question of whether the child was assessed or had the opportunity to obtain legal representation or legal aid.

Table 12: Delays between first appearance and judgement per site				
	Wynberg	P/Maritzb	Pretoria	<i>Overall</i>
Average no. of days	106	49	156	<i>110</i>
Median no. of days	41	17	155	<i>69</i>
N =	34	14	7	<i>46</i>

As in the case of the delay between first appearance and plea, there are lengthy delays between first appearance and judgement. Pretoria seems to have the longest delays between first appearance and judgement.

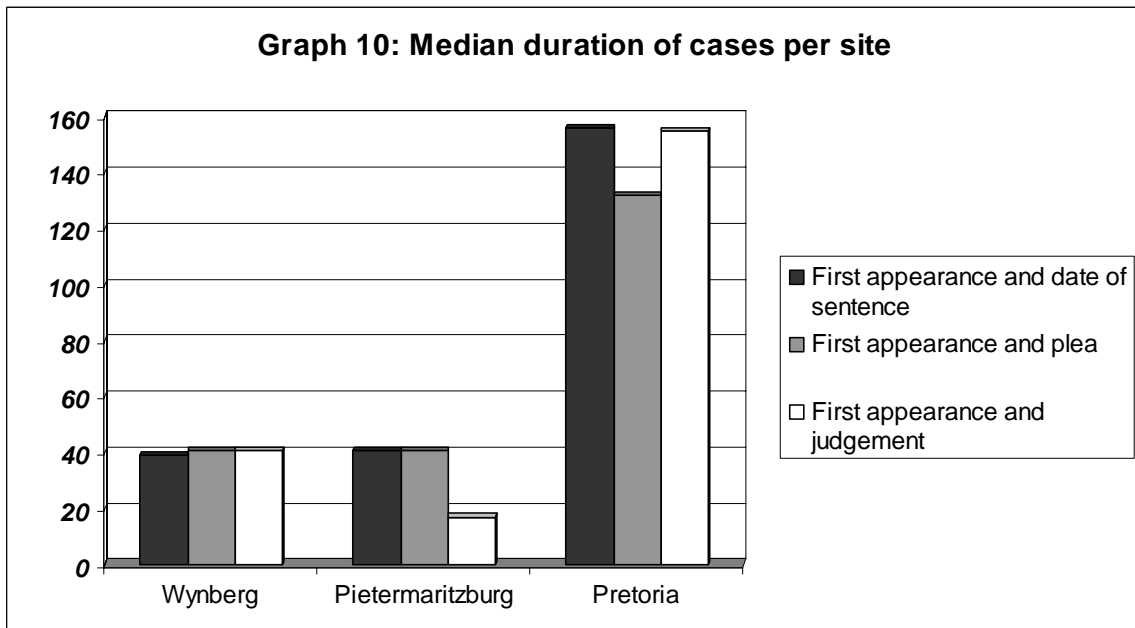
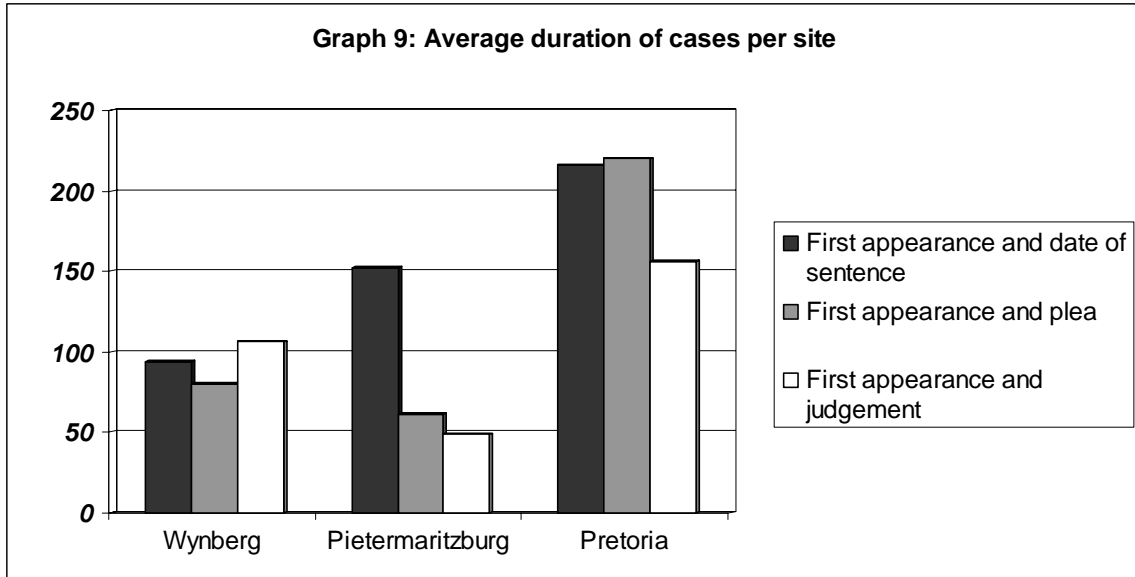
- **Sentence**

The Criminal Procedure Act 1977 contains a wide range of sentencing options to be used in matters pertaining to children. However, in drafting the original version of the Child Justice Bill, the South African Law Reform Commission decided to re-appraise the sentencing of child offenders as it recognised the impact of the concept of restorative justice on the criminal justice system, the effect of our Constitution on the traditional aims of punishment and the shift in the international approach to sentencing from rehabilitation to reintegration into society.

The various types of sentencing in terms of the current child justice system are illustrated below. It is envisaged that the new Child Justice Bill will impact on a wide range of matters in relation to sentencing including pre-sentence reports, the type and nature of sentences and the delays occasioned in sentencing children.

- **Time period between date of first appearance and date of sentence**

Table 13: Delays between first appearance and date of sentence per site				
	Wynberg	P/Maritzb	Pretoria	<i>Overall</i>
Average no. of days	94	152	216	<i>115</i>
Median no. of days	39	41	156	<i>49</i>
N =	18	8	5	<i>26</i>



- **Sentences handed down**

At Wynberg twelve children were sentenced during the research period although nine children were recorded under the reasons for being placed on the court roll.

At Pietermaritzburg six children were sentenced although the court roll indicated that only two children were appearing for sentence.

At Pretoria four children were sentenced although only three attended court specifically for sentencing. However, notwithstanding this, the 'other' category referred to in table 3 may represent instances where the children were appearing for more than reason, such as

for ‘plea and sentencing’. There may thus be more instances where the children were appearing for sentencing.

Table 14: Sentences handed down per site				
	Wynberg	P/Maritzb	Pretoria	Total
Correctional supervision	0	2	0	2
Suspended sentence	10	0	3	13
Postponed sentence	2	4	0	6
Reform school	0	0	1	1

It is interesting to note that no children were sentenced to prison, whereas phase one results revealed that six children were sentenced to prison – all at Pietermaritzburg court.

At Wynberg some of the suspended sentences given stipulated multiple conditions which the accused had to obey during the time of the suspension, these include, for all 12 sentences (according to the charge sheets) that the accused:

- not be found guilty of other / the same offences during the time of the suspension,
- pay a fine,
- be declared unfit to receive a firearm licence,
- complete community service,
- complete a drug rehabilitation programme,
- remain under the supervision of a probation officer,
- remain under house arrest.

At Pietermaritzburg the following stipulations attached to the suspension as cited by the charge sheets were that the accused:

- remain under welfare department supervision,
- remain under correctional supervision under NICRO,
- be declared unfit to receive a firearm licence,
- not be found guilty of other / the same offences during the time of the suspension.

At Gauteng the following stipulations attached to the suspension according to the charge sheets were that the accused:

- not be found guilty of other / the same offences during the time of the suspension,
- complete the Youth Development Outreach Programme,
- remain under home-based supervision,
- complete a drug rehabilitation programme,
- abstain from drugs or alcohol and get tested every three months
- adhere to certain conditions between the accused and guardian

• **Pre-sentence reports**

At Wynberg pre-sentence reports were available in 13 known *cases* (involving 17 children) out of the total number of cases. There were pre-sentence reports for half of the children sentenced at Wynberg and it appears that there was not a pre-sentence report available for the other six children who were sentenced. Of the six children sentenced

where there was a pre-sentence report, two were postponed sentences (the only sentences which were postponed) and the other four were suspended sentences. However, the stipulations attached to the suspended sentences were very similar to the cases where there was no pre-sentence report therefore it is unclear to what extent the probation officers recommendations are taken into account or impact on the sentencing.

At Pietermaritzburg pre-sentence reports were available in four known *cases* (involving five children) out of the total number of cases. The court followed the recommendations of the pre-sentence report in all these cases. There were pre-sentence reports for three of the four cases, the fourth case involved a pre-sentence report even though the child was not sentenced. There were pre-sentence reports for four of the sentenced children (three of the *cases*). It is interesting to note that for these cases very similar sentences were handed – postponement of the case pending NICRO correctional supervision.

At Pretoria there were pre-sentence reports for three of the four *cases* involving sentencing (involving three children) out of the total number of cases. The court followed the recommendations of the pre-sentence report in all these cases. In two of these cases the child received a suspended sentence and for the third case the child was sentenced to reform school.

- **Referral to Children’s Court**

The possibility of referring the matter to a Children’s Court is important and affords the presiding officer in a criminal matter a powerful tool. If he or she considers the child a child in need of care in terms of one of the grounds set out in section 14 (a)(B) of the Child Care Act 74 of 1983 then the criminal proceedings will be stopped and the child will not obtain a criminal record even if he or she has already been found guilty. The circumstances of children in many criminal matters potentially make the child a child in need of care and referral to the welfare system may be the appropriate route to follow for that child. However, anecdotal evidence has shown that this section is not often made use of and when it is used, it only occurs at the stage of sentence with the recommendation of a pre-sentence report. This is confirmed by the research in that, at Wynberg and Pretoria courts, there were no referrals to the Children’s Court. At Pietermaritzburg court there were children (two males, aged 14 and 15) who were referred to the Children’s Court, however, no reasons were given by the court for this referral.

- **Diversion**

Diversion involves the referral of cases, where there exists a suitable amount of evidence to prosecute, away from the formal criminal court procedures.²¹ Diversion can be closely linked to the concept of restorative justice, which involves a balancing of rights and responsibilities. The purpose of restorative justice is to identify responsibilities, meet

²¹ Muntingh, L. (ed) (1995) *Perspectives on diversion*. NICRO National Office, Cape Town.

needs and promote healing.²² In this way a child that is accused of committing a crime takes responsibility for his or her conduct and makes good for his or her wrongful action. Through this process diversion can involve a restorative justice component depending on the nature of the diversion.

Diversion can involve a referral away from the criminal courts conditionally or unconditionally. This illustrates the flexible nature of diversion as a procedure aimed at achieving the best result suited to an individual child. An unconditional diversion can involve for example, cautioning by a magistrate or presiding officer. A conditional diversion, however, can involve referring the child away from formal court procedure on condition that the child attends a programme or undergoes a restorative justice process such as a family group conference. Often the outcome of such a conference can also include referring a child to a particular programme, for example, a life skills programme.

The benefits of diversion are many and include the child gaining insight into the consequences of his or her actions, taking responsibility for them, making good the harm caused (by, for example, compensating the victim or performing some sort of community service or service to the victim), allowing for victim participation where appropriate and ensuring the child does not obtain a criminal record thereby granting him or her the opportunity to forge a path in life without the stigma of a criminal conviction.

Having noted these benefits it is also useful to bear in mind certain potential dangers of diversion. These have to do with the accused person's right to a fair trial and due process.

It is imperative to ensure that children are not diverted to a programme or other informal diversion options in lieu of the possibility of prosecution. In other words, if the state does not possess sufficient evidence against the child to prosecute the matter, it cannot resort to diverting the child as a "second prize". The state cannot absolve itself of the onus of proving the guilt of an accused beyond a reasonable doubt by making use of diversion to achieve a result that it could otherwise not obtain. This would constitute a serious invasion of the accused person's right to be presumed innocent until proven guilty.

Likewise, an accused person's right to remain silent can potentially be compromised by the possibility of diversion. Diversion involves the acceptance of responsibility for the child's actions. The danger exists that a child could be unduly influenced into accepting responsibility for an offence at the expense of his or her right to remain silent. This right is inviolable and it is only a voluntary acceptance of responsibility that would give credence to diversion procedures and a proper child justice system.

It is therefore important to ensure that diversion is properly regulated. The Child Justice Bill proposes various forms of diversion. The options range from receiving a formal caution or compulsory school attendance order to the attendance of a specified programme or referral to a programme with a residential element. As diversion is intended to meet the individual needs of a child and as diversion services are not as

²² Skelton, A. (1999) 'Juvenile Justice Reform: Children's Rights and Responsibilities versus Crime Control', in Davel, C.J. (ed) Children's Rights in Transitional Society, p. 93.

readily available in rural areas as they are in urban areas, the Bill allows the preliminary inquiry magistrate to develop an individual diversion option which meets the purposes of and standards applicable to diversion in the Bill. This last-mentioned provision allows for flexibility and the utilisation of existing community resources where formal diversion programmes are lacking.

The present research was designed to try and assess the extent of diversion in the present system, although there is no regulatory framework available yet. This will show whether prosecutorial discretion is being made use of in order to further the rights of children. When the Bill is finally enacted, the present information and the findings of phase one will be useful as baseline data against which to measure the implementation of formal diversion.

At Wynberg, 12 children were diverted; at Pietermaritzburg 15 children were diverted and at Pretoria 176 children were diverted. The reasons for the high disparity (which also confirms the findings of phase one) is that it is most likely that children at Wynberg and Pietermaritzburg were being diverted before appearing at court, therefore were not included in the research.

Table 15: Number of children diverted disaggregated by age and gender				
	Wynberg	P/Maritzb	Pretoria	<i>Total</i>
Males under 10	0	0	1	<i>1</i>
Females under 10	0	0	0	<i>0</i>
Males 10-13	0	2	5	<i>7</i>
Females 10-13	0	0	3	<i>3</i>
Males 14 - 17	11	8	130	<i>149</i>
Females 14 – 17	1	5	37	<i>43</i>

At Wynberg children who were diverted, according to information obtained at the court, were referred as follows:

- Youth Empowerment Skills at NICRO (7)
- Drug Rehabilitation at NICRO (1)
- Dept. Social Development Drug Information School (1)
- Unknown (3)

At Pietermaritzburg children who were diverted, according to the charge sheets, were referred as follows:

- Youth Empowerment Skills at NICRO (3)
- Victim Offender Mediation (1)
- Unknown (11)

At Pretoria children who were diverted, according to the charge sheets, were referred as follows:

- Youth Empowerment Skills at NICRO (9)
- Drug Rehabilitation at NICRO (8)

- Pre-Trial Community Service at NICRO (6)
- Victim Offender Mediation at NICRO (1)
- Adolescent Development Programme (Youth Development Outreach) (8)
- Victim offender mediation (Youth Development Outreach) (1)
- Drama Therapy at RJC (25)
- Victim Offender Mediation at RJC (4)
- Family Group Conference at RJC (1)
- Drug Programme at Department of Correctional Services (1)
- Anger management and Journey of Life (1)
- Basic Life Skills (11)
- Youth Offender School (9)
- Victim Offender Mediation (2)
- Youth Development Outreach (13)
- Magaliesoord Rehabilitation Centre (1)
- Community Service (6)
- Other (64)
- Unknown (5)

At Wynberg 183 children were not diverted due to for instance, the accused not acknowledging responsibility for guilt (4), no parent or guardian being available (6) and because of the seriousness of the offence (3). Unfortunately, the reasons for not diverting the other 170 children were not available.

At Pietermaritzburg court, the number of children who were not diverted totalled 102. Unfortunately the reasons for not diverting these children are not known.

At Pretoria court the number of children who were not diverted total 75. Some of the reasons for not diverting was that the accused did not acknowledge responsibility for guilt (2); that the child was placed under home-based supervision instead (1); that the child had previously violated the terms of diversion and was thus placed under home-based supervision (1); that another case was pending (1); and that the charges had been withdrawn (1). Unfortunately the reasons for not diverting the other 69 children are not available.

Table 16 below is the gender and age profile of those children who were not diverted:

Table 16: Number of children not diverted disaggregated by age and gender				
	Wynberg	P/Maritzb	Pretoria	<i>Total</i>
Males under 10	0	0	0	0
Females under 10	0	0	0	0
Males 10-13	7	11	0	18
Females 10-13	1	3	0	4
Males 14 – 17	153	68	63	284
Females 14 – 17	22	20	12	54

There have been studies²³ that have shown that the younger the child, the more effective interventions are. It is therefore of concern that 22 children under the age of 14 years were not diverted – despite the actual reasons for these failures to divert being unknown. It is hoped that once the Child Justice Bill is enacted and a legal framework for diversion created, more children will be diverted than is happening at present.

• **Postponements**

One of the main concerns about the present child justice system is the fact that there are lengthy delays before matters are finalised.

At Wynberg postponements took place for 393 accused, at Pietermaritzburg for 146 accused and at Pretoria for 419 accused. Below is a breakdown of the reasons for postponements per site. Please note that often there was more than one reason for the postponement and the numbers of postponements reflected below are more than the number of children.

Table 17: Reasons for postponements per site			
	Wynberg	P/Maritzb	Pretoria
Absence of accused and guardian	11	1	33
Absence of guardian	29	13	28
Absence of interpreter	2	0	4
Absence of investigating officer	0	0	1
Absence of legal representation / legal aid	21	7	33
Absence of probation officer	22	0	5
Accused not complete diversion / other programme	0	0	14
Accused(s) not in court	68 ²⁴	21	26
❖ <i>At large (warrant of arrest issued)</i>	(42)	(14)	(13)
❖ <i>Not brought to court</i>	(12)	(0)	(8)
❖ <i>Absent (no reasons / other)</i>	(10)	(7)	(4)
❖ <i>Accused ill / hospitalised</i>	(2)	(0)	(2)
❖ <i>Accused late</i>	(2)	(0)	(0)
Age assessment to be done	1	9	10
Application for legal aid / legal representation	2	5	8
Appointment of Judicare	2	0	0
Assessment to be done	53	1	49
Bail application / information / hearing	17	2	0
Combining of cases	0	0	6
Compassionate grounds	0	2	0
Correctional supervision report requested	1	0	0
Court ran out of time	1	0	0

²³ For example Loeber, R. and Farrington, D.P. (eds.) (1998) *Serious and violent juvenile offenders: risk factors and successful interventions*. Sage Publications.

²⁴ The reasons for the accused not attending court at Wynberg totaled 50, this total is further disaggregated in the next row according to the particular reason for not appearing at court.

Disclosure	0	0	12
Diversion / other programme completion	0	2	91
Diversion report outstanding	0	0	2
Docket not available	18	4	10
Forensic report outstanding	1	0	0
Forfeiture of bail	0	1	0
Further evidence	0	3	0
Further information / consultation	2	0	2
Further investigations	82	24	23
High court date	4	0	0
Judgement	0	1	2
Legal aid	25	4	13
Mediation	0	10	0
Medical report regarding complainant	1	0	0
Multiple reasons (more than 4 reasons)	4	1	3
New attorney appointed	4	0	0
Original charge sheet not available	7	0	3
Other	4	5	5
Place of safety placement	34	0	0
Plea	38	8	43
Plea bargaining	1	0	0
Post-diversion assessment / report outstanding	0	0	5
Pre-sentence report	24	2	5
Pre-trial conference	0	11	0
Pre-trial report	2	0	2
Presiding officer	0	0	3
Probation officers report	0	7	4
Regional court	5	1	2
Sentencing	14	1	3
Transferred to another court	2	2	3
Trial / trial part-heard	20	8	18
Unknown	2	8	1
Verdict	0	0	2
Withdrawal statement / charges withdrawn	0	0	8
Witness statement outstanding	9	1	2
Witness(es) absent	4	3	2

It seems that the sites experienced postponements for various reasons and some reasons predominated. For instance at Pretoria many of the postponements were made so that the accused could complete a diversion programme whereas this did not feature as a reason in the other two courts. One reason for postponements featuring in all three sites was the absence of the accused and / or guardian due to the accused / guardian not coming to court or the accused not being brought to court by the relevant authorities.

- **Withdrawal of cases**

One of the concerns in the child justice system is that children are unnecessarily arrested when there is no prima facie evidence against them, or that cases are inordinately delayed because of poor investigation. The research therefore set out to determine the frequency of cases being withdrawn and what those reasons for the withdrawal were.

In Wynberg, 66 children were involved in cases that were withdrawn. The reasons and age, gender and offence breakdown given are as follows:

Table 18: Reasons for withdrawal at Wynberg		
Three postponements for further investigation already and docket still not finalised		
Offences committed	Theft where the value is unspecified	2
Accused	Male aged 14 – 17	2
Accused wrote letter of apology to victim		
Offences committed	Assault GBH	1
Accused	Males aged 10-13	1
At request of state – no reasons given		
Offences committed	Assault GBH	1
	Common assault	1
Accused	Males aged 10-13	1
	Males aged 14- 17	1
Insufficient evidence		
Offences committed	Theft from motor vehicle	1
	Common assault	4
Accused	Female aged 14 - 17	4
	Males aged 10-13	1
Case diverted		
Offences committed	Drug possession	4
	Common assault	2
	Housebreaking and theft	1
	Robbery	1
	Theft where the value is unspecified	2
	Unknown	1
	Malicious damage to property	1
Accused	Females aged 14 - 17	2
	Males aged 14 – 17	10
Procedural irregularity on arrest		

Offences committed	Theft where the value is unspecified	1
	Housebreaking and theft	2
Accused	Males aged 14 – 17	3
Accused repentant – state not opposed		
Offences committed	Theft where the value is unspecified	1
Accused	Males aged 14 – 17	1
Docket incomplete for more than 1 year		
Offences committed	Theft where the value is unspecified	1
Accused	Females aged 14 – 17	1
Docket missing		
Offences committed	Common assault	3
	Theft where the value is unspecified	2
	Robbery	1
Accused	Females aged 10-13	1
	Males aged 14 – 17	4
Investigation still incomplete (repeated postponements)		
Offences committed	Possession of drugs	2
	Theft where the value is unspecified	1
Accused	Males aged 14 - 17	3
Reasons unknown		
Offences committed	Assault GBH	8
	Attempted housebreaking and theft	1
	Common assault	1
	Fraud	1
	Malicious damage to property	1
	Theft out of a motor vehicle	1
	Theft where the value is unspecified	6
	Trespassing	3
Accused	Males aged 14 - 17	16
	Males aged 10-13	2
	Females aged 10-13	1
	Females aged 14 – 17	1
No merit to the case		
Offences committed	Possession of stolen property	1
Accused	Males aged 14 - 17	1

Probation officer recommendation		
Offences committed	Theft where the value is unspecified	1
	Assault GBH	1
Accused	Males aged 14- 17	2
	Males aged 10-13	1
Plaintiff withdrew charges		
Offences committed	Assault GBH	1
Accused	Females aged 14 - 17	1
Provisional withdrawal: problem with the docket		
Offences committed	Malicious damage to property	1
Accused	Males aged 14 – 17	1
Representatives investigation completed		
Offences committed	Possession of drugs	1
Accused	Females aged 14 - 17	1
State attorney requested further investigation but offence objected, case already on roll since October 2006. State withdrew charges provisionally		
Offences committed	Possession of drugs	1
Accused	Males aged 14- 17	1
State requested a postponement for a forensic report, defence objected and the objection was upheld, therefore state withdrew charges		
Offences committed	Pointing of a firearm	1
Accused	Females aged 14 - 17	1
Witnesses not at court		
Offences committed	Possession of stolen property	1
	Theft where the value is unspecified	1
Accused	Males aged 14- 17	1
Witnesses unwilling to testify		
Offences committed	Assault GBH	1
Accused	Females aged 14 - 17	1

At Pietermaritzburg 35 children were involved in cases that were withdrawn. The table below provides information on the reasons and a breakdown of the age and gender of the child as well as the type of offence committed.

Table 19: Reasons for withdrawal at Pietermaritzburg		
At request of state – no reasons given		
Offences committed	Theft where the value is unspecified	3
	Theft out of motor vehicle	1
	Assault GBH	1
Accused	Males aged 14 - 17	5
Accused deceased		
Offences committed	Housebreaking and theft	1
Accused	Males aged 14 - 17	1
Complainant not available		
Offences committed	Malicious damage to property	1
	Robbery	3
Accused	Females aged 14 - 17	1
	Males aged 14 - 17	3
No charges specified		
Offences committed	Unknown	1
Accused	Females aged 14 - 17	1
Completed diversion programme		
Offences committed	Assault GBH	1
	Common assault	1
	Theft out of motor vehicle	1
	Theft where the value is unspecified	2
Accused	Males aged 14 - 17	4
	Females aged 14 - 17	1
Guardian not present		
Offences committed	Theft where the value is unspecified	1
Accused	Females aged 14 - 17	1
Insufficient evidence		
Offences committed	Robbery	1
	Assault GBH	1
Accused	Males aged 14 - 17	2
Matter mediated successfully		
Offences committed	Assault GBH	1
	Common assault	4

Accused	Females aged 14 - 17	1
	Females aged 10-13	1
	Males aged 14 - 17	2
	Males aged 10-13	1
Unknown		
Offences committed	Theft where the value is unspecified	9
Accused	Males aged 14 - 17	9
Pending completion of diversion programme		
Offences committed	Assault GBH	1
Accused	Males aged 14 - 17	1
Withdrawal statement made		
Offences committed	Malicious damage to property	1
Accused	Male aged 14 - 17	1

At Pretoria 65 children were involved in cases that were withdrawn. The table below provides information on the reasons, a breakdown of the age and gender of the child and type of offence committed.

Table 20: Reasons for withdrawal at Pretoria		
Accused apologised to complainant		
Offences committed	Common assault	1
Accused	Males aged 14 - 17	1
Accused deported to Zimbabwe		
Offences committed	Theft where the value is unspecified	1
Accused	Males aged 14 - 17	1
Accused mentally impaired		
Offences committed	Robbery	1
Accused	Males aged 14 - 17	1
Accused sent for diversion programme		
Offences committed	Possession of drugs	1
Accused	Males aged 14 - 17	1
Adult co-accused testified that child was not guilty		
Offences committed	Theft where the value is unspecified	1

Accused	Females aged 14 - 17	1
At request of state – reasons unknown		
Offences committed	Possession of stolen property	1
	Assault GBH	2
	Common assault	1
	Robbery	1
	Theft where the value is unspecified	3
Accused	Males aged 14 - 17	8
Docket missing		
Offences committed	Shoplifting	1
	Possession of drugs	2
	Theft where the value is unspecified	2
	Robbery	1
	Common assault	1
Accused	Males aged 14 - 17	6
	Females aged 14 – 17	1
Charge withdrawn against the accused in absentia (postponed too many times)		
Offences committed	Shoplifting	1
Accused	Males aged 14 - 17	1
Accused turned state witness against adult co-accused		
Offences committed	Theft where the value is unspecified	1
Accused	Males aged 14 - 17	1
Completed diversion programme		
Offences committed	Common assault	3
	Assault GBH	2
	Fraud	1
	Possession of drugs	7
	Theft where the value is unspecified	8
	Theft of a firearm	1
	Possession of car-breaking implements	3
	Shoplifting	2
	Housebreaking and theft	1
	Accused	Males aged 14 - 17
Females aged 14 - 17		5
Females aged 10-13		1
Docket missing and witness not in court		
Offences committed	Robbery	2

Accused	Males aged 14 - 17	2
Complainant (child's mother) withdrew charge		
Offences committed	Theft where the value is unspecified	1
Accused	Males aged 14 - 17	1
Unknown		
Offences committed	Possession of drugs	1
	Theft where the value is unspecified	1
	Shoplifting	1
	Illegal hawking	1
Accused	Males aged 14 - 17	4
Provisional withdrawal – accused did not complete diversion programme but witness unavailable		
Offences committed	Assault GBH	1
Accused	Males aged 14 - 17	1
Provisional withdrawal – accused serving another sentence		
Offences committed	Possession of drugs	1
Accused	Males aged 14 - 17	1
Withdrawal statement by complainant		
Offences committed	Common assault	6
Accused	Males aged 10-13	5
	Males aged 14 - 17	1

While some of these reasons are unavoidable, the reasons relating to poor police investigation, loss of dockets and insufficient evidence point to bad management of cases – something that the preliminary inquiry has been developed to try and overcome.

It should be noted that many of the withdrawals relate to the successful completion of diversion programmes or referral to a diversion programme yet again illustrating inconsistency of practice where some courts withdraw on referral to a diversion programme whereas others only withdraw after successful completion of the programme. The Child Justice Bill will ensure consistency in that the order for diversion will remove the matter from the roll and it will only be re-enrolled if the child fails to complete the programme. However, it is uncertain whether this procedure will be changed by the Portfolio Committee on Justice and Constitutional Development.

2.2.6 Probation records

In the proposed Child Justice Bill an assessment is conducted by a probation officer and it is intended to serve a number of purposes, namely, estimating the age of a child, establishing the prospects for diversion, establishing whether a child is a child in need of care, making recommendations relating to the release or detention of a child and determining steps to be taken in relation to children below 10 years of age.

At present there is no legal requirement for the assessment of children who are arrested, although assessments by probation officers do occur. However, assessments in the present system are not uniformly applied or regulated and delays often occur.

In terms of the proposed legislation, the result of the assessment is a set of recommendations submitted to the preliminary inquiry magistrate pertaining to the management of the child. This procedure will be invaluable in determining which children can be dealt with outside of the criminal justice system and then ensuring that they realise that opportunity.

This section of the research concentrated on an analysis of probation records. On the research days that the field researchers were at court, they were also tasked with collating information from the probation records of that particular day. These records primarily relate to the assessments of children that were undertaken on the day in question. The following information reflects the number of records that were analysed throughout the duration of the research period.

At Wynberg there were 109 probation records and 164 probation records at Pretoria (as stated above, there were no probation records collected at Pietermaritzburg as permission to access these records was not secured).

Table 21: Children appearing before probation officers disaggregated by age, gender and site			
	Wynberg	Pretoria	<i>Total</i>
Males under 10	0	0	0
Females under 10	0	0	0
Males 10-13	3	5	8
Females 10-13	0	3	3
Males 14 - 17	95	127	222
Females 14 – 17	11	29	40

- **Family circumstances**

The assessment procedure allows for valuable information on the family circumstances of children to be discerned. This information can determine whether the child is from a single-parent home and whether the child is lacking a mother- or father-figure. This information can assist in decisions as to whether the child is a child in need of care.

Table 22: Family circumstances of children appearing before a probation officer per site

	Wynberg	Pretoria	Total
Number of children with both parents	55	54	109
Number of children with only mother	27	44	71
Number of children with father only	1	9	10
No father or mother	8	17	25
Unknown	18	40	58

It is clear from the research that the majority of children had both parents – however, it must be noted that a large proportion of children had parents that were divorced and had re-married. There were also children who did not have parents (one child’s parents both died of HIV-related diseases) and were residing with extended family. It was also apparent from the probation records that often times a parent was not interested in the child and did not want anything to do with him / her.

- **Previous involvement with a social worker**

The assessment form indicates whether or not a child has had previous interaction with social workers. This is valuable, because if there has been interaction, it may indicate the child is a child in need of care and may also point to children who have special needs or who require a more in-depth assessment.

It appears from the research that none of the children appearing before a probation officer at Wynberg or Pretoria had experienced the previous involvement of a social worker or it was unknown whether they had or not.

- **Recommendations**

Table 23: Recommendations made by the probation officer per site in terms of manner in which the case should proceed			
	Wynberg	Pretoria	Total
No further action	4	2	6
Prosecution	73	32	105
Diversion	28	117	145
Unknown	4	13	17

It is of concern that at Wynberg many more recommendations were made to prosecute the child than to divert the child, yet the opposite is true for Pretoria – again demonstrating the lack of consistency between different courts.

Table 24: Recommendations made by the probation officer per site in terms of the placement of the child			
	Wynberg	Pretoria	Total
Care of parent or appropriate adult	75	144	219
Home-based supervision	0	6	6
Place of safety	15	2	17
Prison	9	0	9

Other:			4
❖ Drug Information school	2		
❖ Youth care centre	1		
❖ Drug therapy		1	
Residential facility/children's home	0	1	1
Secure care facility	0	1	1
Unknown	7	9	16

It is encouraging that most of the recommendations were that the child be placed in the care of a parent or guardian. However, during the course of the research, it was recommended by the Wynberg probation officer that nine children be sent to prison. The reasons for this are unclear but one of the reasons may have been that there was lack of space at alternate facilities and / or that the parents or guardian were unavailable or unwilling to house the child and no alternate facilities were available.

2.3 FIELD WORKER OBSERVATIONS: THE FUNCTIONING OF THE COURTS

What follows are some of the observations made by field workers and supervisors at the three sites in terms of the ways in which the courts functioned and the challenges that this posed for the research:

Pietermaritzburg: court proceedings

Many of the cases on the roll in this court are not children (not as co-accused for minors); it would seem as if this court is not exclusively for children in that many cases of adult accused are transferred to the child court from other courts, particularly for first appearances. At times, cases are also transferred to and from B court and cases are drawn from other courts to fill up the day's court roll.

It was noted that the magistrate appears sensitive to the special needs of children this necessarily has an impact on how cases are handled. It was also reported that inaccurate or incomplete interpretation of testimony by the court interpreter was brought to the attention of the court during the time of the research. A problem of note is that court proceedings are delayed because dockets for accused in custody are not available timeously. There was also a particular problem in court due to the assigning of student prosecutors to D court in November 2006. The field workers at the site noted the following about the effect of this on the court proceedings:

- Student prosecutors are confused about procedures
- The court orderly confirmed that the confusion would compromise efficient proceedings effecting child accused.
- Student prosecutors seemed to be either left unsupervised or supervised by an inexperienced prosecutor.
- Student prosecutors issued the wrong court documents and documents had to be re-issued.

- Despite court starting late because the magistrate was attending a meeting, student prosecutors were so inexperienced that they were unable to peruse the day's charge sheets before court commenced.
- Student prosecutors were causing confusion by not reading charge sheets accurately and asking accused to be brought up from the cells when in fact they are out on bail.
- Court proceedings were delayed for several days due to inexperienced student prosecutors.

Wynberg Court: Access to information and Probation Reports

Wynberg court has a dedicated youth justice court and cases from other courts do not generally get transferred to the youth court (unless as co-accused to a child offender). The field workers made every effort to forge good human relations with the clerk of the court, thus enabling them to gain easier access to the court book before and after court sittings. The field worker responsible for gathering information from probation reports noted the absence of a probation officer on several occasions – this has also impacted on the availability of data from probation records.

Pretoria Court

As with Pietermaritzburg court, the practice of this court is to draw cases from other courts if it finalises its roll early. However, on one occasion the public prosecutor was upset about this since she felt that the child court was not a suitable venue for hearing adult cases since the adult offenders were dangerous. There was also conflict on one occasion between the public prosecutor and the magistrate due to the fact that the magistrate insisted that all cases for the day had to be dealt with (since the court is meant to be in session until 16h00), the public prosecutor was unhappy about this.

The magistrate for the youth court (prior to her transfer to another court) appeared sensitive to the special needs of children. An illustration in point is a request by the magistrate to an interpreter called in to interpret for a foreign accused, who was being held at a place of safety, to spend extra time with the child to note his needs and problems and to transmit this to the court. However, in September 2006 the youth court magistrate was officially transferred to another court by the Department of Justice. By mid-October there was still no replacement for her, leaving her to act as appointed magistrate for this court. For the balance of the month and until mid-December no replacement had been appointed, resulting in numerous court hour losses as the court waited for magistrates from other courts to be freed up to sit in the youth court. This also impacted on the research, as one of the magistrates who was not *au fait* with the research project objected to the presence of the field workers during *in camera* proceedings. A meeting with the Senior Public Prosecutor had to be arranged to ensure that all magistrates were aware of the permission granted to the students to sit in on youth court proceedings. The students were of the opinion that some of these magistrates were not sensitive to the needs of young accused. In mid-December, in the hope of gaining clarity on the appointment date of a dedicated magistrate to the court, the students again sought a meeting with the Senior

Public Prosecutor, but without success. Further obstacles to the smooth running of the court included:

- During week one of the research period there was no Afrikaans interpreter available and another court interpreter had to be called to interpret during the sentencing of an Afrikaans-speaking accused.
- In November the interpreter failed to interpret all questions that the magistrate was directing at the accused and as a result of this the accused was not able to answer all questions. It was clear that the magistrate was not aware of this fact and the students averred that because of this the 'stand in' magistrate became frustrated and "took her frustrations out on the accused" for not answering all his questions.
- The court often experienced delays caused by the unavailability of legal aid lawyers. The students averred that the legal aid lawyers did not accord the court priority and were always busy in other courts.

Two issues of concern is that the in October the field workers noted that youth accused were being held in the same court holding cells as adult accused. Also, on several occasions this court had to conduct age assessments as adult accused attempted to pass themselves off as children. Once the age of such accused had been determined the cases were transferred to other courts.

A major obstacle to the research was the fact that the Probation Officer was not available for the weeks 2, 3, 8, 9 and 10 of the research period. The result is not only a lack of available data for that period, but also that cases postponed to dates within those week to enable assessments would require another postponement, thus lengthening the period of legal proceedings unnecessarily.

3. CONCLUDING REMARKS

Much of the findings for phase two largely conform to that which was found in phase one in terms of the profile of children entering the court system and the types of offences charged with. Gaining access to the probation officers' assessment reports proved particularly difficult. On numerous occasions probation officers were not always present at court. Irregular attendance on the part of the probation officers was also a feature of the court process. Similarly, a high turnover of staff within the court contributed to postponements. Different personalities and styles of operation impacted on the number of cases being processed and the manner in which they were dealt with. Also, there appear to be inconsistencies in terms of how each court operates as shown in the reasons for postponements for instance. The findings of the research – such as postponements, diversion practices, and the like – also reflect to a large extent not only the functioning of the courts but the functioning or lack thereof, of supportive institutions. For instance one of the reasons for postponements experienced at all sites was the fact that dockets were missing and / or that children were simply not being brought to court. Also, the findings reflect the availability or lack thereof, of appropriate channels for diversion and / or housing of the accused (for instance, reflected in the number of postponements at

Wynberg for instance while placements for places of safety become available). The difficulty in improving the court system in its entirety will thus have to focus not only on court practices and personnel but support mechanisms, institutions and programmes as a whole and also ensure the buy-in of all departments responsible either directly or indirectly with youth in trouble with the law. Data collection was restricted by illegible and incomplete information from the probation officer records and charge sheets. At times, the speed with which proceedings were conducted within the court meant that it was difficult for the researchers to keep up with the proceedings and the data capturing process, particularly when there were consecutive postponements or withdrawals of cases. On a few occasions, bits of information relevant to the data-capturing process were missed or overlooked during the course of the proceedings and, consequently, had to be consolidated during court adjournments. It seems that often the criminal justice process is not fully comprehensible to a lay-person. Very often the researchers were unable to confirm much of the data due to reasons cited. The relative dearth of information necessarily impacts on the quality of the data as, in certain areas of analysis, only a select portion of the research is reliable and therefore useable and applicable.

What these findings hope to achieve is a snapshot of some of the challenges that need to be addressed particularly once the Child Justice Bill is enacted.

4. RECOMMENDATIONS

In the light of the fact that the researchers at all three sites experienced problems with sections two and three of the charge sheet template, resulting in some rejections of the data sample, future training should perhaps focus more attention on the use of data tools and ensuring that ambiguities and difficulties are resolved prior to the commencement of the field work.

In terms of the functioning of the courts the following recommendations are made:

- The absence and/or irregular attendance of probation officers at the court necessitates an immediate solution such as the assignment of two probation officers to the court or the allocation of assistants to the dedicated court probation officer.
- High turnover within the court necessitates an improved communication system amongst court role-players so that replacements to absent court officials are made timeously so as to ensure that court activities are not postponed indefinitely.
- Various staff shortages need to be addressed through the appointment of more personnel or of assistants to dedicated court officials, an internship programme is also a possibility.
- The failure of police to deliver dockets on time as well as to deliver children in time for trials impacts on the efficiency of the court system and needs to be addressed through better interdepartmental communication or the creation of a post dedicated to grass roots court management and co-ordination between departments.

- There is also a need to enhance the capacity and use of programmes for diversion and alternative (non-custodial) sentencing and the development and introduction of new programmes.
- A systematic campaign of information and awareness on the judicial / legal rights of the child would seek to provide accessible information in this regard to children, including through the school system, as a means to strengthen the prevention of violations of their fundamental rights or neglect of fundamental legal safeguards.
- There is a need to ensure that systematic training activities are provided for relevant professional groups working with and for children in the area of child justice. Particular reference should be made to the role played by judges / magistrates, lawyers, social workers and probation officers, law enforcement officials, and personnel working in institutions for such children.
- Mechanisms should be established to assist the government in the establishment of a monitoring structure and procedure for the child justice system at all levels.
- Training of court personnel in child justice issues is important and this will have to be intensified once the Child Justice Bill is enacted.
- The caregivers / parents / guardians of the youth who appear in the court should be encouraged and empowered to be more active in the proceedings.

There are some overall recommendations that can be made, for example, in relation to training and information dissemination, however, it is hoped that many of the procedural uncertainties will be addressed by the Child Justice Bill once enacted. The other problems experienced relate mainly to work performance and lack of training. It is this aspect therefore that the Departments of Justice and Social Development will have to pay attention to as these issues cannot be solved by legislation. Quality control, training and court management are issues that need to be addressed if any child justice system, present or future, can function properly.

ANNEXURE 1:

**THE CHARGE SHEET
Research Template A**

Form Number _____

Date _____

Researcher _____

Court/Magisterial District _____

CASE Number _____

No. of co-accused (if any) _____

Note to Researchers:

1. Where information is not available in the charge sheet, police docket or probation officers file write in *“unknown” - IF INFO IS MISSING.*
2. *If the information is not necessary for a particular question, fill in “not applicable”, n/a.*
3. Where the information that was not contained in these files has been found or been made available from somewhere else, please specifically note on your template where this information was drawn from.

INFORMATION CONTAINED IN CHARGE SHEET		
1. Basic Information		
Which police station is responsible for the case?		
Place of trial/first appearance		
Date of arrest		
Date of first appearance		
Address/residence of the child filled in?	<i>Yes</i>	<i>No</i>
Gender		
Age		
Is there any evidence that the child’s age is in dispute?	Yes	No
Race		
Nationality		
Offences charged with:		
For what was child appearing for on this day? eg		

Was it a first appearance, for plea or trial?	
<i>If the case has been on the role for a period longer than 1 year – note the reasons for the delay. This will mean you must take notes on the number of times that the case was postponed and the reason for each postponement and attach those notes to this template</i>	

2. Placement of Child After Arrest	Name and/or Location of Facility	
Custody (prison)?		
Custody (police cells)?		
<i>Custody</i> (Secure Care Facility)?		
<i>Custody</i> (Place of Safety)?		
Released into Custody of Parents/Guardian?		
Reasons cited for not releasing child into custody of parent or guardian:		
If this is not the first appearance for the child, has the type/location of placement changed?	Yes	No
Name and location of facility/placement of child since first appearance:		

3. Information on Arrest & Notification		
Was the child released on police bail?	Yes	No
Was the child warned <i>by police to attend court</i> ?	Yes	No
Into whose custody was the child placed?		
Was the child issued with a written notice?	Yes	No
Was the child issued with a summons to appear?	Yes	No
Was the child released before an assessment by the probation officer took place?	Yes	No
4. Bail		
Did the court release the child on bail?	Yes	No

Reasons for granting bail:
Reasons for denial of bail:
Conditions of bail:

5. Plea & Sentencing		
<i>Has the child pleaded?</i>	Yes	No
Nature of Plea? (<i>guilty / not guilty</i>)		
Date of Plea? <i>If the case has been on the role for a period longer than 1 year – note the reasons for the delay. This will mean you must take notes on the number of times that the case was postponed and the reason for each postponement and attach those notes to this template</i>		
Discharge in terms of s. 174 of the CPA	Yes	No
Judgment?	Guilty	Not Guilty
Date of Judgment? <i>If the case has been on the role for a period longer than 1 year – note the reasons for the delay. This will mean you must take notes on the number of times that the case was postponed and the reason for each postponement and attach those notes to this template</i>		

Nature of offences found guilty of:		
Nature of Sentence:		
Was there a pre-sentence report by a probation officer or a correctional supervision officer?	Yes	No
Did the court follow the probation officer's or the correctional officer's recommendation(s)?	Yes	No
Was there anything noteworthy about this?		
Date of Sentence: <i>If the case has been on the role for a period longer than 1 year – note the reasons for the delay. This will mean you must take notes on the number of times that the case was postponed and the reason for each postponement and attach those notes to this template</i>		
Placement of Child (as part of sentencing) (please tick)		
Custody (prison)?		
Reform schools		
Released into Custody of Parents/Guardian? <i>(e.g. suspended sentence, postponed sentence or correctional supervision in terms of s. 276(1) (h))</i>		
Duration of sentence/placement (<i>prison or reform school</i>)?		

NOTE: If the child was sentenced to prison or reform school as a sentence you must go through the charge sheet and list the reasons for the sentence (the magistrate should write these out or if he doesn't list what the prosecutor said in arguing for sentence –

this should appear from the charge sheet). You must also indicate whether the child had previous convictions from the SAP 69 form and indicate if the SAP 69 was handed in as evidence. List the previous convictions. Write this down on a separate piece of paper and attach it to this template.

6. Juvenile Justice Courts		
Was the child tried in a Juvenile Justice Court? <i>(trial must have happened)</i>	Yes	No
Was the case drawn to another court?	Yes	No
If so, which court?		
On what grounds was the referral made? <i>(e.g. court ran out of time or the magistrate who had heard the case previously is sitting in another court, case erroneously on juvenile court roll)</i>		
Was the child referred for a Children's Court Inquiry?	Yes	No
On what grounds was the referral made?		

7. Diversion		
Was the child diverted?	Yes	No
Nature of diversion programme or conditions of diversion?		
<i>Were reasons given?</i>	<i>Yes</i>	<i>No</i>
If the case was not diverted what reasons were provided? (Please tick appropriate box below)		

Reasons for rejecting diversion option	✓
---	---

No fixed address	
No parent or guardian	
Previous convictions	
No acknowledgement of responsibility or guilt	
Seriousness of offence	
Lack of vacancy in programmes	
Lack of available programmes	
Other (please specify)	

Was the case postponed pending successful completion of a diversion programme?	Yes	No
--	-----	----

8. Withdrawals and Postponements		
Was the case withdrawn?	Yes	No
What were the reasons cited for the withdrawal of the case?		

Was the case postponed?	Yes	No
What were the reasons cited for the postponement of the case?		

9. Researchers Notes	
How many cases were “first appearance” cases today?	
How many cases were on the court roll today in total?	
How many cases were actually dealt with by the court today?	
Other observations:	

end

ANNEXURE 2:

**THE PROBATION RECORDS
Research Template C**

Form Number _____

Date _____

Researcher _____

Court/Magisterial District _____

CASE Number _____

Note to Researchers:

1. Where information is not available in the charge sheet, police docket or probation officers file write in *“unknown” - IF INFO IS MISSING.*
2. *If the information is not necessary for a particular question, fill in “not applicable”, n/a.*
3. Where the information that was not contained in these files has been found or been made available from somewhere else, please specifically note on your template where this information was drawn from.

1. Background Details:	
Probation Office Service Office	
Age of child	
Grade of child (schooling)	
Gender	
Nationality	
Race	

2. Family of the Child	
Father (Yes/No)	
Mother (Yes/No)	
Siblings (How many?)	
Family employment/socio-economic details:	

Family background:		
Previous involvement of social worker?	Yes	No
Details of social worker involvement:		

3. Arrest Details		
Date and time of arrest		
Reason for arrest		
First Appearance – date		
Where the child is currently staying:	(tick below)	
• Parent		
• Guardian (details?)		
• Place of safety		
• Secure care facility		
• Police custody		
• Prison/correctional services		
Are there co-accused?	Yes	No
How many co-accused?		

4. Historical and Personal Details		
Does the child acknowledge responsibility for the crime?	Yes	No
If yes, what are the reasons given by the child for committing the crime:		
Has the child had previous contact with the criminal justice or child care system?	Yes	No
Details:		
Was legal representation and the advantages thereof discussed with the child?	Yes	No

5. Developmental Assessment (<u>briefly</u> describe the probation officer's assessment)
Sense of belonging:
Sense of mastery:
Sense of independence:
Sense of generosity:

6. Recommendations of Probation Officer	
Tick one:	
No further action taken	
Formal caution with conditions	
Formal caution without conditions	
Prosecution	
Diversion	
Motivation provided by probation officer:	
If diversion is recommended, which type? (tick one below)	
Youth Empowerment Skills (offered by NICRO)	
Family Group Conference	
Pre Trial Community Service	
Journey Programme	
Home Based Supervision	
South African Young Sex Offenders' Programme	
<i>Teddy Bear Clinic</i>	
<i>Restorative Justice Centre</i>	
<i>Childline KZN</i>	
<i>NYDO (National Youth Development Outreach)</i>	
Other (please specify)	

<i>Were reasons given for not diverting the child</i>	<i>Yes</i>	<i>No</i>

If diversion was not recommended, what were the reasons for rejecting diversion (please tick below)	✓
No fixed address	
No parent or guardian	

Previous convictions	
No acknowledgement of responsibility or guilt	
Seriousness of offence	
Lack of vacancy in programmes	
Lack of available programmes	
Other (please specify)	

7. Placement of Child - recommended by the PO (tick one below)	
Care of parent or appropriate adult	
Place of safety	
Secure care facility	
Residential facility/Children's Home	
Prison	
Home based supervision	
Other (specify)	
Motivation or details provided by probation officer:	

Note also that the following section which was included in the probation records template used in phase one was ***not included*** in phase two:

8. If assessment has not taken place:
If an assessment has not taken place, are there reasons?

ANNEXURE 3:

**THE OBSERVATIONAL TEMPLATE
Research Template D**

Form Number _____

Date _____

Researcher _____

Court/Magisterial District _____

CASE Number _____

No. of co-accused (if any) _____

Note to researchers: You will fill out one form for each case

Was the option of assisting children in proceedings made available to parents/family and to the children?	Yes	No
Did a member of the family participate in the hearing?	Yes	No
In your opinion, did the child <i>appear</i> to know what was happening during the proceedings?	Yes	No
Observations about child's knowledge of or participation in proceedings:		
Did the court follow the probation officers recommendation(s)? (in assessment or pre-sentence report)	Yes	No
Details of what the court considered in relation to these recommendations (what did the magistrate say?):		

Was the child diverted?	Yes	No
If so, what was the nature of the diversion? ie. did you hear where the child was referred to. If so, please state where, for example the Youth Empowerment Skills Programme of NICRO.		

If the child was not diverted (and otherwise placed into custody, what reasons were provided by the court?) Please tick below.	
No fixed address	
No parent or guardian	
Previous convictions	
No acknowledgement of responsibility or guilt	
Seriousness of offence	
Lack of vacancy in programmes	
Lack of available programmes	
Other (please specify)	

Additional observations about general proceedings: