

CHILD DIVERSION PROGRAMME MINIMUM STANDARD COMPLIANCE IN THE
WESTERN CAPE: AN EXPLORATIVE STUDY

by

SONJA BERG

submitted in accordance with the requirements for the degree of

MASTER OF ARTS

in the subject

CRIMINOLOGY

at the

UNIVERSITY OF SOUTH AFRICA

SUPERVISOR: DR M I SCHOEMAN

CO-SUPERVISOR: PROF J H PRINSLOO

Summary

The aim of this exploratory study was to investigate the Western Cape's NGO child diversion programme compliance with the Minimum Programme Outcomes Standards developed for programme accreditation. The Minimum Standards focus on optimal diversion outcomes for children in conflict with the law and were designed to ensure good diversion practice. The juvenile justice system has determined child diversion as a rehabilitative and cost-effective alternative justice option, contributing towards the curbing of re-offending among child offenders.

The results of the study revealed a high level of Minimum Programme Outcomes Standards compliance, with an average of 83%. These results indicate that the programmes provided by non-governmental organisations and providers are complying with the Minimum Standards and are thereby ensuring good diversion practice. This should positively influence their eligibility for programme accreditation. At the same time, the results of the study have pointed towards other challenges, which were evaluated and discussed.

Key Terms: child diversion, diversion accreditation policy; Child Justice Act (75 of 2008); programme delivery; minimum standard compliance; juvenile justice; children in conflict with the law; diversion programmes; minimum programme outcomes standards; promotion, expansion and monitoring of diversion.

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NOVEMBER 2012

Declaration

I declare that **CHILD DIVERSION PROGRAMME MINIMUM STANDARD COMPLIANCE IN THE WESTERN CAPE: AN EXPLORATIVE STUDY** is my own work and that all the sources that I have used or quoted have been indicated and acknowledged by means of complete references.

Sonja Berg

25.02.2013

Signature

(MISS S BERG)

Date

Dedication

I dedicate this dissertation to my family. You have supported me unconditionally over the last few years. I love you and thank you.

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I wish to express my sincere thanks and appreciation to the following people:

My supervisors, Dr. Marelize Schoeman and Prof. Johan Prinsloo, for their support, invaluable patience and guidance.

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To Ricky Röntsch, for proof-reading and editing the text of this dissertation.

Without you, this study would not have been possible.

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Abstract

The aim of this exploratory study was to investigate the Western Cape Province's non-governmental child diversion programme compliance with the Minimum Programme Outcomes Standards developed by the Department of Social Development for programme accreditation. The Minimum Standards focus on optimal diversion outcomes for children in conflict with the law and were designed to ensure good diversion practice. The juvenile justice system has determined child diversion as a rehabilitative and cost-effective alternative justice option, positively contributing towards the curbing of re-offending among child offenders.

The research process was guided by a mixed method approach and utilised a structured questionnaire as well as comments and information stated by the respondents during the interview process. The questionnaire was applied to a representative sample of non-governmental diversion programme facilitators of the various diversion programme types to determine the level of programme compliance and to evaluate the implications that the results might hold for programme participants, service providers, as well as for the accreditation process.

The results of the study revealed a high level of Minimum Programme Outcomes Standards compliance, with an average of 83%. These results indicate that, in general, the programmes provided by non-governmental diversion service providers are complying with the Minimum Standards and are thereby ensuring good diversion practice. This should positively influence their eligibility for programme accreditation by the Department of Social Development. At the same time, the results of the study have pointed towards other challenges, which were evaluated and discussed.

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Acronyms

Applied Fiscal Research Centre	AFREC
Centre for Justice and Crime Prevention	CJCP
Department of Correctional Services	DCS
Department of Social Development	DSD
Family Group Conferencing	FGC
Global Peace Index	GPI
Human Sciences Research Council	HSRC
Inter-Ministerial Committee on Young People at Risk	IMC
National Crime Prevention Strategy	NCPS
National Institute for Crime and the Re-integration of Offenders	NICRO
National Policy Framework	NPF
National Prosecuting Authority	NPA
National Youth Lifestyle Study	NYLS
Non-Governmental Organisation	NGO
Non Profit Organisation	NPO
Pre-Trial Community Service	PTCS
Sexual Offences and Community Affairs Unit	SOCA
South African Law Commission	SALC
South African Law Reform Commission	SALRC
South African Sex Offenders Programme	SAYSTOP
Truth and Reconciliation Commission	TRC
United Nations Rules for the Protection of Juveniles Deprived of their Liberty	JDL
Victim Offender Mediation	VOM
Youth Empowerment Scheme	YES

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CHAPTER 1

GENERAL OVERVIEW AND ORIENTATION OF THE STUDY

The day will come when nations will be judged not by their military or economic strength, nor by the splendour of their capital cities and public buildings, but by the well-being of their peoples;... by the provision that is made for those who are vulnerable and disadvantaged; and by the protection that is afforded to the growing minds and bodies of their children (The United Nations Children's Fund, 2000).

1.1 General Overview of the Study

This exploratory study aims at investigating the compliance level of child diversion programmes, offered by non-governmental service providers in the Western Cape Province, South Africa, with the Minimum Programme Outcomes Standards developed by the Department of Social Development for programme accreditation, as legislated by the Child Justice Act 75 of 2008 (hereinafter referred to as the Act). The Minimum Programme Outcomes Standards are intended to provide the most beneficial diversion outcomes for children in conflict with the law and were designed to ensure good diversion practice (Swanson-Jacobs, 2007: 2; Dawes & van der Merwe, 2004: 5). Diversion has been identified as a positive and cost-effective contribution towards the rehabilitation and reduction of re-offending of child offenders, and is one of the main objectives of the new Act, enacted in April 2010 (Gallinetti, 2009: 43).

The Act is designed to provide a separate juvenile justice system for child offenders, is aimed at protecting the rights of children accused of committing crimes, and changes the way children are managed in the criminal justice system (South Africa, Department of Social Development, 2011b; Steyn, 2005: 1). Depending on the severity of the crime committed the Act proposes that instead of imprisoning children who have broken the law, they should, in line with restorative justice principles, either be given a diversion order, be placed in a diversion programme, or should be sent to places of safety where rehabilitation is the priority. Incarceration should be the last resort, for the shortest period of time and only if a child offender poses a threat to other children in places of safety or to the community at large (Skelton, 2009a: 46). Section 56 of the Act not only establishes a criminal justice process, based on restorative justice principles, which protects the rights of children and provides a juvenile justice system that cultivates children's sense of dignity and worth, but it also requires that a child may only be referred to a diversion service provider or diversion programme that is accredited by the Department of Social Development (DSD) (South Africa, Department of Social Development, 2010a: 6; Muntingh, 2009: 154).

The next section will continue with the introduction and orientation of the study.

1.2 Introduction and Orientation of the Study

A country's prosperity and stability depends on various factors, including a government that can provide opportunities, build capacities and create a safe environment for its citizens to contribute to the growth of their country with their knowledge and skills (Kelley, 2011: 15; IDASA, 2010: 5). Historical dynamics in South Africa have prevented the provision of adequate opportunities and curtailing the growing number of the vulnerable, poor and disadvantaged (Stout, 2008: 2). South Africa's apartheid legacy is poverty, unequal distribution of wealth, a poor education system lacking basic infrastructure, high levels of unemployment, high rates of crime and victimisation, and a "culture of violence", defined as continuous exposure to crime and violence in places of safety, such as the home or the community, as well as the internalisation and normalisation of violence (Mbeki, 2011: 12; Pelser, 2008: 7; Steyn, 2005: 1). Crime and violence are major factors that continue to threaten the personal safety, psychological well-being, moral health and economic development of many South Africans (Pelser, 2008: 7; Steyn, 2005: 1).

Children in this country face a multitude of changes and challenges in their social, economic and environmental spheres, as South Africa is still manoeuvring its way into democracy. Crime is a continuous concern in South Africa, with levels of serious violent crime ranking among the highest in the world (Centre for the Study of Violence and Reconciliation, 2009: 3). Children and youth are particularly vulnerable and many come from marginalised groups where they are the children of broken families, live in gang-infested neighbourhoods, have no adult role models, display low achievement rates at school and are often victimised (Sloth-Nielsen & Gallinetti, 2011: 83). High exposure to crime and victimisation can increase children's susceptibility to engaging in criminal behaviour (Pelser, 2008: 1; Leoschut & Burton, 2005: 22; Steyn, 2005: 1). During 2011/2012 approximately 2.18 million adult crime cases were registered in South Africa, of which the majority were serious crimes: 28.6% were contact crimes, which include assault with grievous bodily harm, common assault, aggravated robbery, sexual offences, common robbery, murder and attempted murder, and 24.6% were other serious crimes such as commercial crime and theft (South Africa, South African Police Services, 2012: 1). Batley (2005:16) is of the opinion that the criminal justice system will not be able to decrease these numbers if it continues to focus on a purely retributive approach to crime, which aims at increasing the number of arrests, prosecutions and the sentences of offenders, resulting in an over-burdened criminal justice system and an over-populated correctional services system. In March 2012 South Africa's prison population comprised 121 023 prisoners with an overcrowding rate of approximately 30% (South Africa, Department of Correctional Services, 2012a: 28). While the essence of the retributive approach consists of trying to improve the criminal justice system and making it more efficient by increasing the number of arrests and prosecutions, studies worldwide have shown that handing down harsher punishment has been unsuccessful in decreasing the number of offenders or preventing crime and recidivism (Batley, 2005: 16). The retributive approach also ignores the needs of victims and does not nurture a culture that values morality and encourages offenders to take responsibility for their behaviour (Batley, 2005: 16). It seems fundamental that any crime prevention or crime combat strategy should also focus on the moral health

and fibre of a country, with special emphasis on its children and youth, who are the foundation of every generation. South Africa recognised the need to direct its focus on young people and, as described by Badenhorst (2012: 1), “*after more than a decade of lobbying, advocating, debating and discussions*”, filled a vacuum by establishing a progressive juvenile justice system, based on the principles of restorative justice and youth diversion, by promulgating the Act in 2010.

In the early 1990s, South Africa was moving from apartheid to democracy, a transition, as Skelton (2002a: 496) notes, “*characterised by reconciliation, not revenge*”. Reconciliation and the restoration of balance have their roots in the African philosophy of humanity and community, known as ‘*ubuntu*’. *Ubuntu* is a Zulu word that describes a communal world view of African societies, based on respect and understanding between individuals, and has been translated as “humaneness” (Anderson, 2003: 9). It is derived from the expression ‘*umuntu ngumuntu ngabantu*’ meaning ‘a person can only be a person through others’ (Anderson, 2003: 9). Traditional concepts of indigenous African justice, along with the international restorative justice movement prevalent at the time had a big impact on South Africa’s juvenile justice reform (Skelton, 2002a: 496). Restorative justice involves balancing the interests of the offender, the victim, and the community, and relies on the idea that a well-functioning society operates with a balance of rights and responsibilities of all involved (Skelton & Tshehla, 2008: 10). This new juvenile justice system focuses principally on restorative justice because, as stated in the Preamble to the Act, “*...prior to 1994 South Africa had not given many of its children, particularly black children, the opportunity to live and act like children, and also that some children, as a result of the circumstances and environments in which they find themselves, have come into conflict with the law*”. South Africa acknowledges that juvenile crime cannot be defined or explained in simple terms, but that there are a number of factors and issues specific to the South African context that contribute to child offending.

Therefore, one of the main objectives of the Act is to prevent and limit the exposure of children and youth in conflict with the law, especially first-time offenders, to the possible adverse effects of the formal criminal justice system and court procedures (South Africa, Child Justice Act, 2008: Preamble). The aim is to rather divert these children into diversion programmes where they can learn various life or vocational skills and thereafter be re-integrated into their communities (Badenhorst, 2012: 4). The reasoning is threefold: there is concern that young offenders who enter the official criminal justice system will be stigmatised as criminals thus increasing the likelihood of continuing criminal activity; since children are still developing as human beings they have a bigger chance than adults to change their behaviour and become law-abiding contributors to society; and, diversion is the vehicle through which restorative justice principles find expression (Skelton, 2009a: 36; Stout, 2008: 2; Mbambo, 2005: 88; Wood, 2003: 2). In terms of the provisions of the Act, all suitable cases may be considered for diversion, irrespective of the nature or seriousness of the offence, even if a child offender has a record of previous diversions (Badenhorst, 2012: 4). Diversion is recommended as a suitable alternative to retributive sentencing, especially within the child justice field, and especially now that a regulative framework is being implemented through the Act. However, concerns regarding the practical and

operational effectiveness of these regulations, which include Minimum Programme Outcomes Standards and programme accreditation, on diversion programmes remain.

This study will therefore evaluate the Western Cape Province's non-governmental child diversion programme level of compliance with the Minimum Programme Outcomes Standards developed for accreditation. Even though the Act now mandates the Department of Social Development (DSD) and its probation officers to provide diversion services and holds the DSD accountable as the Act's custodian, the focus of this study is on the non-governmental diversion service providers that have been developing and offering diversion programmes and restorative initiatives for a number of years. A number of non-governmental diversion service providers initiated the practice of child diversion, liaised with magistrates to allow alternative sentencing in cases involving children and fought for many years to legislate child diversion. Emphasis on the non-governmental organisations and the programmes they offer will therefore provide the relevant scope for this study. The non-governmental organisations function separately from the DSD, which, on the one hand, has to ensure a valid accreditation process for all diversion providers, and, on the other, the availability of diversion programmes nationwide. The inclusion of only one South African province, namely the Western Cape, into this study, aimed to provide the initial exploration of this topic.

This chapter continues with the rationale of the study; the problem statement and aim of the study; trends in the development of child justice - both in South Africa and internationally; outlining the newly implemented Act, which is based on restorative justice principles; and describes how restorative justice informs diversion practice.

1.3 Rationale of the Study

Why has the reform of the South African juvenile justice system focussed on restorative justice and diversion as an alternative to a retributive system, and how is this new system regulated to ensure that children benefit from it? Although restorative justice may appear to be a new approach to criminal justice, a number of countries, such as Canada and New Zealand, have incorporated indigenous justice into the modern criminal justice system since the 1920s (Skelton, 2009a: 11; Batley, 2005: 16). The similarities between indigenous justice and restorative justice are often accentuated, especially in South Africa, because, prior to the introduction of European concepts of law, justice was handled by the communities, and both the offender as well as the victim, were included in the process (Anderson, 2003: 10; South African Law Commission, 1999: 3). Restorative justice also played an important role in South Africa's transition from apartheid to democracy (Stout, 2008: 5). As noted by Skelton and Frank (2001:118): *"[b]y choosing healing rather than vengeance through the Truth and Reconciliation Commission (TRC) South Africans have demonstrated that they understand the value of a restorative approach to justice"*. The TRC contributed to South Africa's relatively peaceful transition to democracy and has positively influenced the attitude toward restorative justice in South Africa's criminal justice system (Stout, 2008: 5; Anderson, 2003: 10). Restorative justice is seen as a way of integrating indigenous justice with the formal legal system in contrast to the retributive criminal justice system

"imposed by the former colonisers", and is therefore a relevant concept in South Africa today (Stout, 2008: 6; South African Law Commission, 1999: 3).

The focus on restorative justice within the justice system was originally aimed at providing solutions for problems, such as high rates of adult recidivism, which occurred as a result of the retributive justice paradigm in which the offender is responsible for the crime committed and is therefore punished accordingly (Anderson, 2008: 471; Zehr, 2002: 22). The retributive system does not mention the effect of the crime on the victim and/or community. By comparison, the restorative justice paradigm, which is embedded in indigenous justice, was developed to address the underlying reasons for offending, re-offending and recidivism (South African Law Commission, 1999: 9). This paradigm sees crime as a violation of one person by another and does not seek merely to blame and punish but rather focuses on problem-solving and restitution (Zehr & Gohar, 2003: 22). Supporters of restorative justice point to research that has proven that this approach is successful in reducing crime, satisfies victims' quest for justice, and restores the culture of '*ubuntu*' (Anderson, 2003: 9). Communities take back the responsibility of preventing crime and provide culturally- and community-sensitive intervention strategies (Swanson-Jacobs, 2007: 4).

Restorative justice has had a significant influence on the development of South Africa's child justice system and on the Act (Stout, 2008: 6; Skelton & Tshehla, 2008: 42). Skelton and Tshehla (2008: 19) explain that the popularity of restorative justice and diversion in the child justice field is largely due to its potential for a more effective approach to youth crime. As Batley (2005: 17) states "*restorative justice is about addressing the hurts and the needs of both victims and offenders in such a way that both parties, as well as the communities which they are part of, are healed.*" Recidivism and re-offending among child offenders in South Africa was often attributed to the adverse and damaging effect of the retributive criminal justice system (Badenhorst, 2011a: 8). There is no reliable figure on South Africa's overall youth and adult recidivism and re-offending rate, but as noted by Badenhorst (2011a: 8), analysts agree that it is higher than 66%. The National Institute for Crime Prevention and Reintegration of Offenders (NICRO) conducted a study in 2001 on the re-offending rates of child offenders who completed a diversion programme. The results indicated that just over 6% of these children re-offended within the first 12 months and less than 10% during the first 24 months after participation in a diversion programme (Badenhorst, 2011a: 8; Muntingh, 2001: 50). Restorative justice principles aim to make child offenders understand and experience the consequences of their crimes by enabling them to accept responsibility and compensate for the crime committed. Restorative justice is a process through which the child is held accountable for his or her actions and which includes the participation of the offender and victim, as well as their families and communities (Batley, 2005: 17). In short, the four elements of restorative justice are: encounter, reparation, reintegration and participation (Sloth-Nielson & Galinetti, 2011: 69). The goal is to rehabilitate and reintegrate child offenders into their communities, and to prevent re-offending by focussing on initiating a positive change in behaviour, rather than on punishment (McGregor, 2010: 31; Zehr & Gohar, 2003: 31).

Child justice is therefore an important area for the application of restorative justice principals because this approach acknowledges that children are developing individuals who are more likely to change their behaviour as they mature (Skelton & Tshehla, 2008: 19). Childhood and adolescence is a time of experimentation, and delinquency in children does not inevitably lead to adult criminality, but is frequently only a phase of adolescent development and the testing of boundaries (Skelton & Tshehla, 2008: 41). Many court judgments and international instruments have acknowledged that children lack maturity and should be given special consideration and treatment due to their level of development (Stout, 2008: 2; Skelton & Tshehla, 2008: 41). It is also necessary to keep children away from the effects of institutionalisation. Child justice therefore focuses on the principle of detention as the measure of last resort, and only for the shortest possible period of time (South Africa, Department of Justice & Constitutional Development, 2010: 4; Skelton, 2009b: 2). For this reason it is also pertinent that an independent juvenile justice system is in place to handle children in conflict with the law separately from adult offenders and with different procedures from those used for adults (Skelton and Tshehla, 2008: 8). As explained in the 2010 National Instruction on Children in Conflict with the Law, children are different from adults and do not have the same knowledge, experience and insight normally expected from an adult (South Africa, Department of Police, 2010: 4).

The Act is the first piece of legislation to provide a legal framework for diversion in the South African juvenile criminal justice system (Child Justice Alliance, 2008: 1). Prior to the implementation of the Act, diversion was practiced within an unregulated environment – often inconsistently and selectively (Wood, 2003: 1). Yet it was agreed upon that children's contact with the criminal justice system should be limited and young offenders should rather be directed into appropriate diversion programmes than be incarcerated (Wood, 2003: 22). Formal regulation of diversion is important: first, it is vital that any reform of the juvenile justice system should include the regulation of diversion in terms of 'when' and 'which cases', and secondly, including content and outcome in terms of 'how' it should be practiced.

Section 52 of the Act provides that diversion should be considered in each and every child offender case and that it should be allowed at various stages of the criminal justice process, for instance, by the prosecutor before the preliminary inquiry for minor offences, during the preliminary inquiry, and during the proceedings in the child justice court at any time before closure of the case (Badenhorst, 2012: 4; Wood, 2003: 7). Diversion is possible if the child acknowledges responsibility for the offence, the child has not been influenced to acknowledge responsibility, there is a *prima facie* case, meaning sufficient evidence to prosecute, against the child, and if a suitable adult or a guardian consents to diversion (Badenhorst, 2012: 4). A probation officer may recommend, or a prosecutor may decide, that a child should be diverted after considering the views of the victim and after consultation with the police officer responsible for the investigation of the case (South Africa, Department of Justice & Constitutional Development, 2010: 17). Diversion can incorporate a variety of strategies, from school-based crime prevention programmes to community-based or residential programmes. Diversion does not necessarily require a child to be placed in a formal programme, such as a life skills programme, vocational skills training, community service, victim-offender mediation or family group conference, but can include diversion orders such as a police caution, writing a letter of apology, participating in an

alternative dispute resolution forum or being placed under supervision, depending on the type and severity of the offence committed (Wood, 2003: 2).

South Africa is still making the transition to a fully-fledged constitutional democracy and faces the challenge of guaranteeing previously absent human rights, equality, freedom and security among its citizens, especially among its children and youth (Anderson, 2003: 1). As far as the diversion of child offenders is concerned, section 55 of the Act stipulates that diversion options may not be exploitative, harmful or hazardous to a child's physical or mental health. Therefore, as stated by Skelton (2008: 14): *"the benefits of restorative justice far outweigh the risks to due process, and those risks can be managed through the setting of standards which aim to provide protection for all the role-players involved in restorative justice processes"*.

The Act prioritises the development of mechanisms that regulate that the 'who' and 'how' of diversion occurs in a consistent and just manner, and therefore diversion options and programmes have to comply with minimum norms and standards. The Minimum Standards, both at an organisational and programme outcomes level, were developed with the *"aim to set a level of diversion performance that is non-negotiable, and defined as such to protect the interests and rights of all stakeholders"* (Muntingh & Ehlers, 2006: 51). These Minimum Standards were developed by the DSD and NICRO, with the assistance of the Human Sciences Research Council (HSRC), in 2003, and officially launched in 2007 in anticipation of the implementation of the Act. A total of 95 diversion standards were developed and grouped into two broad categories: 60 in the category of organisational standards, and 35 in the programme outcomes category (Muntingh & Ehlers, 2006: 56).

Section 52 of the Act also refers to two sets of standards that summarise the developed Minimum Standards. These two sets of standards are laid out in section 55 of the Act. The first set consists of compulsory requirements for diversion programmes, including that these programmes must: be structured in a way that strikes a balance between the circumstances of the child, the nature of the offence and the interests of society, but is not exploitative, harmful or hazardous to the child's physical or mental health; be appropriate to the age and maturity of the child; may not interfere with the child's schooling; may not be structured in a manner that excludes certain children due to a lack of resources, financial or otherwise; and must be sensitive to the circumstances of the victim. The second set includes more flexible standards that should be adhered to when reasonably possible. For instance, programmes should: impart useful skills; include a restorative justice element which aims at healing relationships, including the relationship with the victim; include an element which seeks to ensure that the child understands the impact of his or her behaviour on others, including the victims of the offence, and may include compensation or restitution; be presented in a location reasonably accessible to the child; be structured in a way that they are suitable to be used in a variety of circumstances and for a variety of offences; be structured in a way that their effectiveness can be measured; be promoted and developed with a view to equal application and access throughout the country, bearing in mind the special needs and circumstances of children in rural areas and vulnerable groups; and involve

parents, suitable adults or guardians where applicable (Muntingh & Ehlers, 2006: 51). The Minimum Standards and their development will be discussed in more detail in the literature review.

As mentioned previously, the Minimum Standards now not only provide protection of children's rights when referred to diversion services, but they also provide the framework against which the quality of services can be evaluated and accredited (South Africa, Department of Social Development, 2010a: 6). The Act establishes a criminal justice process based on restorative justice principles and diversion, while it also stipulates that a child may only be referred to a diversion service provider or diversion programme that is accredited by the DSD (South Africa, Department of Social Development, 2010a: 6; Muntingh, 2009: 154). Accreditation can only be achieved once the provider and the diversion programmes comply with the Minimum Standards.

1.4 Problem Statement

The task that lies ahead for the DSD is to ensure that, through the monitored application of Minimum Standards, children who are referred to diversion programmes benefit from the protection that the standards intend to provide and that these programmes conform to a level of reliability and validity (Muntingh & Ehlers, 2006: 63). In other words, the main challenge for the field of diversion is that even though Minimum Standards are in place, their efficacy in protecting children's rights must be ensured. In an effort to address this concern, section 56(2)(a)(ii) of the Act mandated the Minister of Social Development, in consultation with the Ministers of Justice and Constitutional Development, Basic Education, Police, Correctional Services and Health, to create and implement a policy and framework for the accreditation of diversion programmes (Badenhorst, 2012: 4; South Africa, Department of Justice & Constitutional Development, 2010: 13). The DSD, together with NICRO and the HSRC, created the National Policy Framework for the Accreditation of Diversion Services (NPF) in South Africa (2010). The NPF includes strategic and practical guidelines and processes for accreditation. It also provides for quality assurance, and monitoring and evaluation mechanisms for providers and programmes to ensure that they comply with the Minimum Standards, and to ensure the availability of resources to implement diversion programmes equitably in both urban and rural areas (Badenhorst, 2012: 4; South Africa, Department of Social Development, 2010a: 6; South Africa, Child Justice Act, 2008: section 56). The diversion accreditation system aims to serve as a guideline for the accreditation of various other therapeutic programmes, and accreditation brings new standards of accountability and quality of service, as well as aiming to improve the efficiency of organisations working within the youth diversion sector (NICRO, 2011: 10). As stated previously, the Act requires that both the service provider and individual programmes should be accredited.

Although the NPF has been finalised, no programmes have been fully accredited in the Western Cape at the point of writing this, except for the programme of one provider, namely DARE (Coetzee, 2012; Table 01). According to General Notice 49 of 23 December 2012, as published in Government Gazette 34960 of 2012 (13-14), the following Western Cape service providers and programmes, as set out in Table 1, received full or candidacy accreditation in January 2012:

Table 01: Accredited Diversion Providers and Programmes Western Cape, January 2012

Accredited Diversion Service Providers Western Cape at January 2012
Bosasa: Accreditation status granted for four years from 29 August 2011.
NICRO (National Institute for Crime and the Re-integration of Offenders): Accreditation status granted for four years from 29 August 2011.
DARE (Drug Addiction Recovery Empowerment): Accreditation status for four years from 29 August 2011.
Accredited Diversion Programmes Western Cape at January 2012
DARE (Drug Addiction Recovery Empowerment): Accreditation status granted four years from 29 August 2011.

Source: South Africa, Department of Social Development (2012: 13-14).

The Western Cape Department of Social Development (Coetzee, 2012) confirmed that by June 2012, six non-governmental diversion service providers had received organisational accreditation and were awaiting programme accreditation, one provider had submitted its intention to apply for accreditation, and one provider had received full accreditation in the Western Cape.

Table 02: Current Accreditation Status Western Cape June 2012

NAME	CURRENT STATUS
NICRO	Organisational accreditation achieved / programme accreditation candidacy status achieved
Bosasa	Organisational accreditation achieved / programme accreditation candidacy status achieved
Realistic	Organisational accreditation achieved / programme accreditation candidacy status achieved
DARE	Organisational and programme accreditation achieved
KHULISA	Organisational accreditation achieved / programme accreditation candidacy status achieved
Outward Bound	Organisational accreditation achieved / programme accreditation candidacy status achieved
Creating Effective Families	Organisational accreditation achieved / programme accreditation candidacy status achieved
USIKO	Have submitted their intent to apply for accreditation
Full accreditation: valid for 4 years with annual quality assurance checks Candidacy accreditation: valid for 2 years pending full accreditation with bi-annual quality assurance checks	

Source: Compiled from information received from Coetzee (2012).

According to General Notice 49 of 23 December 2012 (South Africa, Department of Social Development 2012a: 40) defines candidacy status as

...pre-accreditation status awarded to an organisation pursuing accreditation. Candidacy indicates that an organisation or programme has achieved recognition and is progressing towards receiving full accreditation, and has the potential to achieve compliance with standards within two years.

Diversion programmes and diversion service providers that have been granted candidacy status have received certificates, which allow them to operate until they receive full accreditation (South Africa, Department of Social Development 2010a: 40; Coetzee, 2012). The implication is that if the programmes do not achieve full accreditation they will not be allowed to continue providing diversion services. As mentioned previously, the developed minimum norms and standards for child diversion programmes and practice consist of 95 standards. Sixty of these are organisational standards relating to infrastructure, systems and capacities, including standards pertaining to the legal structure, management, governance and recruitment procedures, and the financial systems of the programme. Thirty five are programme outcomes standards, including post-arrest assessment before referral, programme design and delivery, restorative justice processes and sex offender programmes. The final 35 standards are programme outcomes standards, 14 of which specifically focus on programme design and delivery.

The organisational and the programme outcomes standards are equally important in ensuring optimal diversion services, yet this exploratory study aims to focus on the investigation of the compliance level of diversion programmes, offered by non-governmental service providers in the Western Cape, with the programme outcomes-design-delivery standards (hereafter referred to as programme outcomes standards). The programme outcomes standards focus on optimal diversion outcomes for children in conflict with the law. They aim to articulate what the actual services must achieve and to regulate the non-negotiable results of diversion programmes (Dawes & van der Merwe, 2004: 5). Therefore this study will not focus on the Minimum Standards that deal with the organisations' operational aspects. The results of this study aim to indicate to which degree the programmes comply with the Minimum Outcomes Standards and reflect on how far programmes have been practicing outside of the proposed regulatory framework. Possible implications for the participants of diversion programmes, as well as the implementation of the accreditation policy by the DSD, will be reviewed in the process.

This study is part of a broader context of academic inquiry regarding the success of the newly enacted Act and its focus on the practice of diversion. This study is also the first of its kind in the Western Cape. Research into the extent to which diversion programmes offered by NGO child diversion providers in the Western Cape comply with the Minimum Programme Outcomes Standards will benefit the implementation of the diversion programme accreditation policy. Another benefit emanating from this study is the development of new diversion options. The findings from this study have the potential

to be a fundamental resource and a helpful tool to programme providers, organisations and government departments involved in child justice.

1.5 Aim and Objectives of the Study

This study is a response to the lack of research available on child diversion Minimum Programme Outcomes Standard compliance in the Western Cape and the effect which the level of compliance may have on the accreditation process and on programme delivery. The promotion, expansion and monitoring of diversion may be a positive and cost-effective contribution towards the rehabilitation and curtailing of re-offending of child offenders. Against this background the aim of this study is to investigate the compliance rate with the Minimum programme outcomes standards for diversion, the implications that the results may hold for the participants in these diversion programmes, for the NGO programme service providers as well as for the DSD accreditation policy-makers. In order to achieve this aim the following objectives were formulated:

1. Establish the level of compliance of child diversion programmes offered by non-governmental providers with the Minimum Programme Outcomes Standards.
2. Establish the Minimum Standards with which programmes comply the least and, respectively, the most.
3. The DSD Accreditation Committee decides on the eligibility or non-eligibility for accreditation of programmes, depending on their Minimum Standard compliance rate. Non-eligibility implies that programmes will be discontinued. Therefore, what are the implications of the compliance rate results for each of the programmes' possible accreditation?
4. Establish if a minimum level of compliance would serve or defeat the ends of juvenile justice in South Africa, meaning if a certain number of programmes would have to be discontinued because of low compliance rates, what would the implications for the practice of diversion be?
5. Evaluate the opinions that service providers have on the implementation of the Act and the effect it has had on their programme delivery.

The aim of this study can therefore be formulated as follows: to assess the Western Cape's non-governmental diversion programmes' level of compliance with the Minimum Programme Outcomes Standards developed for accreditation. In other words, to explore to what degree child diversion options and programmes in the Western Cape comply with the Minimum Programme Outcomes Standards and if their level of compliance entitles them to be accredited, thereby ensuring the continuation of these diversion options by non-governmental organisations.

1.5.1 Research Question

The researcher raises the following question: to what extent do diversion programmes offered by non-governmental organisations in the Western Cape comply with the Minimum Programme Outcomes Standards and what does the level of programme compliance implicate in terms of the delivery and accreditation of diversion services?

1.6 Research Methodology

1.6.1 Research Approach

The evaluation of child diversion Minimum Programme Outcomes Standard compliance forms the object of this study. For the purpose of this study, Western Cape NGO child diversion programmes formed the unit of analysis and child diversion managers or facilitators functioned as representatives of existing Western Cape non-governmental child diversion organisations and the programmes they offer. The study aimed to explore to what extent diversion programmes comply with the Minimum Programme Outcomes Standards for diversion. A qualified representative of each child diversion programme was asked to answer a structured minimum standard questionnaire about each programme offered, based on the Minimum Standards for programme outcomes, design and delivery determined by the DSD, as well as answer an open-ended question about the influence or effect that the new legislation has had on their programme delivery. Data were furthermore collected from comments made by respondents during the interview process. The aim was to draw conclusions about the implications that the results may hold for programme delivery, good diversion practice and the implementation of the accreditation policy for diversion.

1.6.2 Research Design

The study “Child Diversion Programme Minimum Standards Compliance in the Western Cape” is exploratory in nature. The findings are to be applied for practical purposes and a mixed methodological approach was followed.

Exploratory studies are used to conduct preliminary investigations of relatively unknown areas of research and attempt to look for new insights into phenomena (Bachman & Schutt, 2011: 9). No previous research has been done on the topic of child diversion programme compliance with the Minimum Programme Outcomes Standards in the Western Cape. The findings derived from this exploratory study have practical implications and fall within the realm of applied research. Applied research aims to contribute towards practical issues of problem-solving, decision-making, policy analysis and community development in order to assist decision-makers in drawing conclusions about the problems with which they are grappling (Terre Blanche et al, 2006: 45). The level to which diversion programmes comply with the Minimum Outcomes Standards may assist diversion service providers and policy-makers to decide on the practical implications of regulating, monitoring and accrediting diversion programmes.

The approach guiding this research process is a mixed methodological approach. This research study utilised a structured questionnaire consisting of 10 general demographic information questions, 13 minimum standard statements and one open-ended question on the influence of the new legislation on programme delivery. The questionnaire was applied to a representative sample of non-governmental diversion programme facilitators to determine an overall percentage level of programme compliance, as well as a percentage compliance level of each individual Minimum Standard, and to ascertain

opinions on the effect of the Act on programme delivery. Although the predominant method of data collection is quantitative, qualitative data, collected during the administration of the questionnaires, which were conducted in person or by telephone, were used to add value to the interpretation of the quantitative data, and therefore resulted in a mixed methodological approach.

1.6.3 Research Strategy and Sample

In October 2012 there were nine NGO diversion programme providers offering 36 child diversion programmes in the Western Cape. A list of all programme providers was compiled and the researcher then approached each provider to ascertain the contact details of the managers or facilitators of the child diversion programmes offered by each provider. Each programme representative was contacted, reaching 100% of the sample, namely 36 programmes. Their permission to include them in the study and to ensure their participation was gained. The questionnaire was administered during a face-to-face or telephonic interview with the participants. The intention was to produce results on the level of compliance with the Minimum Programme Outcomes Standards that are representative of all child diversion programme types in the Western Cape at present. These include mentorship, sex offender, vocational skills, community service, restorative justice, combination, wilderness, substance abuse and life skills programme types.

The research methodology will be discussed in more detail in chapter III.

1.7 Ethical Considerations

Research designs should always consider ethical issues in order to protect the welfare and rights of the research participants (De Vos et al, 2011: 114). All research projects should therefore adhere to the ethical principles of autonomy, non-maleficence and beneficence (De Vos et al, 2011: 114; Terre Blanche et al, 2006: 66). The autonomy of all persons participating in the study should be respected, namely voluntary and informed consent, the freedom to withdraw from the project at any time and the right to anonymity in any publication which might arise from the research (Terre Blanche et al, 2006: 66). 'Non-maleficence' is to not harm any participants and to consider potential risks that may inflict physical, emotional, social or other forms of harm (De Vos et al, 2011: 118). Beneficence requires the researcher to design the study in such a way that it will be of benefit to other researchers or the society at large (De Vos et al, 2011: 126).

1.7.1 Ethical Considerations for this Study

The participants of this study were informed about the nature and purpose of the research and about what their participation would entail; written consent was obtained from all participants (Appendix A). Anonymity of the participants was guaranteed and any possible inconvenience was reduced by allowing the participants an acceptable time frame to answer the questionnaires. They were also able to terminate their participation at any time and to reschedule or abandon the study without

explanation. Each participant was informed that they were entitled to withhold their answer on questions if they wished to do so.

Participants did not receive any financial reward for participation in this study in order to avoid feeling obliged to participate. They will gain from contributing to the existing knowledge base and will receive a copy of the research report upon conclusion of the study. The results of this study are published with careful attention to the participants' rights.

No data was falsified or fabricated and any limitations of the research study were acknowledged.

1.8 Definition of Key Concepts

Key concepts referred to in this study are clarified in this section because some concepts are used interchangeably and some may not be familiar to the reader. These concepts were specifically chosen as they are referred to regularly throughout the dissertation.

The term “child”, “children”, “youth” or “juvenile” means any person under the age of 18 years and, in certain circumstances, a person who is 18 years or older but under the age of 21 years whose case is dealt with in terms of section 4(2) of the Act (South Africa, Department of Correctional Services, 2005).

The term “diversion” means diverting a matter, involving a child, away from the formal criminal court procedures by means of the procedures established by Chapter 6 and Chapter 8 of the Act.

The term “youth offender” or “child offender” is used to refer to persons under the age of 18 years who have committed an offence and/or are in conflict with the law (South Africa, Department of Social Development, 2010a: 4).

“Accreditation” is a formal, external monitoring process whereby the DSD accreditation unit sets performance standards for service quality, measures the merit of an organisation or provider in relation to these standards, and keeps the organisation accountable to the public (South Africa, Department of Social Development, 2010a: 3). The process is based on self-assessment and review, as teams of peers and/or professional surveyors assess the quality of an organisation's service delivery and provide assistance aimed at improvement. Accreditation signifies formal recognition by the DSD's accreditation unit, through a quality assurance procedure, that an organisation and diversion programme meets professional and Minimum Standards criteria (South Africa, Department of Social Development, 2010a: 3).

“Life skills” is skills development within a therapeutic and social service context and can be defined as the ability for adaptive and positive behaviour that enables individuals to deal effectively with the demands and challenges of everyday life (South Africa, Department of Social Development, 2010: 5). The core set of skills include: decision making; problem solving; creative and critical thinking; effective

communication; interpersonal relationship skills; self-awareness; empathy; and coping with emotions and stress. As described by Steyn (2010: 21),

...life skills generally focus on its self-explanatory characteristics, including the ability to function efficiently in society, reacting to life's stressors amicably, competence to effectively adapt in an environment, performing daily tasks effectively, successfully dealing with provocative situations and conflict, mastering challenges in a responsible way, communicating meaningfully, and establishing a value system to guide appropriate behaviour.

"Programme outcomes" are linked to the specific skill the programme aims to teach or behaviour it aims to change, as well as successfully rehabilitating participants to avoid re-offending behaviour (South Africa, Department of Social Development, 2010a: 8).

"Probation officers" are social workers appointed by the Minister of Social Development who carry out work in the fields of crime prevention, treatment of offenders, care and treatment of victims of crime, and working with families and communities. Probation work is currently carried out in terms of the Probation Services Act No. 116 of 1991 which provides for the establishment of and implementation of programmes to combat crime and for rendering assistance to and treatment of both victims and offenders. An amendment to the Act in 2002 inserted certain definitions for terms such as "diversion" and "restorative justice", and provided for assistant probation officers. Probation offices are located at every magistrate's court (South Africa, Western Cape Government, 2012).

1.9 Limitations of the Study

The results of this study are subject to certain limitations. Firstly, the data was gathered only in one South African province, namely the Western Cape, and this made it difficult to generalise the findings of the study for the whole of South Africa. Secondly, the questionnaires were completed by a sample of diversion providers that may not represent the larger population of all diversion providers and diversion programme types in South Africa. In other provinces there may be other organisations or providers offering different types of diversion programmes that do not exist in the Western Cape. Thirdly, since self-reporting techniques were used, respondent biases may exist. Respondents may have responded more positively or, perhaps, more negatively, based on their understanding of the scale utilised in the study. Even though the questionnaire was administered during personal or telephonic interviews and the researcher was able to clarify questions that the respondents had, respondent biases may still exist. The survey was in English and although English is one of the 11 officially spoken languages in South Africa, there is a chance that some respondents may have misunderstood some terminology because English is not always the main operational language used by service providers. Fourthly, the developed minimum norms and standards for child diversion programmes and practice consist of 95 Standards, of which 60 are organisational and 35 are programme outcomes standards. The questionnaire utilised for this study consists of 13 minimum standard statements, which are based on the programme outcomes, design and delivery standards

developed by the DSD. Therefore the rate of compliance with the standards included in this study and what it may mean for good diversion practice may be limited due to the focus on a limited number of standards.

However, as this is the first study exploring the compliance with programme outcomes standards, the study paves the way for further studies into this area of enquiry and increases the value of understanding compliance of child diversion programmes with Minimum Standards, which outweigh the limitations of the study. Its value therefore lies in the contribution it can make to the field of diversion.

1.10 Content of the Research Report

Chapter I: General Overview and Orientation of the Study. This chapter gives an overview and orientation of the study. It gives background information on the motivation for the study, the aim and objectives of the study and the questions guiding the research.

Chapter II: Literature Review. This chapter focuses on literature pertaining to the study, including child and youth offending in South Africa, juvenile justice reform, national and international juvenile justice legislation, restorative justice, the Act, the Minimum Programme Outcomes Standards as well as the operational imperatives and challenges of diversion practice and accreditation.

Chapter III: Research Methodology. This chapter discusses the research process, including the research design, sample, procedures followed, data collection, data analysis, limitations and benefits of the study.

Chapter IV: Data and findings are presented.

Chapter V: Summary of findings, recommendations and conclusion. The final chapter summarises, interprets and discusses the findings of the study, as well as the recommendations and possible conclusions of the research study.

CHAPTER 2

LITERATURE REVIEW

2.1 Introduction

South Africa has experienced reforms in all spheres of social, economic and political life during the last two decades, which have also included changes in the country's judicial system, specifically relating to children (Steyn, 2005: 6). Newly enacted legislation, in the form of the Act, was enforced on April 1st 2010, creating the foundation for a separate juvenile justice system for children in conflict with the law. The Act includes sections on diversion, arrest, assessment, detention, trial and sentencing, as well as sections on the duties of government departments and civil society (South Africa, Department of Social Development, 2011b: 1).

The Act aims to establish a justice system that can protect the rights of children as is foreseen in the South African Constitution and in ratified international instruments such as The United Nations Convention on the Rights of the Child, The United Nations Guidelines for the Prevention of Juvenile Delinquency, The United Nations Standard Minimum Rules for the Administration of Juvenile Justice, United Nations Standards Minimum Rules for the Protection of Juveniles Deprived of their Liberty and The African Charter on the Rights and Welfare of the Child (Muntingh, 2009: 154). This newly implemented legislation is based on restorative justice concepts and principles, moving away from a retributive approach and instead provides a juvenile justice system that reinforces children's rights, as well as children's respect for the rights of others (Muntingh, 2009: 154; Skelton & Tshehla, 2008: 42). As noted by Badenhorst (2011: 9):

It [the Act] recognises the need to be proactive in crime prevention by placing an increased emphasis on the effective rehabilitation and reintegration of children in order to minimise the potential for re-offending; and balances the interests of children and those of society, with due regard to the rights of victims.

At the same time the Act provides a legal framework for child diversion, including diversion service providers and the programmes these organisations offer. Child diversion is the process of directing children under the age of 18 who have committed offences and have admitted their guilt, away from formal criminal justice proceedings into programmes aimed at rehabilitation and restoration (Steyn, 2005: 1; Sloth-Nielsen & Gallinetti 2011: 32). Diversion programmes aim to help reintegrate children in conflict with the law back into their communities and at the same time aim to prevent them from re-offending (Steyn, 2005: 6).

The development of the South African juvenile justice system has taken shape through the introduction of reforms and projects by both NGOs and government departments, often working in

partnership with public prosecutors and probation officers (Skelton, 2007: 44). As Skelton (2007: 43) notes, the Act *“incorporates and builds on some sections in existing laws that have in the past provided inconsistent protection for children in conflict with the law”*. The implementation of new child justice legislation will be made easier because there is an existing infrastructure on which to build, for instance, the Probation Services Act 116 of 1991, which provided for the development and implementation of programmes offering assistance to and treatment of both victims and offenders (Skelton, 2007: 43). An amendment to the Probation Services Act in 2002 included definitions for terms such as “diversion” and “restorative justice”, and provided for compulsory assessment of all arrested children within 48 hours after their arrest (Skelton, 2007: 43).

NICRO, which was established in 1910, launched the practice of child diversion in 1992/1993, offering courts alternative sentencing options based on restorative justice concepts, such as Victim-Offender-Mediation (VOM) and Family Group Conferencing (FGC), which, through active involvement of the victims, offenders and communities aim to encourage dialogue and negotiation (Smit, 2011b: 3; Steyn, 2005: 27; Batley, 2005: 21; Muntingh, 1997a: 1). These diversion initiatives were widely utilised by courts in most urban areas of South Africa, but occurred without measures or guidelines in place to ensure that children were protected against possible risks (Steyn, 2010: 5; Muntingh, 2005: 6; Wood, 2003: 1). These risks include the encroachment on the rights of children, selective diversion, maladministration and mismanagement of resources, inappropriate and poor programme content, poor monitoring and evaluation, inappropriate matching of children to programmes, and lack of skills among service providers (Swanson-Jacobs, 2007: 3; Muntingh, 2005: 6).

To promote the protection of children’s rights and appropriate diversion programme content, the DSD was mandated by the Act to design and implement minimum norms and standards, as well as an accreditation and quality assurance policy that would regulate the programmes and service providers (South Africa, Department of Social Development, 2011: 2). The Minimum Programme Outcomes Standards place the emphasis on properly designed programmes in which *“the objectives, activities and targeted behaviour changes are clearly defined”*, as well as on the monitoring of diversion providers in order to ensure that they adhere to good diversion practice (Dawes & van der Merwe, 2004: 5). The National Policy Framework for the Accreditation of Diversion Services (NPF) ensures that child diversion services are formally recognised and that an organisation meets both organisational and Minimum Programme Outcomes Standards criteria (South Africa, Department of Social Development, 2011: 2; South Africa, Department of Social Development, 2010: 3). The DSD Western Cape officially invited providers to apply for the accreditation of diversion programmes by November 30th 2010, of which six providers, namely NICRO, BOSASA, Khulisa, Outward Bound, Creating Effective Families, and Realistic have achieved candidacy accreditation, meaning organisational accreditation but not programme accreditation. According to General Notice 49 of 23 December 2012, the provider, DARE, has achieved full accreditation status, both organisational and programme accreditation (Coetzee, 2012; South Africa, Department of Social Development, 2010b: 3). Another provider, USIKO, submitted its intent to apply for accreditation in May 2012. In the meantime

the DSD has published, by way of General Notice 569 of 2012, published in Government Gazette 35517 of 20 July 2012, another invitation to providers to apply for accreditation by November 2012.

The aim of this study is to assess the Western Cape non-governmental child diversion providers' programme compliance with the developed Minimum Programme Outcomes Standards and to explore what the results imply for the stakeholders involved in child justice, including the provision and accreditation of diversion services.

This literature review will contribute to a clear understanding of the themes impacting on the practice of child diversion and juvenile justice in South Africa at present. The review includes relevant literature relating to youth offending and crime in South Africa, the development of juvenile justice in South Africa and its focus on the restorative justice approach, international and national instruments pertaining to juvenile justice, and the newly implemented Act, which includes legislation regulating the practice of diversion, Minimum Programme Outcomes Standards compliance and the accreditation process for diversion programmes.

2.2 Child and Youth Offending in South Africa

Crime and violence go against the morals and values of society and are perceived as a threat to the prosperity, stable development, equality and economic growth of a society (Burton, 2007: 2). The 2011 Global Peace Index (GPI) shows that South Africa remains one of the least peaceful societies in the world, ranking number 118 out of 153 countries worldwide, and number 26 out of 38 countries in the Sub-Saharan region (Institute for Economics & Peace, 2011: 14). Research evidence suggests that young people in South Africa are disproportionately at risk of becoming victims of crime in comparison to adults and therefore many young people grow up perceiving violence as a socially appropriate way of interacting with others and resolving conflict (Leoshut, 2009: xiii; Ward, 2007: 27-28; Palmarty, 2003: 3). Children and young people are exposed to crime at a time in their lives when such an experience is likely to have a negative impact on their development and these crimes often occur in spaces that are considered places of safety, such as the home, the community or school environments (Pelser, 2008: 8; Leoshut & Burton, 2005: 79).

Many South African children find themselves in environments defined by poverty, unemployment, inferior education in schools that lack basic infrastructure, and underdevelopment (Steyn, 2010: 6). Their communities are often characterised by violence, crime and weak social cohesion (Steyn, 2010: 6). A number of children grow up in unstable households plagued by alcohol and substance abuse, domestic violence and absent parents or guardians (Steyn, 2010: 6). They experience high rates of abuse and neglect, instead of nurturing relationships through which they are able to learn empathy, which may inhibit violent behaviour towards others (Ward, 2007: 28). Approximately 88% of the children in conflict with the law come from broken or dysfunctional families and have been exposed to some form of domestic violence (Restorative Justice Centre, 2009: 2). The increasing availability of drugs and alcohol and the resulting substance abuse among children, as well as a rise in gang-related

activities, particularly in the Western Cape and Gauteng provinces, is often linked to youth violence in South Africa (Ward, 2007: 28). The South African Police Services crime analysis revealed 13.1% of murders and 22.2% of attempted murders in the Western Cape during 2011/12 were gang-related (South African Police Service, 2012: 12).

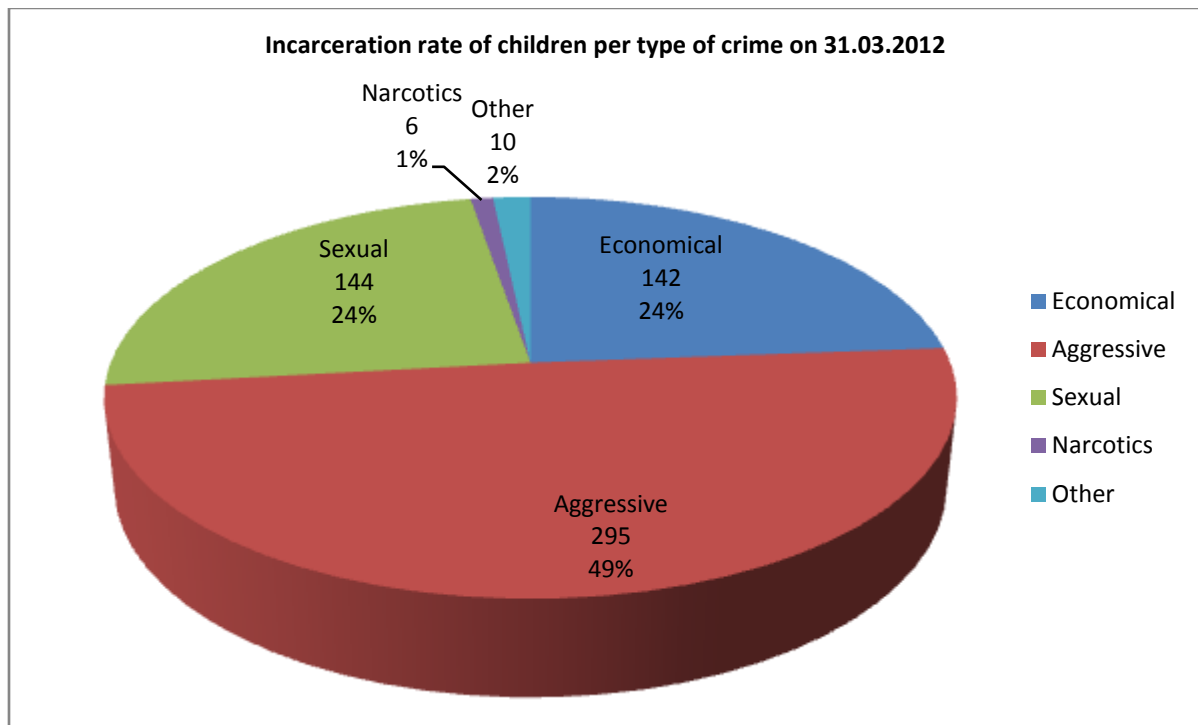
Exposure to violence, aggressive behaviour and substance abuse can result in the destruction of social skills, increase the risk of victimisation, as well as later delinquency or anti-social behaviour. This, in turn, necessitates a specialised criminal justice system that can cater for the needs of youth in conflict with the law (Leoshut & Burton, 2005: 80). This system must recognise the present realities of crime in South Africa and the need to be proactive in crime prevention by placing increased emphasis on the effective rehabilitation and reintegration of children, in order to minimise the potential for re-offending (South Africa, Department of Justice and Constitutional Development, 2012: 11).

Criminal acts of young persons are generally referred to as youth offending and include conduct that is antisocial, dangerous, or harmful to the goals or norms of society (Booyens et al, 2008: 28). Delinquency implies criminal activity and does not usually include misbehaviour and status offences, such as truancy or alcohol consumption (Booyens et al, 2008: 28). Section 7 of the Act legislates that a child has limited legal capacity from birth to the age of 10 years, meaning that children under this age lack the capacity to act and thereby lack criminal responsibility (Bezuidenhout, 2008: 10). Children between 10 and 14 years of age have an indeterminate status; it is not automatically assumed that they lack criminal capacity or responsibility. In certain cases in this age group the lack of criminal responsibility can be refuted, meaning they may be deemed criminally responsible for the crime committed if it can be proven that they understand the difference between right and wrong. It furthermore implies that it is believed that the child is able to control his or her behaviour in line with what he or she understands to be wrong or right (section 7 of the Act; Skelton, 2008: 51; Bezuidenhout, 2008: 10). Children who are over 14 years and under 18 years have criminal capacity, unless refuted (Gallinetti, 2009: 18).

Since the implementation of the Act the number of incarcerated children has been steadily decreasing (see Figure 02; Table 03). Statistics show that in 2006 there was a total number of 2 077 children under the age of 18 in custody, and in March 2010, a total of 1 275 children under the age of 18 years were being incarcerated by the Department of Correctional Services (DCS) (South Africa, Judicial Inspectorate for Correctional Services, 2011: 10; South Africa, Department of Correctional Services, 2010: 28; Booyens et al, 2008: 31). By June 2010, 297 un-sentenced and 632 sentenced children accused of more serious offences were still held in custody (South Africa, Parliamentary Monitoring Group, 2010: 3). The DCS and the DSD statistics show that during the 2010/2011 financial year 75435 children under the age of 18 had been charged by the police, of which 298 children were awaiting trial in correctional facilities and 536 were imprisoned (South Africa, Department of Justice, 2011). According to the South African Police Services' (SAPS) 2011/2012 statistics, 57592 children had been charged, 94 children had been imprisoned and a further 302 children had been sentenced to correctional supervision during this financial year (South Africa, Intersectoral Child Justice Committee,

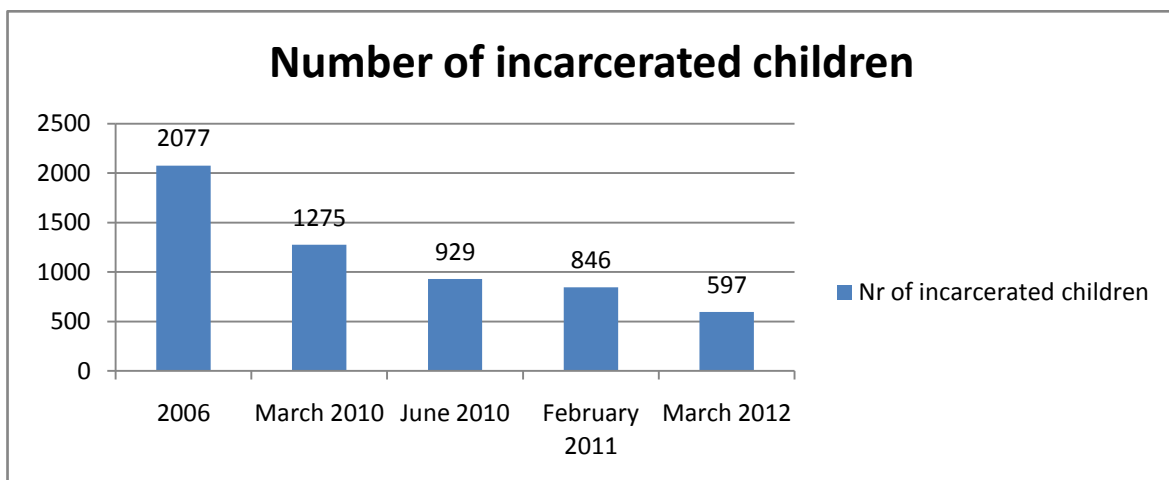
2012: 9). The DCS statistics revealed a total of 597 incarcerated children on the last day of March 2012, which is a decrease from the year before when a total of 846 children were still incarcerated on the last day of February 2011 (South Africa, Department of Correctional Services, 2012b; Figure 02). Approximately 74% of incarcerated children were in pre-trial custody or were serving sentences for aggressive or sexual crimes (South Africa, Department of Correctional Services, 2012a: 28; Figure 01).

Figure 01: South African Incarceration Rate of Children per Category of Type of Crime as at 31 March 2012



Source: Data for the construction of Figure 01 was obtained from South Africa, Department of Correctional Services (2012).

Figure 02: South African Incarcerated Children 2006-2012



Source: Data for the construction of Figure 02 was obtained from South Africa, Department of Correctional Services (2012).

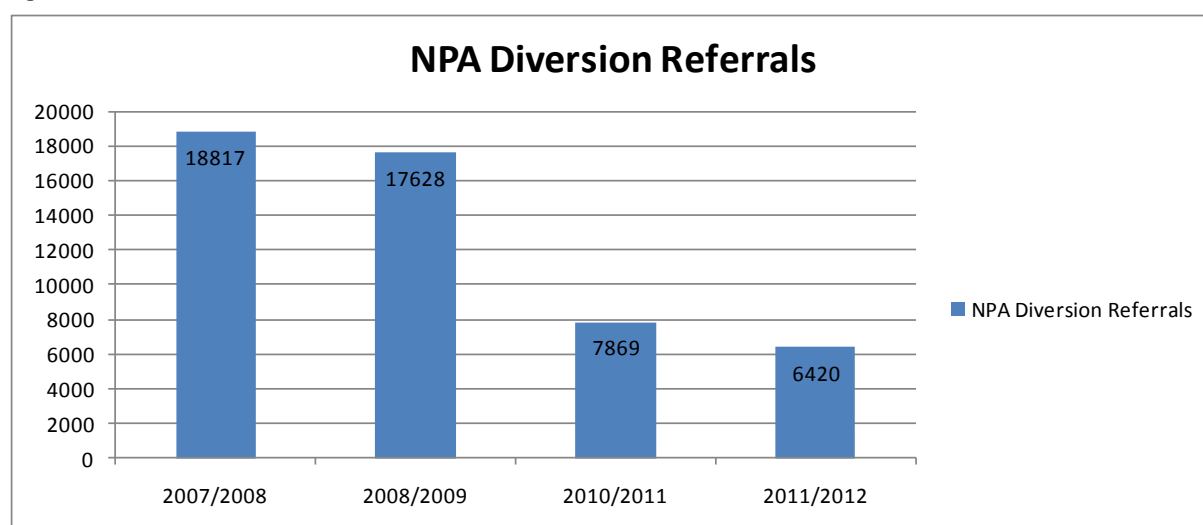
Table 03: Decrease in Incarcerated Children 2006-2012 (includes awaiting trial detainees)

Incarcerated Youth 2006-2012	Nr. of incarcerated children	% decrease from base value
2006	2077	base value
March 2010	1275	-39%
June 2010	929	-55%
February 2011	846	-59%
March 2012	597	-71%
Total decrease since 2006		71%

Source: South Africa, National Prosecuting Authority (2012).

As can be noted from the table above the number of children incarcerated between 2006 and 2012 has decreased. This decrease may be linked to the implementation of the Act, but can be interpreted in different ways. The decrease either indicates that fewer children were in trouble with the law, or that more children were diverted in accordance with the Act instead of being incarcerated. Another interpretation for the decrease could be that the SAPS, being the first point of contact with children committing crimes, had limited knowledge of the new Act and was unsure of how to deal with these children, resulting in children not being charged or arrested (Badenhorst, 2012: 6; Kohler-Barnard, 2012). As stated in the Department of Justice and Constitutional Development's report on the second year of implementation of the Act: *"It was suggested that the low levels of arrests of youths was not due to decreasing levels of crime but rather reluctance on the part of SAPS members to engage with the contents of an Act with which they were not fully familiar"* (South Africa, Department of Justice and Constitutional Development, 2012: 1). Based on an analysis of the literature it is the researcher's opinion that this seems to be the more likely explanation for the decrease, because, as Figure 03 illustrates, the number of diversions has also dropped over the same period, which indicates that fewer children were being assessed and referred to diversion services.

Figure 03: NPA Diversion Referrals 2007-2012

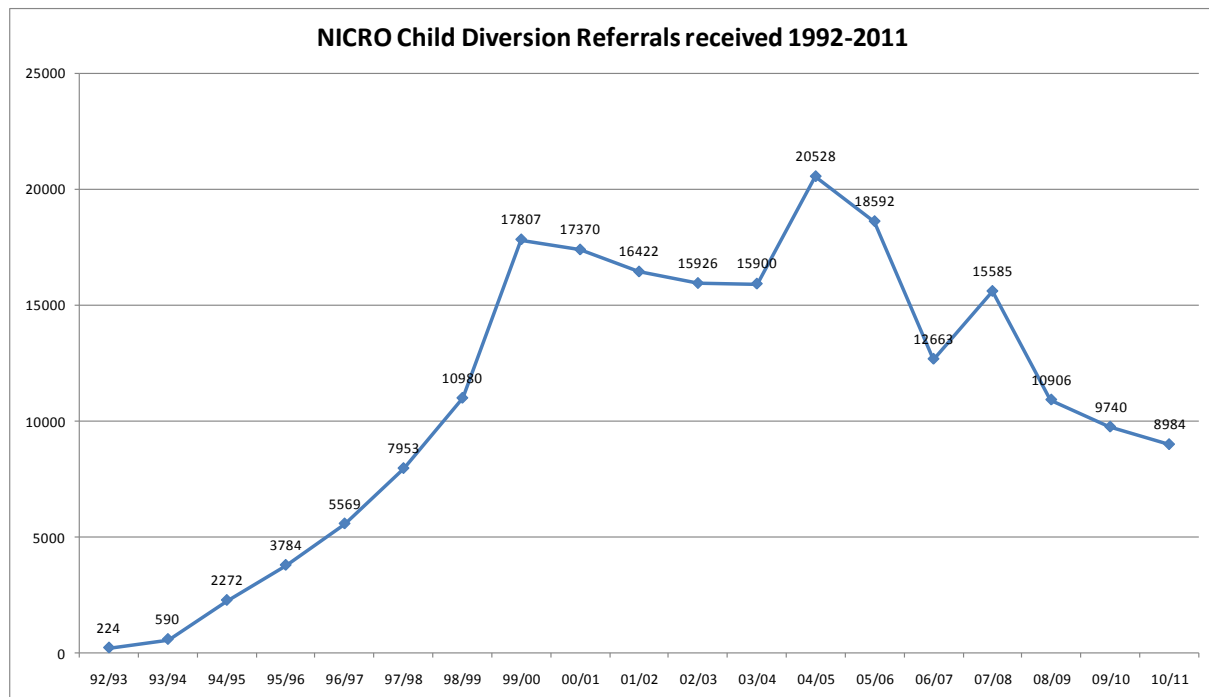


Source: South Africa, National Prosecuting Authority (2008-2012).

Although the practice of diversion was not guided by a legal framework until the enactment of the Act in 2010, statistics from the National Prosecuting Authority (NPA) indicate that, this notwithstanding, 18 817 juveniles were diverted from the criminal justice system between April 2007 and March 2008, while 17 628 juveniles were diverted between April 2008 and March 2009 (South Africa, National Prosecuting Authority, 2009: 18; see also Figure 03). It should be noted that it is not clear if the NPA statistics include persons up to the age of 18 years or 25 years, because if it was to the age of 25 opposed to 18 years of age as used in the following years statistics, this would explain the extreme decrease in diversion statistics in the following financial years. During the first year of the implementation of the Act, in 2010/2011, when one would have expected the number of diversions to stabilise or rise, the NPA diverted 7 869 children and during the second year of implementation, in 2011/2012, a total of 6 420 children were diverted (South Africa, National Prosecuting Authority, 2011; South Africa, National Prosecuting Authority, 2012). It is estimated that the number will increase again once the Act is properly enforced, as the Act now requires that every first-time offender must be assessed and considered for diversion. It is also anticipated that the number of diversion services will increase significantly over the next few years to cater for the increase in referrals (Steyn, 2005: 1; Khulisa Social Services, 2010: 12). A contradiction was also noted between statistics of the Department of Justice and Constitutional Development which reported that during the 2011/2012 financial year there were a total of 8 607 diversions and not the 6 420 reported by the NPA (South Africa, Intersectoral Child Justice Committee, 2012: 12). It is not clear why these statistics differ.

In line with the number of diversions reported by the NPA, NICRO, one of the largest diversion service providers in South Africa, showed a steady decline in diversion referrals. Whereas in 2007/2008 15 585 referrals were received by NICRO, in 2010/2011 there were only 8 984 (see Figure 04 below). It should be noted, however, that NICRO's referral figures seem to include not only NPA referrals but also referrals from other sources, such as school or community referrals. This would account for diversion number that is higher than the overall reported diversions by the NPA for that financial year. As noted by Smit (2011), NICRO Research and Development manager, the declining NICRO numbers may be due to the fact that the DSD, as custodian of the Act is also mandated to provide their own in-house diversion programmes rather than ensuring accessibility to existing programmes, such as those offered by NICRO and other longstanding diversion providers. Furthermore, during the period that its referrals decreased, NICRO's funding decreased to such an extent that NICRO could not keep their services running in the majority of their offices; 34 of a total of 52 offices nation-wide were closed in December 2011 (Badenhorst, 2012: 9-10).

Figure 04: Overview of NICRO Diversion Referrals 1992-2011



Source: Data for the construction of Figure 04 obtained from NICRO (2011).

Khulisa Social Solutions also reported that referrals to their diversion services nation-wide had dropped from 5 890 cases in 2009/2010 to 2 065 cases in 2011/2012 and that the current funding challenges impact negatively on their ability to render diversion services in all areas, especially rural areas (Badenhorst, 2012: 12; Table 04). Table 04 below confirms that other child diversion providers, such as NICRO and the Restorative Justice Centre, experienced a downward trend in referrals similar to that of NPA since the implementation of the Act. It should be kept in mind that the differences in the total number of referrals to each of the service providers are due to the capacity of each provider throughout the country, meaning that some providers are larger organisations and are located more widely and have more offices than others. NICRO did not submit referral numbers for the year 2011/2012.

Table 04: Number of Diversion Referrals before and after the Implementation of the Act

Referrals to NICRO	2009/2010	2010/2011
Total	9295	5826

Referrals to Khulisa	2009/2010	2010/2011	2011/2012
Total	5890	4020	2065

Referrals to the Restorative Justice Centre	2008- 2009	2009-2010	2010-2011
Total	455	408	267

Source: Badenhorst (2012: 11-13).

Further challenges regarding the implementation of the Act were identified by Wakefield (2011: 45-49) and Badenhorst (2011: 12-15) from the Child Justice Alliance: lack of public awareness about the Act;

the training of police officers; the decrease in the number of arrests; a shortage and unavailability of probation officers; a decrease in the number of diversions; a lack of training of all the role players in the child justice system; and inaccurate and unavailability of statistics. It should be noted that although the Act is currently still in its implementation phase, conclusive, accurate and detailed statistics are nonetheless pertinent in evaluating if this newly implemented Act is working and are a pre-requisite to monitoring its progress and effectiveness (South Africa, Department of Justice, 2011; Badenhorst, 2011: 33).

Based on the figures presented in Table 05, it is evident that not only are fewer children being charged but also that fewer children are being assessed, and even fewer diverted. In theory, every child charged must be assessed and diversion should be considered in every case. As Table 05 below shows, in 2011/2012 only 31% of charged children were assessed. More positively, of these assessed children, 97% participated in a preliminary inquiry, which increases their chances of being diverted. However, only 36% of those children assessed were actually diverted (South Africa, Intersectoral Child Justice Committee, 2012: 9-10; South Africa, National Prosecuting Authority, 2012). A Western Cape DSD probation officer, who chose to remain anonymous, confirmed that since the implementation of the Act, various problems have been encountered, mainly due to an insufficient number of probation officers, diversion programmes that require constant adapting to suit the needs and literacy levels of every individual child, the lack of an electronic diversion register, and charges being dropped or the age of the accused being changed to over 18 by untrained police officers to save paperwork or because they do not know how to handle child offenders in line with the new Act (2012).

Table 05: Overview of Children in the Criminal Justice System

Overview of Children in the Criminal Justice System	2010/2011	2011/2012
Charged by police	75435	57592
Assessed by probation officer	32494	18334
Participated in preliminary inquiry	14471	17822
NPA diversions	7869	6420

Source: Data obtained from Wakefield (2011: 47) and South Africa, National Prosecuting Authority (2012: 34).

The decrease in the number of children charged, as depicted in the table above, seems positive at first but becomes an area of concern if the possible reasons for this trend are explored in more detail. As mentioned previously, Badenhorst (2012: 8) proposes that one of the main reasons may be that officials are untrained and ill equipped in handling children in conflict with the law because the regulations of the Act are not included in their training. Whereas these children should be arrested or charged and then dealt with in accordance with the Act, they are denied the opportunity and benefits of early intervention to address the root causes of their criminal behaviour as prescribed by the Act. Instead, being denied these services the risk increases of them lapsing into a continued life of crime (Badenhorst, 2012: 8).

Insufficient funding was a further challenge noted in the first year of implementation of the Act was (South Africa, Department of Justice, 2011: 5). The amount required for the implementation of the Act and the budget required per annum thereafter was calculated by the Applied Fiscal Research Centre (AFREC), a consulting company affiliated to the University of Cape Town (Barberton & Stuart, 2001). Only R30 million of the R52 million estimated by AFREC for implementation purposes was received for the 2010/2011 financial year (Wakefield, 2011: 46). This budget was distributed to the Department of Justice and Constitutional Development for the appointment of dedicated child justice court clerks, the effective functioning of intersectoral governance structures, training, and public education and awareness-raising, to the National Prosecuting Authority for the appointment of additional dedicated prosecutors, as well as to Legal Aid South Africa for the appointment of dedicated child justice attorneys (South Africa, Department of Justice and Constitutional Development, 2012: 40). Even though an additional budget of R52 million had been allocated for the 2011/2012 financial year, only R16 million was received (South Africa, Intersectoral Child Justice Committee, 2012: 15). An insufficient budget will hinder the successful implementation of the Act and prevent all departmental officials from receiving adequate training on the Act.

Considering the unique South African context in which many children find themselves, the move towards a restorative justice approach, and the promotion and regulation of child diversion in the new South African juvenile justice system may offer a solution to decreasing juvenile crime once the Act is properly implemented (Steyn, 2010: 3; Muntingh, 2001: 50).

The next section will review the role of restorative justice in the development of the South African juvenile justice system.

2.3 Restorative Justice

The juvenile justice system adopted by South Africa, as is evident in the Act, is based on a restorative justice approach, which aims to promote the well-being of each individual child in conflict with the law (Skelton & Tshehla, 2008: 26). As Stout (2008: 4) states:

...a conscious attempt was made to build a coalition of progressive forces that could unite around new ideas for dealing with children. There was a recognition that more than just diversion was needed; the concerns of the community had to be taken into account, and this led to reformers advocating for a restorative justice approach.

Restorative justice principles aim to make child offenders understand and experience the consequences of their crimes by obliging them to accept responsibility and make amends for the crime committed (Skelton & Tshehla, 2008: 10). The restorative justice approach also acknowledges that children are developing individuals who are more likely to change their behaviour as they grow older (Skelton & Tshehla, 2008: 19). The core concepts of the restorative justice philosophy are conflict

resolution, accountability and the active involvement of relevant stakeholders in the decision-making process (Batley, 2005: 22).

South Africans accept the idea of community involvement in decision-making, which is clear from the fact that traditional courts and people's courts still play a role in conflict resolution today (Karafin, 2008: 5; Choudree, 1996: 10). Community courts are neighbourhood-focused courts that aim to incorporate the indigenous justice system to address local problems, especially in rural areas where they offer the only access to justice for many citizens, and can deliver justice in an informal, cost-effective and speedy way (South African Law Commission, 1999: 5). There are also traditional or customary courts, formerly chiefs' courts, established at traditional community areas in rural villages known as *Izinkundla*, *Izigcawu* or *Makgotla* (Skelton, 2002a: 499). The judicial functions of traditional leaders are regulated in terms of the Traditional Courts Bill, 2008, which is currently under review (South Africa, Government Communication and Information System, 2011: 188).

Restorative justice aims to define crime in a way that it is not only an offence against the state or simply breaking the law, but as a wrong done by one person to another person, and, in essence, a wrong against the community (Steyn, 2005: 14; South African Law Commission, 2000: 96). Crime prevention takes place through reconciliation and restoration. The community plays an active role in the restorative process in which the victim's rights and needs are also recognised. The restorative process furthermore strives to ensure that offenders understand the repercussions of their behaviour (Steyn, 2005: 14; South African Law Commission, 2000: 96). The emphasis is on problem solving and on repairing social injury, and, therefore, the offender is encouraged to take responsibility, be accountable, and offer compensation (Steyn, 2005: 14; South African Law Commission, 2000: 96).

The next section focuses on the reforms that have influenced juvenile justice in South Africa.

2.4 South African Juvenile Justice Reform

As mentioned previously, court judgments and international instruments have acknowledged that children lack maturity and should therefore be afforded special treatment (Steyn, 2005: 17). It is accepted that children are not adults and do not have the same knowledge, experience and maturity expected from an adult, and should therefore be treated in accordance with their age. One of the consequences of this understanding, as explained in clause 3(1) of the National Instruction on Children in Conflict with the Law of 2010, is that children are regarded as being less responsible for their actions than adults (see also Holman & Ziedenberg, 2006: 2). Early intervention, through appropriate corrective action and guidance could prevent a life of continued crime. Institutionalisation and formal legal proceedings may stigmatise the offender, which could promote rather than curb further offending (Holman & Ziedenberg, 2006: 2). Prison and detention facilities can damage young people's physical and emotional well-being and development, and are often seen as 'schools of crime' where further offending can be learned from other inmates (Holman & Ziedenberg, 2006: 2). As stated by a probation officer in research conducted by Khumalo (2010: 52):

...imprisonment does not rehabilitate a child, but instead causes a child to re-offend; this is because, instead of the child being taught something constructive in prison, they are being exposed to other criminals and from this exposure the child offender learns new ways of committing crime.

It is therefore important that an independent juvenile justice system is in place to manage children in conflict with the law separately from adult offenders (Skelton & Tshehla, 2008: 8).

Muntingh (2009: 8) reviewed the South African juvenile justice reform, which has been taking place over the last two decades, and emphasises that the reform was initiated due to the large number of children detained in prisons in the early 1990s, a legacy of detention without trial during the 1980s. Skelton and Tshehla (2008: 32) describe that during the 1980s thousands of youths were detained in terms of South Africa's State of Emergency regulations for political offences as well as for crimes which were non-political in nature. No laws were in place to ensure that young detainees were treated age appropriately or placed in suitable juvenile facilities. Consequently, these youths were detained, often for months, with little or no legal representation (Skelton & Tshehla, 2008: 32; Koch & Wood, 2002: 1). Even though the number of political detainees had decreased by the end of the 1980s, youths continued to be detained, often together with adult prisoners (Skelton & Tshehla, 2008: 32). In addition, parents were not always informed about the whereabouts of their children (Steyn, 2005: 15). In the absence of a child justice system, children were dealt with by the adult justice system. Legislation, sentencing, and punishment, such as corporal punishment, which were developed with adults in mind, were applied to these young offenders (Stout & Wood, 2004). In reaction to this, human rights lawyers made efforts to create public awareness and as a result, children's rights movements, such as the National Children's Rights Committee, were established in 1991. Furthermore, corporal punishment was abolished in 1994 (Skelton & Tshehla, 2008: 32). In 1991 the National Children's Rights Committee was established, and in 1994 the sentence of whipping was abolished (Skelton, 2008: 186). Campaigns and initiatives, such as 'Justice for Children: No Child should be Caged', initiated by the Community Law Centre, Lawyers for Human Rights and NICRO placed increasing pressure on the government to react to the inhumane treatment of child offenders. The need for a comprehensive and effective youth justice system became crucial and the National Working Committee on Children in Detention was formed (Skelton, 2008: 185). Soon afterwards, NICRO and government diversion programmes were implemented in a number of areas, and seminars and workshops planned future strategies for dealing with children in conflict with the law. Hence, the development of strategies for early intervention and the diversion of young people away from the formal criminal justice system (Steyn, 2005: 15).

President Mandela, in his State of the Nation address on 24 May 1994, stated that Government felt obligated to attend to children and youth kept in detention or in prison, and that the criminal justice system should be only the last resort when dealing with juvenile offenders. He made clear that as a matter of urgency, guidelines would have to be developed to ensure that there were no children in prison and that alternative, suitable care must be provided (Swanson-Jacobs, 2007: 1; Skelton, 2002b:

1; Hamilton, 2001: 3) Steyn (2010: 1) points out that those working with at-risk youth were confronted by inadequacies in the existing legislation that did make provisions for young offenders, such as the Criminal Procedure Act (51 of 1977), the Child Care Act (74 of 1983) and the Correctional Services Act (8 of 1959). Soon after, the United Nations Convention on the Rights of the Child (the Convention) was ratified by South Africa in June 1995. This is the most widely ratified human rights instrument in the world (Badenhorst & Conradie, 2008: 1). The Convention is a political instrument aiming to bring changes in social and political attitudes towards children and to accept that they must be ensured rights and their place as a distinct group in society (Skelton, 2008: 16; Badenhorst & Conradie, 2008: 2). In ratifying the Convention, South Africa obligated itself to adhere to, among others, Article 2 of the Convention to develop separate child legislation and committed itself to implement programmes that respect and uphold the rights of every child in conflict with the law (Stout & Wood, 2004; South African Law Commission, 2000: 2). This instrument also states that children have a right not to be discriminated against and to participate in any decision that affects their lives as well as to be heard (Badenhorst & Conradie, 2008: 2). Some sections in the 1996 South African Constitution (the Constitution) coincide with the recommendations of the Convention, ensuring that all actions taken on their behalf afford South African children rights and protection (Tshem, 2009: 36; South African Law Commission, 2000: 2). Section 28(1) of the Constitution states that the detainment of children can only be exercised as a measure of last resort and, if detained, they must be kept separately from adult detainees, and must be treated in a careful and sensitive manner that takes into consideration the child's age (Skelton, 2009a: 2; also see the Constitution, sections 12 and 35).

In November 1994, the Juvenile Justice Drafting Consultancy published the first comprehensive response to the management of youth offenders in South Africa. The document, entitled "Juvenile Justice for South Africa: Proposals for Policy and Legislative Change", can be considered the first step toward the legal introduction of a juvenile justice system (South African Law Commission, 1997: 5). The proposals dealt with procedures for the arrest and referral of youth in conflict with the law, and also commented on diversion and the sentencing of young offenders (South African Law Commission, 1997: 6). An Inter-Ministerial Committee on Young People at Risk (IMC), led by the then Minister of Welfare, was established in 1995 as a response to the uncoordinated release of more than 2 000 juveniles awaiting trial on 8 May 1995, but eventually focussed on problems related to child justice and the residential care system for children (Skelton, 2008: 37; Del Buono & Rauch, 2003: 6). The uncoordinated release of these juveniles was prompted by an amendment to section 29 of the Correctional Services Act (8 of 1959), prohibiting the detention of awaiting trial juveniles under the age of 18 years in DCS facilities (Muntingh, 1997a: 1). However, there were no other facilities where these juveniles could be kept while awaiting trial, which emphasised the extreme inadequacy of services for young people in general. The IMC believed that the situation then warranted an extensive investigation into all matters relating to child and youth care and its task became that of designing and enabling the implementation of an integrated child and youth justice system, based on a developmental and restorative justice perspective (Muntingh, 1997a: 1).

In November 1997, the IMC circulated their interim policy recommendations for the transformation of the child justice system, in which the limited availability of child diversion programmes and the unequal access to these programmes was acknowledged (Sloth-Nielsen, 2000: 422). In a parallel process during 1996, the Minister of Justice requested the South African Law Commission to commence an investigation into juvenile justice with a view to developing appropriate new legislation (Del Buono & Rauch, 2003: 6). In 1996, the Government of South Africa adopted the National Crime Prevention Strategy (NCPS), which stressed the need for judicial reform, especially relating to young offenders and youth crime (Del Buono & Rauch, 2003: 6; Rauch, 1996: 1). The NCPS saw a reduction in crime as essential for economic growth (Rauch, 1996: 2).

The Juvenile Justice Committee consulted with police, prosecutors, magistrates, judges, non-governmental organisations (NGOs) and academics (Tshem, 2009: 37). The IMC recommended the development of an effective referral process and different levels of diversion options depending on the severity of the crime committed. The IMC was also responsible for setting up a number of pilot projects to test some of their policy recommendations, for example the piloting of family group conferencing (FGC) (Wood, 2003: 2). It continued to operate until 1999, when a new Minister was appointed after South Africa's second election, and the ministry re-named as the Department of Social Development. In 1999, the then South African Law Commission, renamed the South African Law Reform Commission in 2003, published a Discussion Paper founded on ratified international instruments such as the Convention, sections of the Constitution pertaining to children's rights, and theories of restorative justice with a specific focus on the internationally accepted juvenile justice best practice of diversion (Del Buono & Rauch, 2003: 6). The final Report of the Commission's Committee on Juvenile Justice was handed to the Minister of Justice in August 2000, together with the draft Child Justice Bill, which was approved by Cabinet in November 2001 (Gallinetti, 2002: 1; Koch & Wood, 2002: 2). The Child Justice Bill was adopted by the National Assembly in November 2008, and signed into law in May 2009, after six years of legislative processes in Parliament, culminating in the implementation of the Act in April of 2010 (Muntingh, 2009: 153; Skelton, 2009b: 3; Skelton, 2008: 185-186; Pendlebury et al, 2009: 11).

The Act aims to protect the rights of children in conflict with the law, as well as providing legal guidelines for diversion programmes so that these children have the best possible chance at rehabilitation and to avoid re-offending (Steyn, 2005: 6). Various international and national instruments guided the drafting of the Act by clearly stating what an ideal child justice system should include, such as promoting the well-being of each individual child, focussing on diverting a child out of the criminal justice system as early as possible into suitable diversion programmes, ensuring that proceedings take place within appropriate time frames, and that depriving children of their liberty should be a measure of last resort and should be restricted to the shortest possible period of time (Skelton & Tshehla, 2008: 25; Muntingh, 2007a: 330).

2.5 International and National Juvenile Justice Legislation

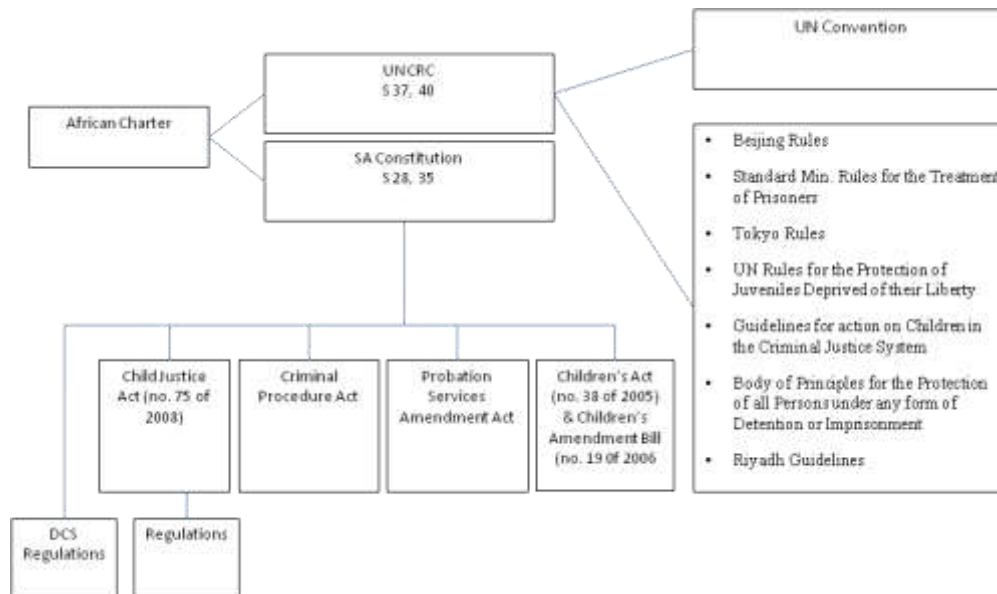
International instruments dealing with juveniles in conflict with the law, such as the Convention, The United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines), The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), The United Nations Standard Minimum Rules for Non-custodial Measures (Tokyo Rules), United Nations Standards Minimum Rules for the Protection of Juveniles Deprived of their Liberty and The African Charter on the Rights and Welfare of the Child, give a clear picture of what a progressive child justice system should include (Skelton & Tshehla, 2008: 27).

As mentioned, South Africa ratified the Convention in 1995 (Skelton & Tshehla, 2008: 16). The Convention deals with children's rights and provides guidelines within which child justice should be administered (Skelton & Tshehla, 2008: 16; Stout, 2008: 3). By ratifying the Convention, South Africa is now obliged, under Article 40(3), to establish laws, procedures, authorities and institutions specifically applicable to children in conflict with the law (Skelton & Tshehla, 2008: 17; Stout, 2008: 3). Articles 18 and 19 of the Convention specifically deal with alternatives to prosecution (Tserere, 2006: 37). Article 18 states that prosecutors should waive prosecution or divert criminal cases from the formal justice system, while considering the rights of suspects and victims, and that countries should adopt diversion options with the purpose to alleviate court loads, as well as to avoid the stigmatising effects of imprisonment. Article 19 states that prosecutors should give special consideration to the nature and gravity of the offence, the protection of society, the personality and background of the juvenile, and always consider available alternatives to prosecution.

The Beijing Rules also place an emphasis on diversion away from criminal justice processes and declare that this should be the central principle of any child justice system (Skelton & Tshehla, 2008: 22; Stout, 2008: 4). The African Charter on the Rights and Welfare of the Child does not differ substantively from the United Nations Convention but is sometimes preferred in South Africa because of it is more collective emphasis and closer fit with perceived African traditions of the social cohesion of communities (Badenhorst & Conradie, 2008: 77; Skelton & Tshehla, 2008: 25; Stout, 2008: 4).

Section 28 (2) of the Constitution provides for children's rights and adheres to the general principle that a child's best interest is of the utmost importance (Skelton & Tshehla, 2008: 17). Section 28 (1) deals specifically with children and provides that children should only be detained as a matter of last resort, for the shortest possible time period and kept separately from adults (Skelton & Tshehla, 2008: 17; Stout, 2008: 3). According to the South African Department of Justice and Constitutional Development (2012: 11-12), other national legislation guiding the Act include the Criminal Procedure Act, 1977 (Act No. 51 of 1977), the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007), the Children's Act, 2005 (Act No. 38 of 2005), the Probation Services Act, 1991 (Act No. 116 of 1991), the Probation Services Amendment Act, 2002 (Act No. 35 of 2002) and the Correctional Services Act, 1998 (Act No. 111 of 1998).

Figure 05: Overview of South African Child Rights Architecture



Source: Muntingh (2007: 331).

Figure 05 above offers an overview of the international and national legislation pertaining to child justice in South Africa and how these are interlinked. The Act reflects the requirements laid down by the ratified international instruments (Skelton & Tshehla, 2008: 27). The Preamble to the Act mentions South Africa's obligations, as a party to international and regional instruments relating to children, with particular reference to the Convention and the African Charter (Skelton & Tshehla, 2008: 27). Both national and international instruments acknowledge and support the need for a separate justice system for young people (Skelton & Tshehla, 2008: 27).

2.6 The Child Justice Act (75 of 2008)

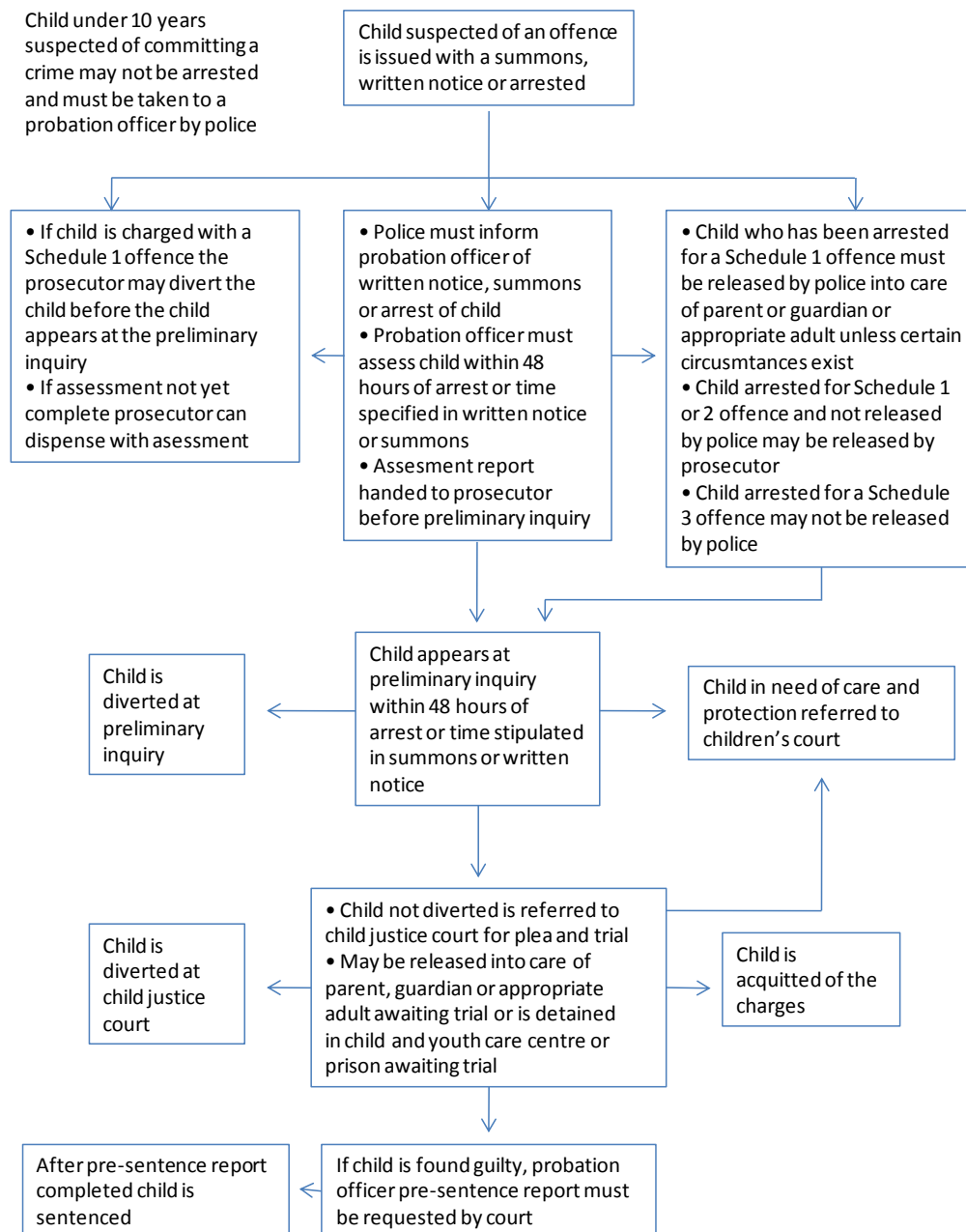
The development of the Act and thereby the creation of a previously absent juvenile justice system, was a long process, which resulted in the Act being signed into law on 7 May 2009 and implemented on 1 April 2010 (Skelton, 2009a: 3). The Act focuses on rehabilitation, restoration and on the humane treatment of children in conflict with the law, considering that they are children, that is, vulnerable, impressionable and developing individuals. As reiterated in the National Instructions on Children in Conflict with the Law of 2010, the Act also ensures that their rights are respected, while acknowledging that they have to take responsibility for their actions.

2.6.1 Intention of the Act

As made clear by the National Policy Framework on Child Justice, the Act represents a restorative justice approach to children in conflict with the law and creates a child justice system that incorporates procedures and processes that have been operating in practice over the last few years without formal legislation, such as assessment and diversion (South Africa, Department of Justice & Constitutional Development, 2010: 4). The new legislation intends that each child is treated and assessed individually, that diversion is considered in each case, that a sentence or management plan that

addresses the unique circumstances of each child is implemented, and at the same time ensures that each child is treated equally before the law (Sloth-Nielsen 2006: 18). The Act focuses on reinforcing children's respect for themselves and for the rights of others, and incorporates concepts such as accountability, reconciliation, and the involvement of victims, families and communities in the process (Skelton and Tshehla 2008: 50; South African Law Commission, 2000: 2). The best interests of the child need to be balanced against the interests of the community to feel safe and secure and therefore, even though the emphasis is placed on diverting children away from the formal justice system, those children who are serious offenders and against whom the community needs to be protected, can be placed in residential care or sentenced to prison. The formal introduction of diversion and restorative justice into child justice legislation is seen as a revolution in the criminal justice field and therefore the Act was applauded by many as a milestone in providing for a protective legislative framework for children and youths in conflict with the law (Gallinetti et al, 2006: 8). Figure 06 below traces a child's passage through the criminal justice system as set out by the Act and shows that diversion is possible at various stages (Gallinetti, 2009: 65).

Figure 06: Child's Passage through the Criminal Justice System



Source: Gallinetti (2009: 65).

Figure 06 shows that, in line with the National Policy Framework on Child Justice, the avoidance of arrest is encouraged, and, where children are arrested, their earliest release into the care of their parents, guardians, other suitable adults or places of safety is encouraged (South Africa, Department of Justice & Constitutional Development, 2010: 4). If a child does go through the criminal justice system, “he or she should be tried by a competent authority (with legal representation and parental assistance) in an atmosphere of understanding conducive to the best interests of the child and the child should be able to participate in the decision-making process” (Skelton & Tshehla, 2008: 26). The proceedings should take place within 48 hours and there should be no unnecessary delays. The National Policy Framework on Child Justice states that, in deciding on the outcome of any matter involving a young offender, the decision-making process should be guided by a set of principles,

including the principle of proportionality, the best interests of the child, and the least possible restriction on the child's liberty (South Africa, Department of Justice & Constitutional Development, 2010: 4; also see Skelton & Tshehla, 2008: 26).

The main goal of this legislation is to afford youth offenders a second chance, to allow for their reintegration back into the community, and to prevent re-offending by focussing on a change in behaviour rather than on punishment. This is made possible by steering children in conflict with the law away from formal court procedures and to rather divert these children into diversion options or programmes (Skelton & Tshehla, 2008: 26). According to the National Policy Framework on Child Justice, in 2009/10, there were approximately 5 000 children whose cases were heard in court on a monthly basis, and of these cases between 1 300 and 1 900 were diverted per month from the mainstream criminal justice system into child diversion programmes (South Africa, Department of Justice & Constitutional Development, 2010: 8). The National Policy Framework on Child Justice warns that this diversion figure is expected to increase dramatically once the Act is fully implemented and therefore the new Act formally incorporates the promotion and expansion of diversion, as well as the regulation and accreditation thereof (South Africa, Department of Justice & Constitutional Development, 2010: 8).

2.7 Diversion

The previous section(s) emphasised why child offenders should be afforded special protective rights and should have access to options that allow for rehabilitative opportunities and for circumvention of the criminal justice system.

Diversion can be described as the tool through which restorative justice principles are implemented, and diversion options and programmes are developed to ensure that children not only avoid formal court action, but also the stigmatisation of a criminal record (Skelton, 2009a: 16; Schönteich, 2002: 12). Children who have been accused of a crime can be diverted, with or without special conditions, into programmes aimed at developing life skills as an alternative to spending time in prison (Mbambo, 2005: 77). By developing effective life skills through the restorative justice principles, which diversion programmes incorporate, diversion can prevent or decrease re-offending and protect children at risk from victimisation (Steyn, 2010: 3; Muntingh, 2001: 50). The intention is to prevent further offending by teaching them the necessary skills to understand and change their actions and behaviour (Wood, 2003: 1). The Act regards the objectives of child diversion as the promotion of the well-being of the child, the development of his or her sense of self-worth and the ability to contribute to society (Skelton & Tshehla, 2008: 11). In an interview with Kemp (2009: 1), South African judge, Albie Sachs, noted:

South African courts are trying to use as much diversion as possible, incorporating apology and reparation and reconnection, rather than institutionalising and isolating the offender from the community and placing the offender with other offenders in a youth culture of marginalisation and anger.

At the 2006 Child Justice Alliance Conference, Advocate Maggie Tserere (2006: 37-46) presented information on the development of diversion by the NPA. She commented that the passing of the Act would increase the diversion of children away from the punitive justice system to rehabilitative programmes, as the Act proposes equal access of children to diversion and this would lay the basis to ensure availability of programmes throughout South Africa, in urban and rural areas alike (Tserere, 2006: 37). The Act prioritises developing mechanisms to ensure that diversion occurs in a consistent and regulated manner and is accessible across the country, and devotes an entire chapter to the regulation of diversion. Sections to this chapter of the Act include: Objectives of diversion (section 51), Diversion options (section 53), Minimum standards applicable to diversion (section 55), Provision and accreditation of diversion programmes and diversion service providers (section 56), Monitoring of compliance with diversion order (section 57), Family group conference (section 61) and Victim-offender mediation (section 62) (Wood, 2003: 5).

Even though diversion represents an alternative to the formal criminal justice system, the Act carefully regulates it to ensure that diversion is not a 'soft option' for children who commit crime (South Africa, Department of Justice & Constitutional Development, 2010: 5). Many believed the Act would be too lenient because of its focus on a restorative justice approach, or, as stated by Sloth-Nielsen and Gallinetti (2011: 81-82) a “*just say sorry*” approach. This view had an impact on the way in which the provisions on diversion were regulated, staying true to the principles and objectives of restorative justice and “*ubuntu*”, while at the same time ensuring that children are held accountable for their actions (Sloth-Nielsen & Galinetti, 2011: 82). In the event of a child not complying with the diversion option, his or her case reverts back to court (South Africa, Department of Justice & Constitutional Development, 2010: 5).

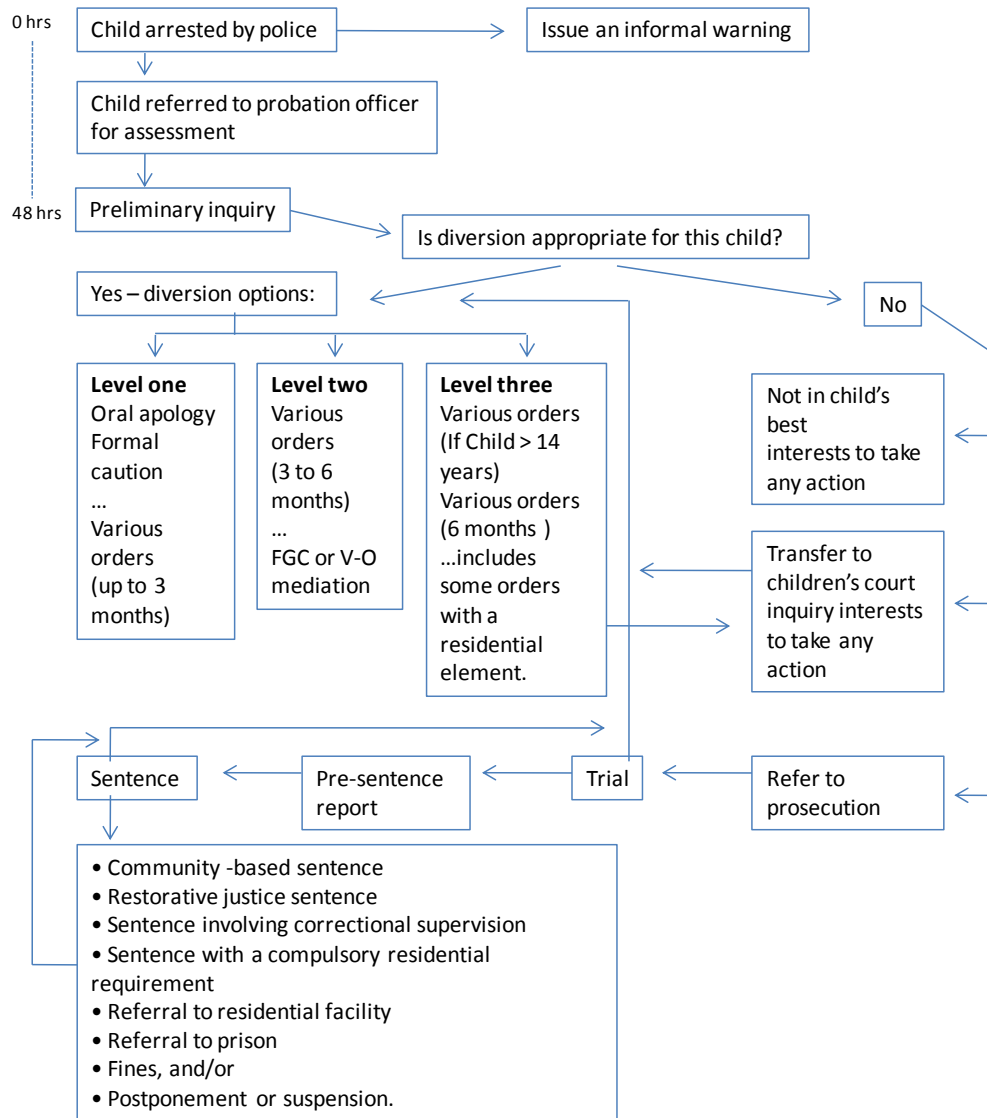
Muntingh (1997c: 6) analysed procedures associated with the practice of diversion and stated:

Diversion is not without its problems and pitfalls, and it is important to be aware of the 'thorns on the rose'. There are a number of problematic issues associated with diversion which relate to both procedural matters and service delivery.

For a child offender to be considered for diversion the accused has to admit guilt in front of the prosecutor, sign an admission of guilt form and only then will a decision be made whether the case is eligible for diversion. The admission of guilt form can be used as evidence in court should the accused fail to comply with the conditions of the diversion. Even if the accused believes he or she is innocent, diversion may still appear to the child to be a better option than the risk of being convicted and sentenced. The result can be that innocent children are diverted, while the actual aim is to divert guilty children from a conviction. Skelton (2008: 14) notes that the benefits of diversion in comparison to a retributive, punitive system outweigh the criticism mentioned. Nonetheless, it is crucial that any negative aspects should be dealt with once the Act is fully implemented. In a well-functioning juvenile justice system there will be mechanisms in place to divert children away from the criminal justice system whenever possible (Skelton & Tshehla, 2008: 22). The Beijing Rules centralise the principle of

diversion and Rule 11.1 provides as follows: “*Consideration shall be given, wherever appropriate, to dealing with juvenile offenders without resorting to formal trial by the competent authority*” (Skelton and Tshehla, 2008: 22).

Figure 07: Referral procedures for Diversion



Source: Wood (2003: 5).

The Figure above shows the referral procedures for diversion as defined by the Act. The process makes diversion possible at various stages of the criminal justice process, with or without conditions, to ensure that the best interests of the child and the community are considered. (Gallinetti, 2009: 65; Wood, 2003: 6).

In summary, the main objectives of diversion, as defined in section 51 of the Act, are to:

- deal with a child outside the formal criminal justice system in appropriate cases;
- encourage the child to be accountable for the harm caused;
- promote the reintegration into the family and community;

- provide an opportunity to the victims to express their views on the impact of the crime;
- encourage the rendering of some symbolic benefit or the delivery of some object as compensation for the harm caused;
- promote reconciliation between the child and the victim(s) affected by the harm caused by the child;
- prevent stigmatising the child and prevent the adverse consequences flowing from being subject to the criminal justice system;
- reduce the potential for re-offending;
- prevent the child from having a criminal record; and
- promote the dignity and well-being of the child, and the development of his or her sense of self-esteem (Dawes & van der Merwe, 2004: 23).

As noted above, mechanisms to ensure that diversion occurs in a consistent and regulated manner are highlighted in the Act, because diversion has been deemed the most beneficial alternative sentencing option when dealing with children in conflict with the law. Diversion service providers must be able to measure their ability and capability to provide beneficial programmes to such children, and the DSD is mandated to ensure the rights of every diverted child are upheld. Therefore, the Act places an emphasis on compliance with the minimum norms and standards for good diversion practice for all providers and programmes involved in the diversion sector.

2.7.1 Minimum Standards for Diversion

In 2003 the Department of Social Development contracted NICRO and the HSRC to develop minimum standards for diversion programmes as contemplated in the Child Justice Bill (Muntingh & Ehlers, 2006: 51; Dawes & van der Merwe, 2004: 4). As mentioned, diversion programmes had been in existence since the early 1990s but had been operating in an unregulated environment (Dawes & van der Merwe, 2004: 23). Sections 55 and 56 of the Act mandate the Minister of Social Development to develop an accreditation system based on the Minimum Standards for diversion (Muntingh & Ehlers, 2006: 51). The Minimum Standards set a level of quality and are intended to safeguard both the rights that are promised to children through ratified international and domestic law, and the interests of other involved stakeholders (Muntingh & Ehlers, 2006: 51; Dawes & van der Merwe, 2004: 5).

The Act stipulates Minimum Standards applicable to diversion programmes, meaning that all programmes and diversion options must comply with specific standards to ensure that children benefit from diversion. For example, punishment and public humiliation are prohibited and instead diversion interventions must promote dignity and well-being, and assist the child to view him or herself as having something valuable to contribute to society (Skelton, 2008: 186; Wood, 2003: 6). Section 55 of the Act states that children should be directed into diversion interventions that are appropriate to their age and maturity, and these should ideally impart skills. Diversion programmes must not interfere with a child's schooling and economic factors are not allowed to become a barrier to a child's inclusion in a diversion programme (Wood, 2003: 13).

The Minimum Standards project team made the assumption that once the Act is passed there will be an expansion of child diversion programmes and also that a variety of new providers will become involved in rendering these services (Muntingh, 2005: 4; Dawes & van der Merwe, 2004: 24; Open Society Foundation for South Africa, 2003: 8). These providers would not all have the necessary experience with diversion, and it would, therefore, be necessary to set certain standards in order to mitigate against possible risks (Open Society Foundation for South Africa, 2003: 8). The Minimum Standards were developed to prevent children from being subjected to harmful and exploitive practices, and in order to monitor this, the Act requires that all diversion options must be registered and accredited in accordance with the developed Minimum Standards (Wood, 2003: 13). The Act underpins the implementation of Minimum Standards to ensure that children are referred to accredited quality programmes and service providers (Tserere, 2006: 37).

The challenge has been to develop minimum standards that would not only protect children's rights but also increase the quality of service delivery (Muntingh & Ehlers, 2006: 52; Dawes & van der Merwe, 2004: 5). It was essential that these standards be achieved by both urban-based and rural-based providers and that preference be given to neither. The important issue was that, in the absence of minimum standards, risks exist on several levels. Minimum standards in diversion programmes are aimed at managing risk areas by setting clear guidelines for performance (Muntingh and Ehlers, 2006: 52). As stated by Muntingh and Ehlers (2006: 52), setting minimum standards is an attempt to, first, be proactive in managing the risk and, secondly, to set a *"standard that is objective, transparent and verifiable"*.

In the first phase of the development of the Minimum Standards, eight primary risk areas were identified that infringed upon the rights of children, namely:

- mal-administration and mismanagement of resources;
- infringing upon the rights of children;
- poor programme quality;
- inappropriate programme content;
- inappropriate matching of children to programmes;
- lack of capacity within service provision agencies;
- lack of skill in service providers; and
- unequal access to diversion services (Muntingh and Ehlers, 2006: 52).

The diversion programmes stakeholders were identified as being programme participants, namely children, and their families; service provider organisations, governmental and NGOs; donors; the Department of Social Development; and the Department of Justice (Muntingh and Ehlers, 2006: 52). The identified risk areas and the goal to develop standards for diversion programmes, which would be suitable for the South African context, would be achievable, high in quality, developmental and empowering, and at the same time would ensure that children's rights were upheld, directed the next steps in the development of the standards (Muntingh and Ehlers, 2006: 53). Two broad categories of

standards were outlined, namely standards relating to the organisational and service provider abilities and capacities, and standards relating to programme outcomes, meaning what programmes need to achieve (Muntingh and Ehlers, 2006: 53).

The second phase of the project involved an all-inclusive research process aimed at documenting national and international best practice and then producing a draft set of standards (Muntingh and Ehlers, 2006: 54). Dawes and van der Merwe, from the HSRC, were contracted to develop the draft Minimum Standards relating to programme outcomes, which involved a national consultation process with stakeholders in the child justice field (Muntingh and Ehlers, 2006: 54; Dawes & van der Merwe, 2004: 6). Workshops were held during October 2004 and participants included prosecutors, magistrates, probation officers, academic institutions, welfare organisations, the South African Police Services, Department of Correctional Services, Department of Social Development, and organisations currently rendering diversion programmes or planning to do so (Muntingh and Ehlers, 2006: 54). There were between 15 and 30 participants in each workshop with a total of 132 participants (Muntingh and Ehlers, 2006: 54). The majority of groups and participants accepted the proposed standards as being 'desirable', meaning they thought it was a good standard and would contribute to better service and outcomes, as well as 'feasible', meaning adequate resources were available. These consultations validated the draft standards that were developed by the researchers (Muntingh and Ehlers, 2006: 55).

The final phase involved a testing phase of the proposed standards by seven diversion service providers (Muntingh and Ehlers, 2006: 55). The providers that participated in this testing process ranged from urban-based service providers, wilderness programme experts, a small community-based diversion provider and a state-run one-stop child justice centre (Muntingh and Ehlers, 2006: 55). These providers agreed to do so under the condition of anonymity and it was made clear that it was important to ascertain to which degree they were meeting the proposed minimum standards and to identify the gaps in resources and / or skills requirements in order to meet the standards (Muntingh and Ehlers, 2006: 55).

After the testing phase, a total of 95 standards were formulated; 60 in the category of organisational standards and 35 in the programme outcomes category. The Organisational Infrastructure and Systems Standards relate to organisational requirements for diversion service providers. These standards are intended to regulate governance and management systems, including finances, service level agreements, human resources, as well as the training of programme facilitators. The organisational standards aim to ensure the proper management of diversion service providers (Muntingh and Ehlers, 2006: 56). Dawes and van der Merwe (2004: 5) state that the purpose of the Programme Outcomes Standards are to ensure that diversion programmes comply with these standards, which focus on programme design, delivery and monitoring, thereby actively protecting the rights of the programme participants. The Programme Outcomes Standards, consisting of standards relating to Post Arrest Assessment before Referral, Programme Design and Delivery, Standards for Restorative Justice Processes, and Sex Offender Programme Standards, attempt to articulate what the actual services must achieve. They "*place emphasis on instilling a sense of methodological rigour*

in the design, development, implementation, monitoring and evaluation of services" (Muntingh and Ehlers, 2006: 56).

This study focuses on the compliance of diversion programmes with the Programme Outcomes Standards developed by the DSD for diversion service providers, specifically those pertaining to programme outcomes, design and delivery (South Africa, Department of Social Development, 2007: 22-23; Muntingh and Ehlers, 2006: 59). The Standards (South Africa, Department of Social Development, 2007: 21-23) on which the questionnaire for this study are based, read as follows:

- Standard 61. Every arrested child is assessed within 48 hours of arrest by a probation officer before the prosecutor makes the decision to (or not to) divert.
- Standard 66. The probation officer's assessment includes the following: - basic descriptive information, including: the child's name, age and gender; contact details for child's parent/guardian; the school the child attends; and the child's place of residence; description of the context and type of offence; assessment of the child's motivation for committing the offence, and the immediate circumstances surrounding the offence; assessment of the child's acknowledgement of responsibility; assessment of the child's understanding of the meaning of acknowledging responsibility; case administration details; relationship to the victim where applicable - And to the extent possible, detailed information on factors associated with offending ("risk" factors) present in the child's life: social relationships, including family and peers; education, including school grade, attendance and performance; history of antisocial behaviour; substance abuse; medical psychiatric history; whether the child has been found in need of care (in terms of the Child Care Act (No 74 of 1983) (as amended)); the child's skills in the area that the programme is designed to address.
- Standard 71. Every child referred to a particular diversion programme is assessed before participation in the programme, and the assessment includes a specified list of information items (e.g. child's level of risk as indicated by attention to the child's family circumstances, social relationships, history or antisocial behaviour, education and scholastic functioning, medical/psychiatric history, offence and diversion history, strengths and skills deficits);
- Standard 72. Diversion programmes include post-intervention assessments that measure changes in factors assessed in the pre-intervention assessment;
- Standard 73. The diversion programme is reasonably geographically accessible to the child;
- Standard 74. The programme is appropriate to the child's age, physical, and cognitive ability;

- Standard 75. The development of diversion programmes is based on research evidence of what works in reducing criminal behaviour in children and adolescents;
- Standard 76. Diversion programmes have clearly articulated programme objectives and outcomes;
- Standard 77. Diversion programme design and activities can be shown to address the factors directly associated with offending, and are therefore likely to reduce the problem of re-offending;
- Standard 78. Diversion programmes have a system for monitoring the quality of programme delivery;
- Standard 79. Diversion programmes have a system for monitoring the child's progress, including his/her compliance with the conditions of his/her diversion order, and a record of reasons for non-compliance, if applicable;
- Standard 80. The intensity of diversion programmes (frequency and duration of programme activities) vary according to the level of risk recorded in the pre-intervention assessment of participants (i.e. the most intensive services are delivered to higher risk cases; and less intensive services are delivered to lower risk cases);
- Standard 81. A senior staff member regularly supervises diversion programme staff members;
- Standard 82. The manner in which the programme is delivered encourages the active participation of the young offender;
- Standard 83. Diversion programmes are subject to regular outcome evaluations;
- Standard 84. Diversion programme staff track participating children within one year of programme completion to establish the overall well-being of the child with an emphasis on further offending behaviour.

The Minimum Standards relating to diversion programme outcomes, listed above, were adapted for the questionnaire utilised in this study. Compliance with all 95 standards is crucial for good diversion practice, but as mentioned previously, the programme design, delivery and outcomes standards attempt to articulate what the actual services must achieve and have therefore been chosen to investigate the compliance level of diversion programmes.

Despite the development of Minimum Standards, the main challenge for the diversion field is to ensure their effectiveness in protecting children's rights. Standards would mean very little if no accountability mechanism were in place to monitor their compliance (Muntingh and Ehlers, 2006: 61). Therefore, the

DSD developed the National Policy Framework and System for Accreditation of Diversion Service Providers and Programmes (NPF), based on the developed Minimum Standards as prescribed in section 56(2)(a)(ii) of the Act.

2.7.2 Accreditation of Diversion Programmes

The Act introduces the requirement that a child may only be referred to a service provider or programme that is accredited by the Department of Social Development (South Africa, Department of Social Development, 2010: 5). According to General Notice 809 of 2010, the official invitation for applications for the accreditation of diversion programmes and diversion service providers, published in Gazette 33469, 2010, accreditation aims to ensure that service providers comply with programme and organisational standards, which facilitate successful programme outcomes and benefit the programme participants, also see Smit (2011a: 2). The NPF notes that *“the policy is integral to a quality assurance system that supports services to meet quality standards and encourages continuous improvement of programmes”* (South Africa, Department of Social Development, 2010b: 18). In this regard, the DSD encourages and supports service providers to develop or adopt their own internal quality assurance processes, complimentary to the departmental quality assurance and accreditation system (South Africa, Department of Social Development, 2010b: 18). The quality assurance process of the service providers should enable the delivery of services to the agreed standards, and accreditation sets the minimum level of competence in the providers’ organisational and programme outcome areas. The DSD policy outlines a management framework for the accreditation, quality monitoring and quality improvement of diversion service providers and their programmes (South Africa, Department of Social Development, 2010b: 5). The management framework particularises both the accreditation of service providers that provide rehabilitation and developmental services and programmes as diversion and sentence options to children in conflict with the law, as well as the content for diversion programmes and alternative sentences, offered either by government departments or non-governmental service providers (South Africa, Department of Social Development, 2010b: 15). It also provides for the removal of accreditation as a result of non-compliance with the Minimum Standards (Muntingh and Ehlers, 2006: 51).

Accreditation provides for the official recognition of diversion service providers and programmes in South Africa and is a mechanism for quality assurance and quality improvement of diversion in the long term (South Africa, Department of Social Development, 2010b: 23). The accreditation process for diversion providers, as described in the NPF, consists of four phases (Badenhorst, 2012: 5). Phase one is the application phase, where the service provider expresses interest to be accredited, completes and submits a self-assessment form and sends the official application form to the accreditation committee at the provincial office of the Department of Social Development (Coetzee, 2012; Badenhorst, 2012: 5). Phase two is the desk assessment of candidacy, during which the accreditation committee conducts a preliminary assessment of the provider’s compliance with the requirements. Thereafter site visits are conducted and the site verification team prepares the necessary documents for submission to the accreditation committee (Coetzee, 2012; Badenhorst, 2012: 5; South Africa, Department of Social Development, 2010: 40). Phase three involves the

accreditation decision by the accreditation committee. There are four possible decisions: to award candidacy status, to award accreditation, the deferral of accreditation, or the denial of accreditation (Coetzee, 2012; Badenhorst, 2012: 5). If accreditation has been deferred or denied the provider has 14 days after receipt of the letter to initiate the complaints process (Badenhorst, 2012: 5). In cases where accreditation has been awarded, the provider goes into phase four, which is the quality assurance cycle. This includes the maintenance of accreditation and quality, which include annual site visits, progress reports, self-reporting of changes and quality assurance processes (Badenhorst, 2012: 5). Accreditation status allows the provider to operate for a period of four years, after which the process begins anew from phase one (Coetzee, 2012; Badenhorst, 2012: 5). As previously described, candidacy status is defined by the Policy Framework on Accreditation of Diversion Services in South Africa, as a pre-accreditation status awarded to a provider pursuing accreditation and allows a provider to continue operating until full accreditation is achieved (South Africa, Department of Social Development, 2010a: 3; South Africa, Department of Social Development, 2010a: 40).

This is the status of most of the diversion providers that have applied for accreditation in the Western Cape. As previously mentioned (see Table 02 above), only one of eight providers, namely DARE, has achieved full accreditation status. The others have candidacy status. This study aims to determine the programme compliance rate with the Minimum Outcomes Standards and to give insight into the consequences of not achieving full accreditation status. Even though the mechanisms for monitoring the practice of diversion, such as the NPF, are in place, these have not been fully implemented at this stage. The accreditation system has not been evaluated and it is not clear what implications the Minimum Standard compliance results of this study may hold. If diversion providers do not comply with the standards, they will not receive accreditation and will then not be able to continue providing diversion services in future. At the same time, the Act mandates the DSD to provide an adequate number of diversion services nation-wide. Badenhorst (2012: 5-6) noted various challenges experienced by service providers during the accreditation process: *"The application processes and systems are 'labour intensive and complex' and providers have noted that the DSD Accreditation Committees do not adhere to uniform assessment standards"*. Some committees accredit the programmes separately from the site, whilst other committees do both together, resulting in diversion programmes being accredited in one province, whilst the same programme is not accredited in another (Badenhorst, 2012: 6). This has also been confirmed by Smit (2011), who noted that NICRO has had to submit numerous applications in different locations for exactly the same programme. An inconsistent and costly accreditation process may have an adverse effect on the number of diversion services made available by non-governmental providers, because they may not have the financial or human resources required for the process, and this will then limit the number of available diversion services.

South Africa has a wide range of diversion options that have the potential to successfully promote rehabilitation and a sense of responsibility in children, thereby curbing re-offending (Mbambo, 2005: 88). A number of diversion programmes and options were developed for the different schedules of offences in order to achieve the objectives of diversion and cater for the needs of these children. As

stated previously, this study aims to evaluate Minimum Standard compliance of the various programme types offered by providers in the Western Cape and will subsequently give background information on the different levels of diversion and programmes available.

2.7.3 Levels of Diversion

Section 53 of the Act specifies three levels of diversion, ranked from least (Level One) to most severe (Level Three) (see Figure 08). Level One diversion options may be ordered for a maximum of three months and involve tasks such as written apologies, obligatory family time, counselling or therapy, or symbolic restitution. Level Two diversion options include orders contained in Level One diversions and may be ordered for a maximum of six months, with the possible addition of a maximum 50 hours of community service over six months, family group conferences or victim-offender mediation. Level Three diversions only apply to children older than 14 years and are only ordered for matters involving serious crimes or repeat offending. These may include a residential element or community service of up to 250 hours over one year. However, the Act indicates that children can be placed in any registered diversion option as long as it fulfils the objective of diversion, namely rehabilitating the offender in accordance with restorative justice principles, and can provide an individualised response to each child offender (Wood, 2003: 11).

Choosing a suitable diversion option includes ensuring that the child receives an intervention, based on his or her individual circumstances, that produces the best outcome for the child and considers the needs of the victim and promoting public safety. When diverted, the child does not incur a criminal record, thereby allowing the child to become a productive member of society without the stigma of a formal criminal record.

Figure 08: Diversion Options

Diversion options		
LEVEL ONE	LEVEL TWO	LEVEL THREE (child must be ≥14 years)
oral or written apology	oral or written apology	
formal caution – with or without conditions	formal caution – with or without conditions	
supervision or guidance order (≤ 3 mnths)	supervision or guidance order (≤ 6 mnths)	
reporting order (≤ 3 mnths)	reporting order (≤ 6 mnths)	
compulsory school attendance order (≤ 3 mnths)	compulsory school attendance order (≤ 6 mnths)	
family time order (≤ 3 mnths)	family time order (≤ 6 mnths)	
positive peer association order (≤ 3 mnths)	positive peer association order (≤ 6 mnths)	
good behaviour order (≤ 3 mnths)	good behaviour order (≤ 6 mnths)	
place prohibiting order (≤ 3 mnths)	place prohibiting order (≤ 6 mnths)	
counselling or therapy (≤ 3 mnths)	counselling or therapy (≤ 6 mnths)	referral to a programme with a residential element (≤ 6 mnths)
vocational or educational centre placement order (max. 5hrs/week; ≤ 3 mnths)	vocational or educational centre placement order (max. 5hrs/week; ≤ 6 mnths)	vocational or educational centre placement order (max. 35hrs/week; ≤ 6 mnths)
symbolic restitution	community service (50 hrs; ≤ 6 mnths)	community service (250 hrs; ≤ 12 mnths)
restitution of specific object	service or benefit to victim(s)	
	compensation payment ≤R500	
	service or benefit or payment to an organisation	
	family group conference or victim-offender mediation	
	combination of any two of above options	counselling or therapy in conjunction with any of the above options

Source: Wood (2003: 6).

As displayed in the Figure above, there are various diversion orders and programmes available for each of the diversion levels. Probation officers, prosecutors and magistrates must be knowledgeable about all available options so that they can ensure that a child is referred to an option that is in their best interest and will be most beneficial for the rehabilitation and developmental needs associated with the child's delinquency.

2.7.4 Diversion Programme Options

The DSD, as well as other civil society organisations, run a number of diversion programmes. As explained previously, NICRO, a non-governmental organisation, launched the first child diversion initiatives in South Africa in the early 1990s in the Western Cape and KwaZulu-Natal (NICRO, 2012). These diversion programmes were initiated as a response to the vast numbers of children caught up in the criminal justice system, and offered courts alternative sentencing options, based on restorative

justice principles (NICRO, 2012). These options were utilised by a number of magistrates in the urban areas of South Africa, but because there was no regulating legislation to ensure the protection of children's legal rights, these diversion options were often administered selectively and inconsistently (Wood, 2003: 1). The first two programmes initiated by NICRO in 1996 were the Youth Empowerment Scheme (YES) and Pre-Trial Community Service (PTCS). NICRO later expanded the range of diversion programmes to include Family Group Conferences (FGC), Victim-Offender Mediation (VOM) and The Journey, a wilderness adventure programme (Wood, 2003: 3). Probation officers have also been providing restorative justice diversion programmes for many years. The types of diversion programmes focussed on in this study will be summarised below.

2.7.4.1 Life Skills Programmes

Life skills training assumes that offending behaviour stems from inadequate skills to react appropriately to particular situations or where the inadequate control of internal impulses hampers pro-social interaction (Steyn, 2010: 23). Developmental life skills cover a wide range of skills, such as personal awareness and growth, communication skills, conflict resolution and effective mediation, sexuality, crime awareness and crime prevention, parent-child relationships, self-esteem, responsible decision-making, gender sensitivity and leadership development (Mbambo, 2005: 79; Wood, 2003: 12). These programmes are offered by diversion providers, youth clubs as well as church groups and make use of interactive and experiential learning techniques to facilitate these skills (Mbambo, 2005: 79; Wood, 2003: 2; Van der Sandt & Wessels, 1997: 15; NICRO, 2012).

2.7.4.2 Mentorship Programmes

Peer/youth mentorship programmes make use of peers or youth and adult mentors, often from the community (Mbambo, 2005: 80; Wood, 2003: 13). Mentors are assigned to a child or a young person at risk and they spend time together in order to develop a relationship. The mentor offers guidance, plays the role of a peer or sibling and offers friendship to the child, so that they can assist the child in all areas of their lives, for instance school or other institutions, such as the family. Some mentors also facilitate family group conferences and they report back to the programme manager on the progress of the child (Mbambo, 2005: 80; Wood, 2003: 14). These programmes, as a diversion option, are based on the importance of supportive peers in the lives of children, especially as children seem more accepting of and learn more from their peers than from adults. They aim to promote positive values such as self-esteem, self-respect and respect for others, encouraging youths to develop their own vision for the future and aim to assist them in maximising their potential (Wood, 2003: 14; bbbssa.org.za). In some programmes the mentor provides aftercare support and monitoring after the child has completed a diversion programme (Wood, 2003: 14).

2.7.4.3 Wilderness Experiential Programmes

Wilderness/adventure therapy programmes offer life skills, education and leadership skills through outdoor experiential learning (Mbambo, 2005: 80, Wood, 2003: 14). Many of these programmes are

especially designed for children with serious behavioural and emotional problems. By placing these children on 'wilderness journeys' for specified periods of time, they can learn more about themselves and acquire new skills so that they can cope more easily with the challenges in their social environment (Mbambo, 2005: 80; Wood, 2003: 14). The programmes aim to engage youth in problem-solving activities through an adventure-based experiential outdoor intervention model in order to empower the youth to take control of their own lives (Mbambo, 2005: 80; Van Eeden, 1997: 50). The outdoor environment promotes self-awareness, self-sufficiency, and increased self-esteem. The group-based activities provide an opportunity to learn about multiculturalism and develop important life skills such as communication, positive expression of feelings, conflict management, leadership styles and facilitation, decision making and team work (Wood, 2003: 14).

2.7.4.4 Vocational Skills Programmes

Vocational skills training and entrepreneurial programmes offer vocational training, such as business skills training, craftsmanship, entrepreneurial skills, computer skills, mentorship and small business development and follow-up training (Mbambo, 2005: 81; Wood, 2003: 14). Research has shown that programmes that offer vocational training and employment opportunities are most likely to produce positive outcomes for children in conflict with the law (Mbambo, 2005: 81). Some of these programmes are run through residential facilities and have been identified as suitable Level Three diversion options (Wood, 2003: 14). The aim is to develop these once vulnerable individuals to start living a sustainable life and empowering them to take responsibility for their lives.

2.7.4.5 Restorative Justice Programmes

Restorative justice programmes include family group conferencing (FGC) and victim-offender mediation (VOM). The aim is to provide a platform for the victim and the offender to discuss the events surrounding the offence and the consequences for all parties, so as to develop a mutually beneficial agreement to remedy it through restitution efforts, community service programmes and compensation (Steyn, 2005: 27; Mbambo, 2005: 81; Muntingh, 1997b: 33). Restorative Justice programmes give the victim an opportunity to tell the offender how the crime affected him or her, and the offender has the opportunity to apologize and explain his or her behaviour (Muntingh, 1997b: 33). Family-based programmes, including Family Group Conferencing, offer intensive support, guidance and treatment for the whole family (Mbambo, 2005: 81). It is often the exposure to crime experienced within the family environment that leads to the young person's own involvement in the criminal justice system. Therefore treating children in isolation from their families is like treating the symptom rather than the cause. When using family-based services as a diversion option, the child is placed back with his or her family, with the condition that specific support services are offered to both the child and family (Mbambo, 2005: 82).

2.7.4.6 Community Service

Pre-trial community service or community service proposes the use of community service as an alternative to paying compensation for offences committed and has been used successfully in South Africa, particularly by NICRO, for children who have committed minor offences (Mbambo, 2005: 82; Muntingh, 1997b: 29). The procedure is for the child to commit to serving the community for a recommended number of hours (ranging from 10 to 120 hours) instead of going to court (Mbambo, 2005: 82; Muntingh, 1997b: 32). Young people are placed in suitable community service settings, depending on their skills, and where they are needed most, such as libraries, police stations, old age homes, children's homes and hospitals (Steyn, 2005: 60). Examples of tasks that may be assigned include picking up trash, painting community institutions, planting trees and starting small vegetable gardens (Mbambo, 2005: 82). Ideally, community service should enable children to learn new skills and to enhance their self esteem while making amends to society, for instance involvement in computer work and filing, so that their skills can be upgraded (Steyn, 2005: 60). If the community service is well organised and effective, some youths may continue to be involved in the activities after the charges have been dropped, either as volunteers or in paid positions (Steyn, 2005: 60; Mbambo, 2005: 83).

2.7.4.7 Sex Offender Programmes

Programmes for the treatment of young sex offenders were formed in order to develop innovative and effective interventions aimed at the management and treatment of juveniles accused of committing sexual offenses (Stout & Wood, 2004: 124). The objectives of these programmes are to interrupt the development of sexually deviant behaviour; to develop life skills; to attend to family and other contextual issues that may have supported the development of deviant behaviour; to provide an alternative to institutional or custodial care; to encourage the juveniles to assume responsibility for their actions; and to develop insight about the impact of their behaviour on their victims (Stout & Wood, 2004: 124; van Niekerk & Dhabicharan, 2003: 22). Treatment themes include sex education, social skills training, cognitive restructuring, empathy training, impulse control, conflict resolution, acknowledging behaviour, acknowledging positives, relapse prevention, and progress evaluation. Role-plays are used extensively in all of the sessions (Omar, 2003: 29).

2.7.4.8 Therapeutic / Substance Abuse Programmes

Counselling and therapeutic programmes focus on children who have committed crimes and have behavioural, substance-related and mental health-related problems, and therefore need intensive counselling (Mbambo, 2005: 88). The South African National Council on Alcoholism Drug Dependency (SANCA) offers a variety of treatment services for children and young people with substance abuse problems (Wood, 2003: 15). SANCA offers three in-patient treatment programmes. Services offered include assessment, detoxification, counselling, family intervention, support and after care services (Wood, 2003: 15).

2.7.4.9 Combination Programmes

Combination programmes combine a range of elements, such as life skills training, FGC, mentorships, vocational skills training, family support for children and adventure therapy (Mbambo, 2005: 82). The strength of these combination programmes is that they are highly creative and stimulating for all those involved. Nevertheless, combination programmes need to be carefully evaluated to ensure that they meet the Minimum Standards for diversion, for the very reason that they consist of various elements (Mbambo, 2005: 82).

From the discussion of the available programmes above it is clear that, even though there are a variety of programmes already available for children in conflict with the law, more programmes that address the specific needs of children in the system are still lacking. Participants at the national and provincial workshops on programmes to support the child justice system agreed that the following services should be more intensively developed throughout South Africa. Specific needs identified were diversion options for children requiring alcohol and drug treatment; counselling and therapeutic programmes for children with serious emotional, behavioural and mental health-related problems; treatment and counselling for children who have committed sexual offences (Mbambo, 2005: 86). Other services lacking are vocational skills development for children over the age of 14 years, as many existing programmes only offer vocational skills training only target youth over 18 years. Also lacking are: alternative educational programmes for older children who left school in lower grades; programmes with a residential component that can be used for Level Three diversion; and restorative justice programmes (Mbambo, 2005: 86).

In conclusion, as stated by Mbambo (2005: 88):

Diversion is the vehicle for restorative justice principles to find expression. Whether focused on counselling, mentoring, life skills, or community service, all these programmes promote responsibility and accountability towards the harm caused by child offenders”.

Within a purely retributive criminal justice system most young people are not held accountable for their actions in a way that allow them to understand the victim’s viewpoint, apologise for and repair the damage done, and come to the conclusion that re-offending leaves them with few options to lead a productive life and contribute constructively to society (Shapiro, 1997: 12).

2.7.5 The Effectiveness of Diversion Programmes

The question remains whether diversion is effective in curbing re-offending and if it has provided positive feed-back from participants, both offenders and victims. It is a valid question because, as discussed in the sections above, the new child justice system is based on restorative justice principles and the practice of diversion is to ensure that children’s well-being is promoted, their rights are upheld and they have as little contact as possible with the justice system to avoid any stigmatising effect. As discussed, the Standards and accreditation policy were developed to guarantee best practice for

diversion and programmes are being rolled-out nation-wide. These programmes should deliver the expected results, namely to rehabilitate youngsters, curb re-offending and re-integrate children back into their communities so that they can develop into citizens capable of contributing positively to society, rather than being caught up in a life-long spiral of crime.

Limited research is available on the effectiveness of child diversion programmes in local, South African contexts, as well as which programmes work best for particular profiles of child offenders (Steyn 2010: 5). An evaluation study on the effectiveness of South African diversion programmes conducted by Muntingh in 2001, which included NICRO's YES, Pre-trial Community Service, Family Group Conferencing, and The Journey programmes, yielded valuable programme feedback from former participants. Until 2010, diversion programmes operated without a legislative framework and this has impacted on the extent of their utilisation. The Muntingh study highlighted a number of points gleaned from feedback from former participants, re-offending rates and the importance of a diversion register to monitor diversion effectiveness (Muntingh, 2001: 48).

Findings from Muntingh's (2001) study showed that the typical South African youth diversion programme participant is a male, aged 15 - 17 years, a first offender charged with property crime. These offenders were found to reside with their parents and were in their second to third year of secondary schooling (Muntingh, 2001: 48). The compliance rate for all the programmes was found to be above 80%. This is regarded as a positive indication of participants' commitment to completing the programme. It furthermore points to them viewing diversion as a second chance whereby they can avoid a formal sentence and criminal record if they successfully complete the programme (Muntingh, 2001: 48).

2.7.5.1 Participant Feedback

Avoiding re-arrest and a conviction was identified as the single most important reason for complying with the conditions of the diversion programmes (Muntingh, 2001: 49). Feedback on programme content was very positive and most participants stated that the programme they attended had a long-lasting effect on them (Muntingh, 2001: 49). Most respondents were able to remember details about the programme content 24 months after they had participated, which confirms the impact it had on them, especially programmes with experiential and adventure education techniques (Muntingh, 2001: 49). The majority of participants said that they experienced a positive personal change after the programme, with the emphasis being on more responsible decision-making (Muntingh, 2001: 49).

2.7.5.2 Re-offending Rates

A very small percentage of South African divertees re-offended: 6.7% in the first 12 months and 9.8% up to 24 months after participation in a diversion programme (Muntingh, 2001: 49). In contrast, an outcome evaluation of wilderness/adventure therapy programmes in North America showed a 92% re-offending rate among its participants (Dawes & van der Merwe, 2004: 35). There appears to be a fair amount of offence specialization, as the majority of South African re-offenders again committed

economic offences (Muntingh, 2001: 49; Wood, 2003: 16). The predominant reason cited for re-offending, were being influenced by friends or gang members, economic reasons, and being under the influence of alcohol (Wood, 2003: 16). When considering life skills programmes only, research in South Africa found recidivism rates between 17% and 25%, which suggests that up to one in four children re-offend following participation this type of diversion programme (Steyn, 2010: 26).

Regarding the effectiveness of treating young sex offenders, Meys (2003: 17) pointed out that empirical evidence of successful programmes is lacking both locally and internationally. Reliability of re-offending studies depends on apprehension and self disclosure, and 5-year re-offending rates ranged between 5 - 14% (Meys, 2003: 57). It is not clear if the re-offending was related to sexual offenses or other offences. Eliasov's (2003: 43) evaluation of the South African Sex Offenders Programme (SAYSTOP) reported tentative findings that indicated that the programme seemed to work best when the young offender accepted responsibility, and where the family and community were supportive. Participants placed in the programme showed victim empathy, were cooperative, attended school, and were able to break away from their peer group were also more likely to succeed (Eliasov, 2003: 43). Less successful were participants who denied responsibility, had committed other offences, felt they were wrongfully punished, did not complete the programme, had a history of violence or substance abuse, were not enrolled in school, and avoided the issue or were rejected by their family and community (Eliasov, 2003: 43). None of the children interviewed for the evaluation of the SAYSTOP programme reported any sexual re-offending after attending the programme and only one child had recommitted a non-sexual criminal offence (Wood, 2003: 17).

Dawes and van der Merwe (2004: 31) stated that methodologically sound studies on the re-offending rate after the completion of a restorative justice programme or process in South Africa were lacking, and existing studies have produced mixed results. Victim-Offender Mediation (VOM) interventions did not produce significant reductions in repeat offending for young economic offenders. This has implications for diversion in South Africa, where the majority of young offenders are apprehended for this type of offence (Dawes & van der Merwe, 2004: 31). Reporting on findings, Bonta et al. (2002: 322) demonstrated an average reduction in recidivism of no more than 3% across 30 restorative justice programmes. In addition, recent research, focusing on community panels and family group conferences for youths, demonstrated that at six-year follow-ups, three-fifths of the sample had been reconvicted (Dawes & van der Merwe, 2004: 32). In contrast, both Bonta et al. (2002) and Dolling & Hartmann (2003) (as quoted in Dawes & van der Merwe, 2004: 31) reported significantly lower re-offending rates in youths participating in individualised restorative justice initiatives.

In the South African context, where the majority of youth offenders are likely to be economic offenders, the development of offender-specific diversion initiatives may be of particular importance, as well as ensuring that an assessment for each individual offender is adhered to (Dawes & van der Merwe, 2003: 47-48). Khumalo (2010: 62) spoke to a number of probation officers for her research and noted the following:

In a casual conversation I had with another probation officer, she employed a narrative of the variation and uniqueness of every child (and each case), to explain the variation in the success and effectiveness of diversion. She spoke about the uniqueness of every child and the cases that they deal with in the system. She pointed out another telling point: diversion works; it is rehabilitative, but it does not work for every child. The reason for this is that some children understand the wrongfulness and the seriousness of their crimes and they absorb what the programme teaches them and through this they are willing to learn and change. In contrast, she continued, some children do not understand the seriousness of their crimes and may view diversion as getting off lightly.

Even though the re-offending rates are inconsistent, the positive feedback from participants in Muntingh's (2001) study supports the practice of diversion as an effective rehabilitation tool.

2.7.5.3 Diversion Register

Information systems tracing former participants of programmes through official records, such as computerised information management systems have not been implemented and manual registers remain inadequate (DSD Probation Officer, 2012; Muntingh, 2001: 49). Information management systems are not negotiable for the proper administration, management and tracking of juvenile justice services and service delivery, as well as ensuring valid research results (Muntingh, 2001: 48). According to Muntingh (2007: 7) there remain significant information gaps in the criminal justice system relating to children. The lack of quantitative data presents enormous problems in respect of planning and monitoring of services. At the moment there is no way, other than through the inconsistent statistics supplied by the SAPS and the NPA, to monitor the number of children that are prosecuted, convicted and sentenced, and it is not known what sentences convicted children are receiving (Department of Justice, 2011; Muntingh, 2007b: 7). At the first Child Justice Act Implementation Briefing by the Department of Justice (June 2011) the Committees noted discrepancies in the figures for awaiting trial children and figures for children arrested and assessed, even though the Act requires the effective monitoring of children going through the child justice system through the establishment of an integrated information management system. The collection of quantitative and statistical data on child justice promotes transparency and accountability by describing what is happening to children in the criminal justice system and how they are treated. It informs the development and review of policy, and allows for the analysis of trends and interventions (South Africa, Department of Justice & Constitutional Development, 2012: 11; Muntingh, 2007b: 7).

The United Nations Committee on the Rights of the Child has also expressed its concern about the absence of comprehensive and reliable statistical information regarding the quantity and nature of offences, length of pre-trial detention, number of convicted children and sentences passed on children in conflict with the law (United Nations Committee on the Rights of the Child, 2007: 3). Their commentary stated that, without accurate and reliable information, it would be difficult to measure any progress with regard to the upholding of the rights of children in conflict with the law (United Nations Committee on the Rights of the Child, 2007: 3). In South Africa, there is no central register for cases

referred to diversion programmes. Such a register, to be maintained by the DSD, is envisaged by section 60 of the Act and would ensure reliable data on diversions, as well as compliance and recidivism or re-offending rates (Tserere, 2006: 37). In accordance with the Act, a register of children in respect of whom a diversion order has been made must be established and maintained. Section 60 of the Act states that the register must include: the personal details of each child; details of the offence in relation to which the diversion order was made; the diversion option or options as described in the diversion order; and particulars of the child's compliance with the diversion order. Between July 1999 and December 2005, the NPA had diverted 115 582 cases (Muntingh, 2007b: 8). These statistics of diverted cases were manually gathered in a register by the NPA, but the age of the accused, compliance rates per programme, age and gender breakdowns, geographical distribution of participants, and offence profiles were not recorded (Muntingh, 2007b: 8; Tserere, 2006: 37).

Well-developed information systems are vital for the proper administration and management of juvenile justice services (Muntingh, 2001: 48). An integrated information system will not only enhance research, but also service delivery to children in trouble with the law through accurate monitoring (Muntingh, 2001: 48). At this point NICRO is busy implementing a Client Management System throughout its organisation to ensure that information on their services and clients can be collected, created, organised and distributed optimally, thereby ensuring an efficient service that allows for monitoring progress and providing statistical data (Smit, 2011). As stated in the DSD's state of readiness in implementation of the Act (March 2010), the DSD has developed an electronic diversion register in respect of children for whom a diversion order has been made, yet no information could be obtained about the system. In a personal interview with the Department of Social Development it was confirmed that the system was in the process of being tested but had not been implemented yet (Mqonci, 2012). Once implemented, it will ensure reliable data on diversions, which is vital to keep track of consistent implementation as well as compliance and re-offending rates.

In summary, the review of the above research indicates that, even though diversion seems to be effective in reducing re-offending among youth offenders, it is important that the programmes comply with a level of quality and standards to ensure that the programme participants enjoy the benefits of best diversion practice (Dawes & van der Merwe, 2004: 26). The majority of evaluation studies support the move towards the promotion and expansion of diversion as one of the central objectives of the Act, but also underline the necessity for an adequate information system and diversion register.

The effective implementation of the Act, specifically regarding its focus on diversion, is also dependent on the cooperation of all the relevant government departments, non-governmental and civil society organisations, and other child diversion service providers (Wood, 2003: 14).

2.7.6 Role-players in the Implementation of Diversion Services

The Act provides clarification regarding the duties and responsibilities of the police, probation services, justice personnel, legal representatives, and diversion service providers (see sections 12, 23, 32, 34, 41, 56, 80 of the Act; Wood, 2003: 7). According to Mbambo (2005: 86) *"there must be a common*

understanding and acceptance of diversion, based on the philosophy of restorative justice, by all practitioners involved”.

Section 93 of the Act requires the Minister of Justice and Constitutional Development, after consultation with the Ministers responsible for Safety and Security, Correctional Services, Social Development, Education and Health, to adopt a National Policy Framework relating to all matters dealt with in the Act in order to:

- ensure the uniform, coordinated and cooperative approach by all government departments, organs of state and institutions dealing with matters relating to child justice;
- guide the implementation and administration of the Act;
- promote co-operation and communication with the non-governmental sector and civil society in order to ensure effective partnerships for the strengthening of the child justice system; and
- enhance service delivery (South Africa, Department of Justice & Constitutional Development, 2012: 12).

The Act provides for the Intersectoral Committee to invite government and civil society representatives to its meetings to foster co-operation in the implementation of the Act (South Africa, Department of Justice & Constitutional Development, 2012: 16).

The NPF underlines capacity building within the child justice sector as the key requirement in the effective implementation of the Act (South Africa, Department of Justice & Constitutional Development, 2012: 21). It views capacity building as acts which focus on the increase of human resources, the enhancement of skills and knowledge, as well as the availability of required physical infrastructure (South Africa, Department of Justice & Constitutional Development, 2012: 21). Capacity building in terms of human resources further implies that the various departments will prioritise the allocation of additional resources and budgets, to appoint and train dedicated personnel and officials necessary to ensure the protection of the rights of vulnerable children and to operate in accordance with the Act (South Africa, Department of Justice & Constitutional Development, 2012: 21). Probation officers play a much more central role than before the implementation of the Act, as they now carry out the assessments of every child charged, make recommendations about the prospects for diversion, as well as the release or programme placement of the child, and are responsible for monitoring the compliance of the child with a diversion order (Skelton, 2007: 44). They are also required to attend the preliminary inquiry, render pre-sentence reports, and carry out the supervision of children in the community (Skelton, 2007: 44).

Table 06: Training of Implementation Role-players

Department Training	2010/11	2011/12	Overall total trained
Department of Justice and Constitutional Development (DOJCD)	395	496 (190 Child Justice Clerks / 306 Intersectoral Training)	891
South African Police Service (SAPS)	18 540	14 060 (excl no of members trained informal lecture sessions)	32 600
Department of Social Development (DSD)	854	1 281	2 135
Legal Aid South Africa (LASA)	1 855	1 700	3 555
National Prosecuting Authority (NPA)	349	214	563
Department of Correctional Services (DCS)	146	111 (109 Correctional Officers / 3 Social Workers)	257

Source: Intersectoral Child Justice Committee (2012: 7-8).

The breakdown in Table 06 shows a decrease in the number of training opportunities of police officials as well as employees at legal aid, the NPA and DCS in the second year of the implementation of the Act. The Intersectoral Child Justice Committee remarked that the decrease in the number of training events was due to a greater focus on training in the initial year (South Africa, Intersectoral Child Justice Committee, 2012: 8). Wakefield (2011: 49) and Badenhorst (2011: 12-15) have identified the high number of police officers and various other role players untrained on the provisions of the Act, as well as a shortage and unavailability of probation officers, as major challenges hampering the successful implementation and execution of the Act. As of March 2012 only 32 600, out of a total of 150 319 SAPS members, had been trained on the provisions of the Act. The training figures were not broken down by region or province and it is therefore the distribution of trained offices per station is unknown (South Africa, Intersectoral Child Justice Committee, 2012: 7-8; Wakefield, 2011: 2). This is concerning as the police are the first point of contact for any child that has committed a crime. The immediate effect of untrained personnel at the first point of contact is that fewer children are being charged, assessed and diverted, which may sound positive at first, but in reality keeps children that may benefit from an early intervention out of a system that was designed to help them (Badenhorst, 2012: 8). It has also been noted by Khumalo (2010: 79) that probation officers do not always conduct a thorough assessment due to their high case load and a shortage of probation officers, and as a result *“therefore the required detail in the assessment reports is often not being provided due to time constraints”*. An incomplete assessment report by a probation officer makes it difficult for prosecutors to decide on the best option for the child offender (Khumalo, 2010: 79). The prosecutor needs a complete and detailed assessment report regarding the child offender's background, mental and psychological well-being and whether the child is a re-offender or not (Khumalo, 2010: 79). Only if there are an adequate number of diversion services that are geographically accessible, as well as trained role-players that conduct their jobs efficiently, can the Act be implemented in the manner intended.

Communities, where many diversion programmes take place, are also crucial to the successful implementation of diversion (Mbambo, 2005: 86). Many residents have negative perceptions about people who commit crime in their communities and children are easy targets of community anger when they are suspected of having committed crime (Mbambo, 2005: 86). As noted at the Act's

Implementation Briefing in July 2011, since the implementation of the Act there has been a lack of visible information sharing, awareness raising, and communication to the general public (Wakefield, 2011: 2). Yet, parents, guardians and families play an important role when a decision whether to divert or not is taken by a prosecutor or magistrate and their lack of cooperation can become a hindrance to the successful implementation of diversion, especially in cases when diversion would have been the most beneficial option (Mbambo, 2005: 86). In essence, everyone must have confidence in the programmes on offer to avoid the incorrect perception that diversion is a 'soft option' and will have no positive effect on the behaviour of young offenders (Mbambo, 2005: 87). To ensure the successful implementation of the Act, it is essential to involve families and communities - by sharing knowledge about the Act, by encouraging them to change their often negative perspectives about children in conflict with the law and by making them aware of the benefits (Badenhorst, 2011b: 36). As Mbambo (2005: 88) notes:

Although some have negative perceptions about diversion, more education and involvement of communities in offering and supervising accredited diversion options will ensure a more widespread understanding of the value of restorative justice and diversion.

The Act requires the availability of many more programmes for diversion throughout the country than is currently the case, meaning that more programmes have to be identified, designed and implemented to ensure that they are accessible in all areas, particularly in rural areas (Mbambo, 2005: 83). In 2000 the NPA conducted a national audit of diversion programmes and their findings indicated that there were fewer diversions occurring in the rural areas when compared to the urban areas. In the latter areas there seemed to be more resources, and prosecutors and other diversion role-players were more aware of the available options (Mqonci, 2012; Badenhorst, 2011b: 15; Tserere, 2006: 37).

As noted above, in order to increase the availability and use of diversion options, it is important to add to the pool of service providers those programme providers and community-based providers that have not been involved in diversion programmes previously (Mbambo, 2005: 87). It must be ensured that these new partners are well trained in the Act, have clearly defined programmes, a good track record of service delivery, programmes that include a restorative justice component, and clear accountability mechanisms and procedures to protect the rights of all parties involved (Mbambo, 2005: 87).

2.8 Conclusion

This study aims to assess the Minimum Standard compliance of child diversion programmes based in the Western Cape and what implications the results may hold for the programme providers and participants. To understand the focus of the Act on the practice and regulation of diversion, and to assess diversion programmes and their compliance with the developed Minimum Standards, the literature review includes information relating to the development of a separate child justice system through the implementation of the new Act. It also focussed on the historical factors that lead to the enactment of the Act. It furthermore explored the reason why the Act has been based on a restorative

justice approach - one of its main objectives being the increased diversion of cases out of the formal justice system. Also included is information on the development of the Minimum Standards for diversion practice specifically relating to Programme Outcomes Standards, as well as the accreditation policy framework. Research has shown that diversion focuses on ensuring children's rights, offers a viable alternative to the retributive approach, can decrease re-offending rates and is a more cost-effective option, especially if it is implemented in accordance with Minimum Standards that are non-negotiable, and enforced within a regulated and accredited juvenile justice environment.

South Africa's transition to democracy has led to various reforms. Among these reforms, the country's criminal justice system is being transformed to ensure that children in conflict with the law receive appropriate attention. The initial drive for juvenile justice reform was the large number of children detained in prisons in the early 1990s, a legacy of apartheid's detention without trial during the 1980s. The need for a comprehensive and effective youth justice system became crucial and seminars and workshops planned future strategies for dealing with children in conflict with the law, their main objective being to intervene at an early stage to divert young people away from the formal criminal justice system (Skelton, 2008: 185; Steyn, 2005: 15). Early intervention not only provides the opportunity to prevent a life of continued crime, but also curbs the negative effects of institutionalisation and formal legal proceedings, which may stigmatise and label the young offender (Holman & Ziedenberg, 2006: 2).

Newly enacted legislation, in the form of the Act, was enforced on April 1st 2010, creating the foundation for a separate juvenile justice system for children in conflict with the law. The Act changes the way children are managed within the criminal justice system and establishes a juvenile justice system that protects the rights of children as upheld by the Constitution and in other ratified international instruments pertaining to children. As explained in the National Instructions on Children in Conflict with the Law, the Act focuses on rehabilitation, restoration and on the humane treatment of children in conflict with the law, considering that they are children, vulnerable, impressionable and developing individuals (South Africa, Department of Police, 2010: 3).

The juvenile justice system, along with the Act that governs it, is based on a restorative justice approach, which aims to promote the well-being of the child and allows victims to be heard. Each child arrested or in conflict with the law must be assessed individually by a probation officer and a sentence or management plan must be constructed that addresses the unique circumstances of each child. Diversion must be considered in each case (Skelton & Tshehla, 2008: 26; Sloth-Nielsen 2006: 18). By including all parties concerned, such as the child offender, the victim(s), the families and community members, this justice approach aims to identify and address harms, needs and obligations through the processes of taking responsibility, making restitution, taking measures to prevent re-offending and promoting reconciliation (Batley, 2005: 22; South African Law Commission, 2000: 224). Supporters of restorative justice point to research proving that the approach is highly successful in reducing re-offending and satisfies victims that some form of justice has been done.

As stated by Mbambo (2005: 88): *“Diversion is the vehicle through which restorative justice principles find expression”*. Diversion has shown positive results in rehabilitating youth offenders and in preventing re-offending, as well as protecting children at risk from victimisation due to the development of effective life skills and teaching non-violent conflict resolution. Whether focused on counselling, mentoring, life skills, or community service, all these programmes promote responsibility and accountability towards the victims harmed by child offenders (Mbambo 2005: 88). The formal introduction of diversion and the underlying principles of restorative justice into the South African juvenile justice system were seen by many as a revolution in the criminal justice system (Gallinetti et al., 2006: 8).

At the same time the Act provides a legal framework for child diversion, and child diversion programmes, which provides the maximum amount of protection from risks. These include the encroachment on the rights of children, diverting selectively, maladministration and mismanagement of resources, inappropriate and poor programme content, poor monitoring and evaluation, inappropriate matching of children to programmes, and lack of skills among service providers (Swanson-Jacobs, 2007: 3; Muntingh, 2005: 6). To promote the protection of children's rights and appropriate programme content, the DSD is mandated by the Act to design and implement a legal framework consisting of minimum norms and standards to which all diversion programme providers must adhere, as well as an accreditation and quality assurance policy that regulates child diversion programme providers (South Africa, Department of Social Development, 2011b: 2). The Standards place the emphasis on adherence to good diversion practice and ensuring properly designed programmes, in which the objectives, activities and targeted behaviour changes are clearly defined (Dawes & van der Merwe, 2004: 5).

The Minimum Standards were developed to prevent children from being subjected to harmful and exploitative practices. Minimum standards therefore aim to set a level of performance that is not negotiable and to protect the interests and rights of all stakeholders (Muntingh & Ehlers, 2006: 51). Children should be channelled into diversion interventions that are appropriate for their age and maturity. Diversion programmes should ideally impart skills and should not interfere with a child's schooling, and financial factors should not be an obstacle to a child's inclusion in a diversion programme (Wood, 2003: 13). A total of 95 Standards were formulated; 60 in the category of Organisational Standards and 35 in the Programme Outcomes category. The Programme Outcomes Standards attempt to articulate what the actual services must achieve (Muntingh and Ehlers, 2006: 56).

Even though the Act provides that diversion programmes offered should adhere to the regulations and Minimum Standards, there is also the need for a monitoring and accountability mechanism. The Minimum Standards that have been developed will only be effective in protecting children's rights if the ability to ensure that the accountability of diversion programme providers and quality assurance is in place (Muntingh and Ehlers, 2006: 51). The Act therefore introduces the requirement that a child may only be referred to a service provider or programme that is accredited by the DSD (Department of

Social Development, 2010: 5; Wood, 2003: 13). These service providers include government, civil society and educational providers (Smit, 2011a: 2). Accreditation has the primary purpose of accountability, monitoring and improvement of services delivered to children in conflict with the law (South Africa, Department of Social Development, 2010a: 7). Accreditation aims to ensure that service providers meet both internal standards as well as the provisions of the official Minimum Standards, which facilitate successful programme outcomes and benefit the programme participants (Smit, 2011a: 2). Through accreditation, the NPF provides for recognition of diversion service providers and programmes in South Africa and offers a mechanism for quality assurance of diversion (South Africa, Department of Social Development, 2010a: 23).

South Africa has a wide range of diversion options that aim to teach skills and promote the rehabilitation of children charged with criminal offences (Mbambo, 2005: 88). The majority of evaluation studies support the move towards the promotion and expansion of diversion as one of the central objectives of the Act, with the ultimate goal of decreasing youth crime. Mechanisms for accountability, good practice and monitoring are in place, yet various challenges remain regarding their implementation and evaluation, which will be explored in this study.

The following chapter discusses the research methodology of this study.

CHAPTER 3

METHODOLOGY

3.1 Introduction

The purpose of this chapter is to discuss the research process that was employed in carrying out this study, including the unit of analysis, the research aim and objectives, the research design, the research techniques, the sample design and size, the data collection methods, the data analysis and interpretation, validity and reliability, and the ethical considerations in scientific research. Each study is unique and dependant on a number of variables, for example, the time, place and approach of that particular research, but all research projects must have a clearly stated research design that explains how the data will be gathered and analysed (Maxfield & Babbie, 2009: 260).

The aim of social science research is to understand and explain social life as well as social behaviour, and finding answers to socially relevant questions. Social science utilises a collection of methods that systematically produce new discoveries about the social world which in turn may result in transformations within society (Bachman & Schutt, 2011: 8; De Vos et al., 2011: 63; Bless & Higson-Smith, 2005: 5; Babbie & Mouton, 2004: 16). Different versions and beliefs about society are continually being produced and contested within the social research arena and therefore social research is based on gathering and obtaining empirical evidence to contribute to the discourse about society and the world (Terre Blanche et al., 2006: 6).

The choice of which research process to follow for a study is determined largely by the research question, the aim and the availability of resources. The goal of each research process is the same, namely researching socially relevant phenomena, understanding the social world and interactions, and conveying the results and findings to ensure that these are communicated to the outside world.

3.2 The Research Process

The procedure of acquiring knowledge and facts about social phenomena is bound to a specific process that commits itself to ensuring that results are valid and are applicable in a wider context. The research process follows certain steps that pertain to all research approaches and commences with a problem and ends with a conclusion or solution (De Vos et al., 2011: 62). Within this empirical research process four elements are standard, namely the selection and formulation of a research problem, planning and implementing a research design, gathering empirical evidence, and analysing and interpreting the results (De Vos et al., 2011: 70). These pre-defined and logical procedures ensure that researchers follow a scientific process enabling them to validate the findings.

The research process begins with the identification of a researchable problem or question, in view of the specific research objectives, units of analysis, theoretical perspective, research design and methods of data collection and analysis, by scanning relevant literature (De Vos et al., 2011: 70). In the next phase the researcher decides which approach would be most conducive to the chosen topic. The research question is formulated and thereafter the research proposal is drafted with the purpose of clarifying the topic (De Vos et al., 2011: 72). As indicated in Chapter I, the focus of this study is to ascertain the level of compliance of diversion programmes in the Western Cape with the Minimum Programme Outcomes Standards. Against this background the following methodology was chosen.

3.3 Unit of Analysis

The formulation of a research question “informs” and guides research. It provides a focus and a framework to the research (De Vos et al., 2011: 89). For the purpose of the study, the following questions were posed: to what extent do diversion programmes comply with the Minimum Programme Outcomes Standards, and what does the level of compliance implicate in terms of the delivery of diversion services?

In defining the object of a research study, the researcher is specifying about whom or what they want to draw conclusions. These objects of investigation, for instance individuals, groups, towns, nations or organisations, amongst others, are known as the ‘unit of analysis’ (Bachman & Schutt, 2011:138; De Vos et al., 2011: 93). The unit of analysis has an impact on sample selection, data collection and the types of conclusions that can be drawn from the research (Terre Blanche et al., 2006: 37). In some studies, organisations or groups are the unit of analysis, but data is collected from individuals, known as the ‘units of observation’ (Bachman & Schutt, 2011: 139).

Child diversion Minimum Programme Outcomes Standards compliance in the Western Cape is the object of this study. For the purpose of this study, child diversion programmes form the unit of analysis and child diversion managers or facilitators are the units of observation, as they function as representatives of Western Cape non-governmental organisations and the child diversion programmes they offer. The study aims to explore to what extent diversion programmes comply with the Minimum Outcomes Standards for diversion. Diversion managers or facilitators of each child diversion programme were asked to answer a structured questionnaire, consisting of 13 questions, about each programme offered, based on the Minimum Standards on programme design, delivery and outcomes, developed for this purpose by the DSD, as well as 10 general information questions and one open-ended question. Respondents were allowed to comment and expand on the questions asked in the questionnaire. The aim was to draw conclusions about the implications the findings may hold for effective diversion practice and the implementation of an accreditation policy for diversion.

3.4 Research Aim and Objectives

The research goal or aim and objectives specify and operationalise the focus of the research. A specific research goal will have problem-specific objectives – in other words, research problems and

questions should be capable of being answered by some form of social enquiry (Bachman & Schutt, 2011: 8). The ultimate aim of research is to bring forward evidence to make a convincing argument in relation to research question(s) (De Vos et al., 2011: 94). The research goal is a general statement of what the research aims to accomplish – what does the researcher aim to establish through the research? The objectives are smaller entities with specific outcomes – the objectives eventually provide specific means through which the research goal is facilitated (De Vos et al., 2011: 94).

This study is a response to the lack of research available on child diversion Minimum Programme Outcomes Standards compliance in the Western Cape and the effect the level of compliance may have on the accreditation process and on programme delivery. The aim of this study is to investigate the compliance rate with the Minimum Programme Outcomes Standards for diversion, the implications the results may hold for the participants of diversion programmes, for the programme service providers, as well as for the DSD accreditation process. In order to achieve this goal the following objectives were formulated:

1. Establish the level of compliance of child diversion programmes offered by non-governmental providers with the Minimum Programme Outcomes Standards.
2. Establish the Minimum Standards with which programmes comply the least and, respectively, the most.
3. The DSD Accreditation Committee decides on the eligibility or non-eligibility for accreditation of programmes, depending on their Minimum Standard compliance rate. Non-eligibility implies that programmes will be discontinued. Therefore, what are the implications of the compliance rate results for each of the programmes' possible accreditation?
4. Establish if a minimum level of compliance would serve or defeat the ends of juvenile justice in South Africa, meaning if a certain number of programmes would have to be discontinued because of low compliance rates, what would the implications for the practice of diversion be?
5. Evaluate the opinions that service providers have on the implementation of the Act and the effect it has had on their programme delivery.

The aim of this study can therefore be formulated as follows: to assess the Western Cape's child diversion programmes' level of compliance with the Minimum Programme Outcomes Standards developed for accreditation. In other words, to explore to what degree non-governmental child diversion options and providers in the Western Cape comply with the Minimum Programme Outcomes Standards and if their level of compliance entitles them to be accredited, thereby ensuring the continuation of these diversion options or programmes.

3.5 Research Design

The purpose of a research project is reflected in the types of conclusions the researcher aims to draw. Therefore, the type of study best suited to answering the research questions should be chosen (De Vos et al., 2011: 143; Terre Blanche et al., 2006: 43). The object of study and the type of study should

fit logically within a particular paradigm of research and inform decisions about the techniques to be used in implementing the study to ensure valid findings (De Vos et al., 2011: 143; Terre Blanche et al., 2006: 47- 48). The research design should provide a detailed plan of action, including techniques that will be employed in the implementation or execution of the research (De Vos et al., 2011: 144; Terre Blanche et al., 2006: 48). This ensures the accountability of the research design and its outcomes, which is vital to the success or acceptance of the research project by the scientific community (De Vos et al., 2011: 144; Terre Blanche et al., 2006: 48).

As indicated in the title of the dissertation, the study “Child Diversion Programme Minimum Standard Compliance in the Western Cape – An Explorative Study” is exploratory in nature. The findings are to be applied for practical purposes, such as programme monitoring and accreditation, therefore the study is applied research, and a mixed method approach was followed. The section following below will explain the reasons why this design was chosen for this particular study.

Exploratory studies are used to make initial investigations into relatively unknown areas of research and are flexible and inductive in approach as they attempt to look for new insights (Bachman & Schutt, 2011: 9; De Vos et al., 2011: 94; Terre Blanche et al., 2006: 43). In this study, the level of compliance with the Minimum Programme Outcomes Standards of child diversion programmes available in the Western Cape was explored, as there is a lack of research available on this topic in South Africa and the policy regulating and accrediting diversion practice has not been formally implemented. This study was based on the assumption that compliance with Minimum Programme Outcomes Standards will provide the basis for good diversion practice, that adherence to these Minimum Standards by programme providers will improve diversion programme quality and outcome, and that an accreditation policy will provide a sound framework to monitor and regulate diversion programmes.

The findings derived from this exploratory study will have a practical application and will fall within the realm of applied research. Applied research aims to contribute towards practical issues of problem solving, decision making, policy analysis, and community development in order to assist decision-makers in applying the findings to particular problems with which they are dealing (Bachman & Schutt, 2011: 373; De Vos et al., 2011: 95; Terre Blanche et al., 2006: 45). The level to which diversion programmes comply with the Minimum Outcomes Standards has the potential to assist diversion service providers and policy-makers in deciding on the practical implications of regulating, monitoring and accrediting diversion programmes, thus alluding to the applied nature of this study.

Research can follow a quantitative, qualitative or mixed methodology approach. A quantitative research approach is a structured, organised and systematic process that incorporates specific methods and techniques for selecting cases, measuring and observing social life, gathering and refining data, analysing data, and reporting on the results (De Vos et al., 2011: 63). The quantitative research method is characterised by precise and objective empirical observations in order to discover causal laws to measure social phenomena and to predict general patterns of human behaviour (De Vos et al., 2011: 63). This process is highly structured, in that specific questions to be researched or

the hypothesis remains constant (De Vos et al., 2011: 63). This approach is largely influenced by the positivist paradigm, which believes that reality is law-like, stable, static and predictable, and therefore measurable (De Vos et al., 2011: 63). The role of the researcher is objective or culturally neutral (the etic perspective) and any direct involvement with the research subjects is limited (Terre Blanche et al., 2006: 401). The research design is meticulously planned before the research process begins and is adhered to. Any form of data collection is standardised, for instance the same questions are asked of every subject and the responses are chosen from an available, limited response set to enable the quantification (measurement) of pre-determined variables (De Vos et al., 2011: 63). The obtained data undergoes statistical analysis to determine relationships between variables. Measurement is a fundamental aspect of quantitative research and is the process of describing abstract concepts in terms of specific indicators (Terre Blanche et al., 2006: 74). Measurement consists of rules for assigning numbers to objects so as to represent quantities or attributes numerically in a consistent manner (Terre Blanche et al., 2006: 73). A researcher takes a concept or idea and develops a measure to observe the idea empirically and thereby is able to collect and count the empirical data. Quantitative researchers strive to use valid and reliable measurement techniques. Constructs are often abstract and not directly observable and reliability and validity help to establish the truthfulness or credibility of the obtained results from the examination of these abstract concepts (Terre Blanche et al., 2006: 83).

The qualitative research process, in turn, is an interpretative approach, which aims to describe and understand social life, including the meanings that people attach to their experiences and perceptions of everyday life, by incorporating an emic (from within a culture) perspective of the researcher (De Vos et al., 2011: 64). Qualitative research is based on the interpretive paradigm, which seeks to interpret, understand and describe social reality. Reality is seen as being fluid, dynamic and undeterminable. Social reality emerges through people, and meaning emerges through engagement with the social world and relationships with other people (De Vos et al., 2011: 64). The researcher is central to the research process and determines what sense is made from the observations (Terre Blanche et al., 2006: 401). Interpretation and description is the core of qualitative research and focuses on the meaning of the human experience, emotions, social situations or phenomena (Terre Blanche et al., 2006: 127). The research process is not static and is adapted throughout (De Vos et al., 2011: 64). The collected data is mainly descriptive and stated in the participants' own words, while continuously considering the impact that the researcher may have on the situation. Differing from quantitative research, which aims to translate the results into variables and mathematical calculations, qualitative research utilises the power of language and expression to convey meaningful results (De Vos et al., 2011: 64; Terre Blanche et al., 2006: 123). Data collection methods, such as participant observation, unstructured interviewing, and the use of personal documents, are emphasised in this approach (Babbie & Mouton, 2004: 53).

Lastly, the mixed method research approach is a combination of the quantitative and qualitative approaches, allowing for a more complete understanding of the research problem (De Vos et al., 2011: 66). This method mixes both quantitative and qualitative data collection and analysis in a single

study (De Vos et al., 2011: 435). There are various rationales for applying a mixed method approach, namely: triangulation, which seeks to converge and corroborate results from the different methods; complementarity, which seeks to elaborate, enhance or clarify the results of one method from the other. Initiation, on the other hand, seeks to discover paradoxes and contradictions; development, which seeks to use the results from one method to help inform the other; and expansion, which seeks to expand the range of the research by using different methods (De Vos et al., 2011: 445-446).

For the purpose of this study, the approach guiding this research process was the mixed method, with the rationale of complementarity. This research study utilised a structured questionnaire of 13 Minimum Standards applied to a representative sample of diversion programme facilitators to determine an overall percentage level of compliance. It furthermore analysed the percentage compliance level of individual Minimum Outcomes Standards, which were then quantitatively compared to the other compliance results among the different programme types. The questionnaire also included one open-ended question regarding the effect or influence the new Act may have on the provider's programme delivery. The open-ended question allowed for a more in-depth understanding of the level of the diversion programmes compliance rate and the implications the results may hold. In addition, during the interviews, respondents were allowed to expand on their answers and these responses were also included in the study. The mixed method approach provides more comprehensive evidence for studying the research question of Minimum Programme Outcomes Standards compliance, and can complement and thereby improve the interpretation of the results (De Vos et al., 2011: 436).

3.6 Research Techniques

The research method connects research questions to data and comprises all incorporated techniques for researching the problem by providing a detailed description of how the research will be conducted, as well as a justification for selecting the specific techniques and instruments (Babbie & Mouton, 2004: 72).

3.6.1 Sample Design and Size

Sampling involves deciding what or who will be observed and selecting an appropriate sample from which data can be gathered (De Vos et al., 2011: 446; Babbie & Mouton, 2004: 164). The incorporation of random (probability) sampling techniques determine the probability of certain cases being a part of the sample in the case where the whole population is known, whereas non-random (non-probability) selection techniques include specifically chosen cases for a study (Babbie & Mouton, 2004: 164). Setting up the sampling plan is one of the most important steps in the research process because it determines the outcome and results of the study (De Vos et al., 2011: 222; Terre Blanche et al., 2006: 278). It must be ensured that the chosen sample is large enough to make inferences about the population, but small enough to ensure feasibility of the study (De Vos et al., 2011: 223; Terre Blanche et al., 2006: 44). The main issue with drawing an adequate sample from a population is ensuring representativeness of the sample to the wider population. The question is if the chosen

sample is an accurate representation of the average of that population and if the results obtained can be generalised to that population (De Vos et al., 2011: 223).

It must be made clear that no single sampling method applies specifically to the quantitative or qualitative paradigm, but certain techniques are more widely used by the one or other research approach, depending largely on the research question and available subjects, sampling frame (a list of all the members of a population) or resources (De Vos et al., 2011: 228). Sampling can be divided into probability and non-probability sampling.

A probability sample is one in which each sampling unit has the same chance (probability) of being randomly selected for the sample, in that each sampling unit within that population must be known (De Vos et al., 2011: 228; Bachman & Schutt, 2011: 119). Probability sampling includes simple random sampling, systematic sampling, stratified random sampling, cluster sampling and panel sampling (De Vos et al., 2011: 228). Quantitative research mainly includes random sampling techniques, because the aim is to gather data that represents the population in question so that the obtained results are generalisable to the population as a whole. Each member of that population has to have an equal chance of being selected for the sample (De Vos et al., 2011: 228).

In non-probability sampling the population size and members are not known and therefore it is not possible to randomly select a representative sample from a population (De Vos et al., 2011: 231; Bachman & Schutt, 2011: 127). Non-probability sampling includes accidental or haphazard sampling, purposive or judgmental sampling, quota sampling, target sampling and snowball sampling (De Vos et al., 2011: 231). Sampling techniques utilised in the qualitative research process are less structured and not as strictly applied as in quantitative research (De Vos et al., 2011: 228). Therefore qualitative research most often utilises non-random sampling techniques, where the researcher purposefully chooses specific cases that will be relevant to the research question and will maximise gathering information-rich data by choosing specific cases to interview (De Vos et al., 2011: 229). Theoretical sampling is incorporated when the researcher needs more in-depth details on a discussed issue or category, for instance the researcher decides that more information on an issue is needed and asks the respondents to explain more in-depth (De Vos et al., 2011: 229). Snowball sampling is widely used to find respondents that are difficult to reach otherwise. A few cases are found and these in turn point the researcher to other respondents that can give the researcher useful information on the subject under study (De Vos et al., 2011: 233). When incorporating purposive or judgemental sampling in a research design, the researcher decides and judges exactly who will be a part of the sample according to the belief of who is representative of the population (De Vos et al., 2011: 392).

For the purpose of this study all non-governmental child diversion programmes in the Western Cape were included in the sample, meaning the whole population. This non-random sampling method ensured the representativeness of the sample. The reasoning behind this decision was that the population is not very large and therefore it is the most feasible sampling method for the purpose of this study to include all diversion programmes, thereby ensuring the most valid findings.

3.6.2 Sampling Plan

There are nine NGO providers offering a total of 36 child diversion programmes in the Western Cape, South Africa at October 2012. A list of all providers was compiled. The researcher then approached each provider to ascertain the number of programmes and who manages the diversion programmes offered by each. Each programme representative was contacted, reaching 100% of the diversion programme sample, their permission was obtained to include them in the study and the researcher ensured their voluntary participation through a signed consent form. The intention was to produce results on the level of compliance with the Minimum Programme Outcomes Standards that were representative of all child diversion programmes from all the main programme types in the Western Cape. Table 07 below shows the different programme types and how many of each programme type participated in the study, resulting in a sample size of 36 child diversion programmes.

Table 07: Participating Programmes per Programme Type

Diversion Programme Type	Number of Diversion Programmes per Programme Type	%
mentorship	1	2.78
sex offender	1	2.78
vocational skills	2	5.56
community service	2	5.56
combination	3	8.33
restorative justice	3	8.33
wilderness experiential	5	13.89
substance abuse	7	19.44
life skills	12	33.33
Total Nr of Diversion Programmes participating in the Study	36	100.00

3.7 Data Collection

A perfect research design and a representative sample mean very little if the data collection is inaccurate (Bless & Higson-Smith, 2005: 97). To draw valid conclusions from a research study, it is essential that the researcher has sound data to analyse and to interpret (Terre Blanche et al., 2006: 56). Some methods of data collection include observation, questionnaires or interviews that can be adapted to different types of research (Bless & Higson-Smith, 2005: 100).

In this study data was collected making use of a questionnaire during interviews. The questionnaire is the most widely used data gathering method in quantitative research (Terre Blanche et al., 2006: 293). A questionnaire is composed of a collection of questions and statements and the basic objective is to obtain facts from respondents about their opinions, beliefs, characteristics or behaviour (Terre Blanche et al., 2006: 293). The type of questionnaire a researcher chooses to use as a data collection technique depends on which one seems most suitable for the intended purpose (Terre Blanche et al.,

2006: 293). Time limitations, financial obstacles, availability of fieldworkers, a suitable social environment and, of course, if the sample is literate and knowledgeable on the topic being questioned, all influence this choice (Terre Blanche et al., 2006: 293).

Certain steps have to be considered when developing a questionnaire. The first step is to decide what information is to be obtained from the questionnaire (Babbie & Mouton, 2004: 239). The questions have to be chosen so that *relevant* information can be obtained. The maximum amount of information should be retained with a minimum number of questions (Babbie & Mouton, 2004: 239). The questions should be formulated as briefly and as clearly as possible and should be structured so that the sequence of the questions start with the least threatening and then continue with the more sensitive questions (Babbie & Mouton, 2004: 239). The researcher must choose what response system will be most suitable to obtain relevant answers from the questionnaire. Different types of response formats include the following:

- open - allows the respondent to fill in the answer in a blank space;
- closed - offers a selection of response choices;
- dichotomous – these are ‘yes’ or ‘no’ answers to questions;
- multiple-choice - offer three or more response options;
- ordinal - offers a ranking in order of importance;
- completed - asks the participant to complete sentences;
- scaled - offers different degrees of response categories;
- statement - offers a variety of statements presented simultaneously;
- matrix-type - allows the participant to choose more than one characteristic;
- follow-up questions - follows up on a previous responses (Terre Blanche et al., 2006: 295).

Each response system has advantages and disadvantages. Some require more interpretative methods while others are more close-ended (Bless & Higson-Smith, 2005: 109).

This study is mixed method in nature and the aim is to assess the levels of compliance with the Programme Outcomes Minimum Standards of diversion programmes. The compliance level data was collected by asking diversion programme managers or facilitators to complete a structured questionnaire of Minimum Standards. The questionnaire comprised three parts: 10 general information questions, 13 Minimum Standards statements and one open-ended question.

The general information section included 10 demographic questions regarding the provider's name; the diversion programme's name; the programme type; the length of the programme; the professional qualification of the programme facilitator; the programme objectives; the year since the diversion provider has been working in the diversion field; where most referrals come from; the respondent's name and position in the organisation.

The Minimum Standards statement section included 13 programme outcomes standards, expressed as statements, which the participants rated on a 5-point Likert scale, an ordinal measurement or response format that allows the researcher to ascribe a quantitative value to qualitative statements for statistical analysis (Babbie & Mouton, 2001: 154). The questionnaire was based on the developed Minimum Standards Manual by Dawes and van der Merwe (2004: 53) for the DSD in accordance with international recommendations for good diversion practice and effective programme implementation (Table 08). The researcher adapted the DSD Minimum Programme Outcomes Standards and their corresponding indicators relating to design, delivery and outcomes of diversion programmes into the questionnaire for this study. An excerpt of the DSD Minimum Programme Outcomes Standards, on which the questionnaire standards are based, is attached hereto as Appendix C. The following questions were developed for the questionnaire utilised in this study from the DSD Minimum Standards Manual:

Table 08: DSD Minimum Outcomes Standards utilised for the Questionnaire

Nr.	Questionnaire Standard	Based on DSD Minimum Standard No.
1	Every child referred to the diversion programme was assessed by a referrer (e.g. probation officer, prosecutor, magistrate) prior to participation in the programme?	61
2	If an assessment was conducted by a referrer, does the programme provider have access to the assessment documentation or report?	66
3	Every child referred to the diversion programme is assessed by a programme provider, manager or staff member before participation in the organisations programme?	71
4	The assessment includes detailed information on factors associated with offending ('risk' factors) present in the child's life, e.g. child's family circumstances, social relationships, history or antisocial behaviour, education and scholastic functioning?	71
5	The assessment includes detailed information on the child's psycho-social functioning, e.g. medical/psychiatric history, offence and diversion history, strengths and skills deficits?	74, 80
6	The diversion programme is reasonably geographically accessible to the participant?	73
7	The diversion programme is based on research evidence of 'what works' in reducing criminal behaviour, i.e. is based on behavioural change principles, sound methodologies and accords with good programme design practice?	75, 76, 77
8	The manner in which the programme is delivered encourages the active participation of the young offender?	82
9	The diversion programme has a system for monitoring participant progress after every intervention activity, group session or at the end of the programme, e.g. through an individual evaluation report?	72
10	The diversion programme has a system for monitoring the child's compliance with the conditions of the diversion order, e.g. through an attendance register or an individual evaluation report?	79
11	The diversion programme content is subject to regular evaluation by programme staff and/or programme provider?	78, 80, 81, 83
12	Is a formalized follow-up and aftercare strategy available, e.g. does staff or management track participants within one year of programme completion to check on any re-offending behaviour?	72
13	Diversion programme provider receives or requests information about any previous participants' re-offending behaviour, e.g. from probation officers?	84

Source: Own data.

The last section of the questionnaire included one open-ended question about the effect or influence of the new Act on the provider's programme delivery.

The data collection technique employed in this study consisted of contacting all child diversion programme representatives telephonically, and informing them of the purpose and content of this research study. If they agreed to participate they were sent a copy of the questionnaire and an informed consent form via email and were asked to complete the questionnaire in a set time frame, agreed upon in advance.

The questionnaire was accompanied by a set of instructions in the form of a cover letter, formulated in a manner to ensure that the respondents understood the questions and the purpose of the questionnaire. The idea behind this was that because the respondent and researcher were physically removed from one another, this allowed the respondents to feel more anonymous. They were thus not under pressure to complete the questionnaire under the eyes of a researcher. Thereby the influence of a researcher on any of the responses would be eliminated. This is positive, yet may also be limiting, because the researcher is not there to explain any questions that may seem unclear or confusing to the respondent. The participants were informed that they would stay anonymous and that they could contact the researcher at any time if questions were unclear or if they had any queries regarding the questionnaire.

The costs of e-mailed questionnaires are low and a large number of respondents can be reached in a short period of time (Bless & Higson-Smith, 2005: 112). Yet, the response rate of an e-mailed questionnaire is unfortunately very low. Usually only 30% of mailed or e-mailed questionnaires are returned, because respondents are not under pressure to send the questionnaire back (De Vos et al., 2011: 167; Bless & Higson-Smith, 2005: 112). Some respondents might choose not to answer all the questions, which would invalidate the results to a certain extent (Bless & Higson-Smith, 2005: 112). To minimise this limitation, the structure and appearance of the questionnaire should stimulate enough interest for the respondent to want to complete it (De Vos et al., 2011: 167). One main limitation of the e-mailed questionnaire is that there is no control over who actually completes the questionnaire.

Follow-ups were made by the researcher shortly before the agreed return date of the questionnaires and because none of the respondents had filled in their questionnaires by that stage, it was then decided to arrange personal or telephonic interviews with the respondents to ensure their participation. Of the total of 36 questionnaires, 19 questionnaires were filled in during a telephonic interview with the researcher and 17 questionnaires were filled in during a personal interview with the researcher.

Telephonic questionnaires are similar to a structured interview, as the questions are asked from person to person via the telephone. The researcher is able to clarify certain questions, literacy is not required and the response rate is much higher than with e-mailed questionnaires because the respondents do not refuse to answer as easily (De Vos et al., 2011: 168). The telephonic survey may be more expensive than the mailed version but an advantage is that data can be gathered from a widely distributed target population (De Vos et al., 2011: 168; Bless & Higson-Smith, 2005: 112). Telephonic interviews are quick and easy to administer, the response rate is high and it is good for sensitive topics, because the respondents feel more anonymous over the phone than they would in person.

In a personal interview, the self-administered questionnaires are handed to the respondent personally (De Vos et al., 2011: 168). These questionnaires are quite costly, but also ensure a much higher response rate because the researcher can clarify the questions if necessary (De Vos et al., 2011:

168). For the purpose of this study the questions from the questionnaire were posed to the respondent by the researcher during the personal interview and the answers filled in by the researcher.

During both the telephonic and personal interview process, respondents were allowed to expand on the answers they gave during the answering of the questionnaire and these responses were also included in the findings of the study. The questionnaire is attached hereto as Appendix B.

3.8 Data Analysis and Interpretation

Data analysis should be carefully considered when designing a study, since the aim of data analysis is to transform information into an answer to the original research question(s) (Terre Blanche et al., 2006: 52) To reiterate these: what is the degree or level of compliance of diversion programmes with the Minimum Programme Outcomes Standards to date; are there differences between the compliance rates, for instance between the individual standards and programme types; what implications do the results hold for the practice of diversion? In the first instance the aim was to analyse the overall compliance rate of each programme and each programme type, and to evaluate what the level of compliance is to date. In the second instance, the aim was to evaluate the compliance rates for the 13 individual standards or questions to evaluate which standards had a higher or lower compliance rate. In the third instance the aim was to make comparisons between the compliance rates of the different programme types, including wilderness experiential, substance abuse, restorative, community service, life skills, mentorship, vocational skills and sex offender programmes. It was furthermore evaluated if there were visible differences between the programme types regarding compliance levels per standard. Further information was ascertained via the general questions regarding the number of diversion programmes each provider offers, the length of each programme, where most referrals are received from, and the individual programme's objectives. The facilitator's qualification and how many years the provider has been working in the diversion field were also assessed. Information and comments made by the respondents regarding the Act and the effect this legislation may have on their programme delivery was collected and included in the analysis.

Upon completion of all 36 questionnaires, each question or statement was coded and the answers were captured in the computerised statistical software programme PSPP (GNU Version 3, 29 June 2007) to calculate an average percentage rate. The quantitative analysis of the compliance rates resulted in a score per standard, obtained from the 5-Point Likert Scale. Each minimum standard statement on the questionnaire offered 3 or 5 possible answers on the scale, equalling a total possible points, ranging from 0 to 4. Those questions with 3 possible answers were divided into 0, 2, 4 possible points and those with 5 possible answers into 0, 1, 2, 3, 4 possible points. The total score per standard was then added up and divided by the total number of questionnaires, namely 36, resulting in an average score. The latter score was then converted into an average percentage compliance rate per minimum standard. To ascertain how far a programme complied with all of the 13 minimum standards, the points per programme and standard were added up and divided by the total number of standards,

namely 13, resulting in an average score, which was then converted into average percentage compliance rate per programme.

The open-ended question answers were collected in a spread sheet and analysed to find out if any themes emerged in the process. Similarly, any comments or information stated by the respondents during the interview process were also collected for qualitative analysis.

3.9 Validity and Reliability of the Developed Minimum Programme Outcomes Standards

Researchers strive to use valid and reliable measures or measurement techniques. Constructs are often abstract and not directly observable. Reliability and validity help to establish the truthfulness or credibility of the obtained results from the examination of these abstract concepts, as well as the measures used to obtain the results. The measurement procedures and instruments must therefore be reliable and valid to ensure consistent results. Validity and reliability are the most important concepts of the measurement process (De Vos et al., 2011: 160).

Validity refers to the extent to which an empirical measure accurately reflects the concept it is intended to measure (De Vos et al., 2011: 160). Reliability means consistency or dependability of the measuring instrument (Terre Blanche et al., 2006: 488).

Dawes and van der Merwe (2004) developed a set of 95 Minimum Programme Standards for diversion, of which 35 standards specifically focus on diversion programme *outcomes*. Of the 35 Programme Outcomes Standards, 16 were adapted into the 13 questions used during data collection (Table 08). The need was identified to develop norms and standards, because all the criminal justice role players involved in developing, facilitating and implementing diversion programmes were finding it difficult to provide uniformity when rendering these services (South Africa, Department of Social Development, 2007: 3). The Department of Social Development, which is mandated by the Act to provide diversion programmes for purposes of alternative sentencing options, compiled a booklet or manual on these minimum norms and standards, which stipulates how service providers should deliver diversion services (South Africa, Department of Social Development, 2007: 3). This manual is meant as a practical guide for criminal justice professionals dealing specifically with diversion of children in conflict with the law and it sets out the Minimum Standards with which organisations, providers, facilitators and programmes are expected to comply when delivering diversion services (South Africa, Department of Social Development, 2007: 3).

As this study was based on the Minimum Standards, specifically on the programme outcomes and delivery standards, the validity and reliability of these developed minimum standards will be reviewed to ensure the validity and reliability of the utilised questionnaire in this study.

3.9.1 Validity

The validity of a measurement procedure is the degree to which the measurement process measures the variable it claims to measure (De Vos et al., 2011: 172-173; Terre Blanche et al., 2006: 88). The measure should provide a good degree of fit between the conceptual and operational definitions of the construct and that the instrument should be usable for the particular purpose for which it was designed (Terre Blanche et al., 2006: 88). The instrument must actually measure the concept in question and must measure the concept accurately.

One of the most useful classification schemes attempting to categorise the validities underlying measurement is: face, content, criterion and construct validity (De Vos et al., 2011: 173). Content and face validity can be established prior to data collection, while criterion and construct validity are established once data has been collected via the instrument (De Vos et al., 2011: 173).

3.9.1.1 Face Validity

Face validity is the simplest definition of validity (De Vos et al., 2011: 173). It is a judgement by the scientific community that the indicator really measures the construct (Terre Blanche et al., 2006: 83). It concerns itself with the face value of a measurement procedure, meaning, does it seem like it is measuring the variable it claims to measure (De Vos et al., 2011: 174; Bachman & Schutt, 2011: 94)? It indicates only to which extent it appears to measure the construct. In order to assess the extent to which the Minimum Standards were appropriate in measuring programme outcomes, delivery and design, key informants working in the field of diversion were selected to comment on the developed Minimum Standards (Dawes and van der Merwe, 2004: 53). This ensured that the scientific community working within the field agreed with the validity of the construct to be measured. This also ensured that the questions relating to the Minimum Programme Outcomes Standards utilised in this study conformed to the validity of the construct to be measured, namely programme outcomes.

3.9.1.2 Content Validity

Content validity is concerned with the representativeness or sampling adequacy of the content of an instrument and its items (De Vos et al., 2011: 173; Bachman & Schutt, 2011: 95; Terre Blanche et al., 2006: 85). The question it asks is if the measuring instrument covers the full range of meanings that are included in the variable being measured, meaning the researcher's minimum standards questionnaire aims to measure good diversion practice in terms of programme outcome, design and delivery. A valid measuring instrument would provide a representative sample of all content (De Vos et al., 2011: 173; Bachman & Schutt, 2011: 95). An interview schedule, containing minimum standards for diversion processes and programmes was constructed, based on the recommendations compiled by and emerging from the literature review conducted by Dawes and van der Merwe (2004: 53). These recommendations included the need for a) theoretical and empirical research on risk factors for the development of antisocial or delinquent tendencies; b) theoretical evaluation literature, and process and outcome evaluations of interventions targeting delinquent or antisocial youths; and c) meta-

analyses of outcome evaluations of interventions targeting young offenders. Dawes and van der Merwe (2004: 53) identified specific intervention characteristics distinguishing more effective programmes from less effective programmes. This method also included data from different studies and sources on good diversion practice. This and the responses by key informants working in the field of diversion from the interview schedule resulted in the compilation of the 35 Programme Outcomes Standards. Based as they are on the DSD Programme Outcomes Minimum Standard, it can be argued that the minimum standard questions utilised in this study offer a solid foundation for measuring content validity.

3.9.1.3 Criterion-related Validity

Criterion-related validity provides a more objective evidence of validity (De Vos et al., 2011: 174; Bachman & Schutt, 2011: 95). It is the degree to which a measure is related to some other criterion, which is known to indicate the construct accurately (Bachman & Schutt, 2011: 95; Terre Blanche et al., 2006: 83). It is established by comparing the measure with another valid measure of the same construct. In the development of the Minimum Standards by Dawes and van der Merwe (2004: 53), key informants responded to the proposed standards in the interview schedule by indicating on a 10-point scale how appropriate and feasible they thought the proposed standards were for the South African context. The information was then analysed to indicate the degree of convergence and conflict between key informants' ratings on the scale (Dawes and van der Merwe, 2004: 53). The findings for the South African context related positively to the established international standards from the literature review, namely that they were accepted as feasible and appropriate. Also, the Minimum Standards developed by Dawes and van der Merwe (2004) for the South African context have been accepted by the DSD as the basis for good diversion practice and stipulates how service providers should deliver services, as well as providing a monitoring and evaluation mechanism, thereby ensuring continuous delivery of effective and efficient services. Therefore the questions utilised for the purpose of this study conform to criterion-related validity.

3.9.1.4 Construct Validity

Construct validity seeks relationships between different theoretically associated constructs (Bachman & Schutt, 2011: 95; Terre Blanche et al., 2006: 87). It involves determining the degree to which an instrument successfully measures a theoretical construct (De Vos et al., 2011: 174). This is difficult to determine, as the constructs in question are often abstract concepts, for instance, 'good diversion practice'. Convergent validity applies when multiple indicators are associated with one another and means that multiple measures of the same construct operate in similar ways, meaning scores from different measures are related or converge (Terre Blanche et al., 2006: 87).

Construct validity could not thoroughly be established for the developed minimum standards measure by Dawes and van der Merwe (2004) as the scores from the different items on the measure were not compared to ascertain if they were related or unrelated. Items were accepted as either feasible / not feasible, or appropriate / inappropriate (Dawes and van der Merwe, 2004: 53). It was therefore

accepted that the items all measured and were related to the construct of 'good diversion practice', as established by the content validity measure. It is therefore assumed that the questions utilised in the questionnaire for this study do provide an acceptable level of convergent validity.

The types of validity build up on each other, each type requiring more information than the previous one (face, content, criterion, construct validity). The questions researchers must ask in connection with validity are, does the measurement measure what it is supposed to, how well does it compare to other measures that claim to measure the same construct, and what is the measure actually measuring?

3.9.2 Reliability

Reliability is a property of a measuring instrument and describes the dependability of the instrument by repeatedly measuring the same. The reliability of a measurement procedure is its stability or consistency, or the extent to which the instrument yields the same results on repeated trials (De Vos et al., 2011: 177; Bachman & Schutt, 2011: 97; Terre Blanche et al., 2006: 89). Several methods exist to establish the reliability of an instrument, namely, 1) test-retest reliability, which measures reliability over time - meaning that the same instrument is tested and retested on different occasions; 2) split-halves method, meaning the items of a test are divided into two parallel halves and the strength of the relationship between the two are correlated; and 3) internal consistency method, which measures the degree to which each item of the test correlates with another item (Terre Blanche et al., 2006: 90). Basically, reliability assesses if the results yielded from a questionnaire can be trusted (De Vos et al., 2011: 177). The reliability can be increased by the following procedures: increasing the number of items on the measuring instrument, eliminating unclear items, standardising the conditions under which the measurement is taken, minimising the effects of external events, maintaining consistent scoring procedures, and incorporating pre-tests or pilot studies (De Vos et al., 2011: 177).

The split-halves method is not a viable option for the questionnaire utilised in this study because the questionnaire only consists of a limited number of minimum standard questions, with each question relating to either design, delivery or outcome standards, and it would not be possible to divide it into two parallel halves. A similar problem exists with the internal consistency method. The Minimum Standards developed by Dawes and van der Merwe (2004: 79) were not *piloted by them* during their study and therefore the reliability of the measurement instrument could not be established. Therefore, to increase the reliability of the measuring instrument for the current study, a mini-pilot test run was conducted. A pilot study aims to increase the precision of the main study and enhances its validity, reliability and effectiveness (De Vos et al., 2011: 177).

The pilot study is a process whereby the research design for a prospective survey is tested and can be regarded as a small-scale trial run of all the planned aspects of the main study (De Vos et al., 2011: 237). It helps to fine tune all the elements of the main study and determines whether the methodology, sampling, instruments and analysis are adequate and appropriate, as well as ensuring that the results obtained will be meaningful to the study or are reliable (De Vos et al., 2011: 237). The pilot study also

helps to investigate the feasibility of the planned project and helps to bring possible deficiencies to the surface (De Vos et al., 2011: 237). Although all eventualities may be planned theoretically, a practical run is valuable. It might seem time consuming, but it may save more time in the long run if all eventualities have been taken into consideration. The pilot study consists of four steps, namely the study of literature, the experience of experts, the feasibility of the study and testing the measuring instrument (De Vos et al., 2011: 238).

For the purpose of this study the reliability of the measuring instrument, namely the questionnaire, was established by means of a pilot study. A diversion service provider was randomly chosen and the questionnaire was administered to a senior social worker, responsible for the provider's diversion programmes, in a personal interview. The respondent was asked to give feed-back regarding the wording and the sequence of the questions, and to point out any questions that were misleading, unclear or confusing. The original questionnaire consisted of 20 minimum standard questions. The respondent felt that the questionnaire could be shorter to ensure more accurate answers, because six of the questions were too similar to other questions being asked. The pilot study allowed the researcher to reduce the number to 10 general information questions, 13 minimum standard questions and to add one open-ended question that would allow the respondents to give more detailed information on the subject matter if they wished to do so.

The two constructs of reliability and validity are related. If a measure is unreliable it cannot be valid, but a measure can be reliable without being valid because the reliability score may not assess the attribute it claims to measure (De Vos et al., 2011: 178). Regarding the validity and reliability of the measuring instrument utilised in this study, face, content, criterion-related and convergent validity could be established, as well as the reliability of the measuring instrument through the pilot study. It can therefore be accepted that the questionnaire does actually measure programme outcomes and thereby the abstract concept 'good diversion practice'.

3.10 Research ethics

Research designs should always reflect careful attention to ethical issues embodied in research projects for which the researcher is responsible (De Vos et al., 2011: 114; Terre Blanche et al., 2006: 66). Ethical guidelines in research are a set of moral principles, accepted by the research community, expressing the most correct conduct towards everyone participating in the research project (De Vos et al., 2011: 114). The essential purpose is to protect the welfare and rights of the research participants and all research should therefore adhere to the ethical principles of autonomy, non-maleficence and beneficence (Terre Blanche et al., 2006: 66). The autonomy of all persons participating in the study should be respected, namely voluntary participation and informed consent, the freedom to withdraw from the project at any time, and the right to anonymity in any publication which might arise from the research (De Vos et al., 2011: 115; Terre Blanche et al., 2006: 66). Non-maleficence means to not harm any participants, to consider potential risks that may inflict physical, emotional, social or other forms of harm, and to not deceive participants by stating untrue or misleading information about the

purpose of the research study (De Vos et al., 2011: 118; Bachman & Schutt, 2011: 62; Terre Blanche et al., 2006: 66). Beneficence or relevance requires the researcher to design the study in such a way that it will be of benefit to other researchers and / or make a useful contribution to society at large (De Vos et al., 2011: 126; Terre Blanche et al., 2006: 66; Bless & Higson-Smith, 2005: 12).

3.10.1 Ethical Considerations for this study

Participants were informed of the nature and purpose of the research study, and what their participation would entail. Informed consent was obtained from all participants (see Appendix A).

No major risks are anticipated for participants in this study. Inconvenience was reduced by allowing the participants an acceptable time frame to return the questionnaires and to participate in a telephonic or personal interview. They were also able to terminate their participation at any time and subsequently, reschedule or drop from the study without explanation. Each participant was informed that they could refuse to answer any of the questions should they wish to do so.

Participants did not receive any monetary reward for their participation in the study. They should not have perceived any type of coercion to participate in the study. They will only gain from contributing to the existing knowledge base and will receive a copy of the research report upon conclusion of the study.

The results of this study will be published with careful attention to the rights of the participants. Care will be taken to protect the identities of individuals and they were informed that the research results would be reported on the basis of anonymity, as those diversion service providers that participated in a previous study conducted during the development of the Minimum Standards agreed to do so only on condition of anonymity (Dawes and van der Merwe, 2004: 79).

No data was falsified or fabricated and any limitations of the research study are acknowledged. Ethical clearance was granted by the UNISA College of Law Research Ethics Sub-Committee for this study and is attached as Appendix D.

3.11 Conclusion

In this chapter the research methodology was discussed. The methodology of a study is important because it lays the foundation for ensuring valid and reliable research data and the analysis thereof. The research methodology includes detailed information about the research process, the unit of analysis, the aim and objectives, the research design, the incorporated research techniques, data collection, data analysis, the validity and reliability of the utilised measuring instrument and the ethical guidelines followed.

The following chapter presents the data and findings of the study.

CHAPTER 4

DATA PRESENTATION AND FINDINGS

4.1 Introduction

This chapter presents the data collected from the questionnaires on child diversion programme Minimum Standard compliance in the Western Cape and which effect the level of compliance may have on the accreditation process and on programme delivery. Findings from the literature review point to diversion being a positive and cost-effective contribution towards the rehabilitation and curbing of re-offending amongst child offenders. Against this background the aim of the study is to assess the Western Cape's non-governmental diversion programmes' level of compliance with the Minimum Programme Outcomes Standards developed for good diversion practice and accreditation. In other words, to explore in how far non-governmental child diversion programmes in the Western Cape comply with the Minimum Programme Outcomes Standards and if the level of compliance achieved guarantees their accreditation, thereby ensuring the continuation of these diversion programmes.

By October 2012 nine non-governmental (NGO) diversion providers offering 36 child diversion programmes in the Western Cape Province were receiving referrals from the courts. Providers and programmes are individually accredited by the Department of Social Development (DSD) accreditation committee. For the purpose of this study the sample included all 36 programmes being offered by NGO diversion providers in the Western Cape Province, the sample size thus constituting 100% of the identified research population.

The questionnaire utilised in this study was divided into three sections, including 10 general information questions that including demographic questions about the service provider and programme(s) offered, 13 programme outcomes standards based on the Minimum Standards developed for diversion, and one open-ended question regarding the opinion held by the diversion service providers about any effects the new Act may have had on programme delivery. The questionnaires were all answered by a senior staff member of the provider as participant, either during personal or telephonic interviews with the participants. Even though the interviews were structured, respondents were allowed to expand on their answers if they wished to do so. The participants indicated their willingness to participate in the study by signing an informed consent form (see Annexure A), which explained the purpose, risks and the participants' rights. The participants were assured that any information disclosed would be treated confidentially. The following section presents the results and analysis.

4.2 General Demographic Information Section

This section included questions about the provider's name, the programme name(s), and the respondent's name and qualification. The purpose of these questions was to audit the existing non-

governmental programmes and providers in the Western Cape Province. To ensure anonymity no service provider was identified by name. The results will be presented according to programme type.

4.2.1 Programme Frequency per Programme Type

Table 09: Participating Programmes per Programme Type

Diversion Programme Type	Number of Diversion Programmes per Programme Type
mentorship	1
sex offender	1
vocational skills	2
community service	2
combination	3
restorative justice	3
wilderness experiential	5
substance abuse	7
life skills	12
Total Nr of Diversion Programmes participating in the Study	36

Source: Own data.

Table 09 lists the number of programmes per programme type that are offered by NGOs in the Western Cape. It also reflects the programmes which participated in this study. Wilderness, substance abuse and life skills programmes form the majority of programmes offered by NGOs in the Western Cape (October 2012). Every child in conflict with the law is referred to a DSD probation officer who must assess the child and make a recommendation to the prosecutor or magistrate regarding the suitability of diversion, as well as to which programme the child should be referred to and for how long. The child diversion providers are dependent on the referrals they receive from the courts, including prosecutors, magistrates and the recommendations made by the DSD probation officers, because they receive funding from the DSD per child referred to their programme. Even though a number of these NGO diversion providers also offer their programmes as prevention programmes and receive some referrals from schools and from the community, the majority of referrals to a programme are made by the courts, either from a magistrate, a prosecutor or a DSD probation officer, for diversion purposes. The DSD is the custodian of the Act and is mandated by the Act to implement the Act and to ensure that adequate diversion services are available. Therefore, the number of referrals received from the DSD may inform the type of programmes the NGOs offer.

As noted by Muntingh (2001: 49), the majority of charges against children are property-related or economical crimes. The three most commonly reasons cited by children for committing an offence were, being influenced by friends or gang members, economic reasons, and being under the influence of alcohol (Wood, 2003: 16). As noted in the literature review, many South African children find themselves in environments defined by poverty, unemployment and underdevelopment (Steyn, 2010: 6). Their communities are often characterised by violence, substance abuse, physical and emotional abuse, crime and weak social cohesion, and exposure to these circumstances can result in destroying

social skills (Steyn, 2010: 6; Leoshut & Burton, 2005: 80). This is mirrored in the number of available programme types which aim to teach children life skills, such as personal awareness and growth, communication skills, conflict resolution, self-esteem and responsible decision-making, as well as acknowledging that many children have substance abuse issues that have to be dealt with (Mbambo, 2005: 79; Wood, 2003: 12). Wilderness/adventure therapy programmes also offer life skills, education and leadership skills through outdoor experiential learning (Mbambo, 2005: 80, Wood, 2003: 14). Many of these programmes are especially designed for children with serious behavioural and emotional problems. By placing these children on 'wilderness journeys' for specified periods of time, they can learn new skills and more about themselves so that they can cope more easily with the challenges they encounter in their social environment (Mbambo, 2005: 80; Wood, 2003: 14). Diversion programme participant feed-back revealed that most respondents were able to remember details about the programme content 24 months after they participated, especially programmes which included experiential and adventure education techniques (Muntingh, 2001: 49).

As mentioned above, the DSD is the custodian of the Act and has to ensure that there are an adequate number of accredited programmes available in all regions (Skelton, 2007: 44). In addition to the programmes offered by NGOs, the DSD also provides its own in-house diversion programmes, which are offered at the regional DSD offices or in communities by probation officers. The types of diversion programmes offered by the DSD include:

1. Oral/ Written Apology (essay or picture collage);
2. Home-based Supervision;
3. Supervision;
4. Sex offender: SAYsTOP (13 - 17yrs);
5. Sex offender: SAYsTOP (7 – 12 yrs);
6. Substance abuse: Drug Intervention Programme;
7. Restorative Justice: Victim Offender Mediation (VOM);
8. Restorative Justice: Family Group Conference (FGC);
9. Pre-trial Community Service
10. Life skills: Zest for Life.

In addition to presenting these programmes, the DSD is furthermore undertaking the training of probation officers on five new therapeutic diversion programmes to be implemented by the DSD, including a substance abuse programme, a sex offender programme, a restorative justice programme, a personal development life skills programme and an after-care programme (Mqonci, 2012). The researcher was informed that the DSD is also collecting evidence on the programmes' effectiveness, which is required for accreditation processes (Mqonci, 2012).

Since the implementation of the Act, probation officers play a much more central role and often don't have the capacity and time to provide diversion programmes, especially in urban areas. Probation officers are social workers employed by the Department of Social Development, but work at the courts or at the DSD offices in a region or district. Probation officers now carry out the assessments of all charged children and make recommendations about the prospects for diversion as well as the release or placement of the child (Skelton, 2007: 44). They are also required to attend the preliminary inquiry, render pre-sentence reports, and carry out supervision and monitoring of diverted children in the

community, in addition to providing DSD diversion services (Skelton, 2007: 44). Section 57 of the Act stipulates that the probation officer must submit a report to the prosecutor if the child successfully completes the diversion.

The more populated DSD regions seem to rely on the programmes offered by NGOs, whereas in the rural areas, where there are no NGOs, the DSD probation officers have to ensure that diversion programmes are accessible and they are responsible for providing them. It is difficult to ascertain if there are enough child diversion programmes on offer at this point in time because, as noted in the literature review, the number of charged children, assessments and preliminary enquiries have decreased to a large extent, which seems to have been caused by factors relating to the implementation of the Act. Wakefield (2011: 49) and Badenhorst (2011a: 12-15) identified the shortage and unavailability of probation officers as one of the major challenges hampering the successful implementation and execution of the Act. This has also been supported by various other sources, such as research conducted by Khumalo (2010: 79) and a Western Cape probation officer (2012) who chose to stay anonymous. The number of referrals is expected to increase again once the Act is fully implemented, and when they do, the DSD will have to ensure that enough programmes and probation officers are available.

Another important point to note, regarding the type of programmes available, is that there are certain programme types which is difficult for the DSD to provide. The DSD does not offer wilderness type programmes due to the fact that the probation officers work within the communities or from the DSD regional offices. They therefore often do not have the capacity to cater for wilderness or substance abuse type programmes, which usually take place over a few days or weeks, are located outside of the community or have a residential component. These programme types are therefore outsourced to other providers with whom the DSD has service agreements. The service agreements or contracts that providers have with the DSD reflect the total number of diversions that can be facilitated by the service providers according to the DSD and are directly linked to the annual targets set for providers (South Africa, Department of Social Development, 2011a: 5). This implies that the DSD is forced to rely on certain diversion services to be provided by outsourced providers, especially multiple day or week-long wilderness programmes. As indicated in Table 09, wilderness, substance abuse and life skills programmes form the majority of programmes offered by NGO diversion providers at the moment.

4.2.2 The Average Programme Length in Hours per Programme Type

Table 10: Average Length per Programme Type

Programme Type	average hours
restorative justice	15
sex offender	20
mentorship	24
life skills	24
wilderness experiential	80
combination	90
vocational skills	100
community service	100
substance abuse	120

Source: Own data.

Table 10 shows the average number of hours, in other words, how long a programme runs per programme type, but individual programmes may be longer or shorter. Restorative justice programmes have the least number of hours, whereas substance abuse programmes have the highest number of average hours. The average number of hours does not give information about the actual duration of the programme. Some of the hours may be spread over weeks or months and some are fulfilled in a few sessions or a two- week period, such as the outdoor wilderness programmes.

The average number of hours per programme type also does not offer much information in terms of the intensity of the programme content. Restorative justice programmes include family group conferencing (FGC) and victim-offender mediation (VOM). The aim of these programmes is to provide a platform where the victim and the offender can come together to discuss the events surrounding the offence and the consequences the offence has had on all parties, so as to develop a mutually beneficial agreement to remedy the situation through restitution efforts, community service and/or compensation (Steyn, 2005: 27; Mbambo, 2005: 81; Muntingh, 1997b: 33). Although the number of hours per restorative justice intervention is on average only a total of 15 hours, respondents stated that the intensity of each session is very high as all stakeholders are involved in the process. Substance abuse programmes focus on children who have behavioural, substance-related and mental health-related problems, and therefore need intensive counselling and therapy (Mbambo, 2005: 88). These programmes offer in-patient treatment programmes, and services offered include assessment, detoxification, counselling, family intervention, support and after care services (Wood, 2003: 15). Addiction-related therapeutic programmes are very time-intensive and can consist of between three and six months of residential treatment.

As specified by the Act, each child in conflict with the law must be assessed by a probation officer and an individual management plan must be constructed, which addresses the unique circumstances of each child (Skelton & Tshehla, 2008: 26; Sloth-Nielsen 2006: 18). Various diversion options may be used in combination with each other and, in terms of section 54(3) of the Act, an individual diversion

option meeting the objectives of diversion may be developed for a particular child. Respondents have noted that probation officers often do not make adequate recommendations or suitable management plans regarding the programme to be attended, but simply refer a child to any diversion programme. The probation officers do not specify how long a child should participate in a certain programme, but this is probably due to the fact that the programmes all have a set number of sessions (with the exception of community service), which are aligned with the goal the programmes aim to achieve with their content. The NGO diversion providers have service level agreements (SLA) with the DSD in which the funding per child received is agreed upon for a certain programme. As confirmed by the DSD, funding differs from office to office. There is no standardisation and it depends on what each diversion provider has submitted per DSD regional office and whether that particular DSD office has approved the provider's cost proposal (Mqonci, 2012).

The courts should compile a management plan for each child and a child who is diverted might be required to attend programmes presented by different programme providers. One example described to the researcher by a respondent was that children are often referred to a life skills programme by a probation officer because they have committed theft, but when re-assessed by that programme provider they have found that other risk factors, such as substance abuse, are present in the child's life. These risk factors have to be addressed first, for instance through a substance abuse programme - which may be presented by another service provider - before participation in the life skills programme. Some NGO diversion providers have good relationships with other providers and in certain cases, as described above they will refer the child to a substance abuse programme before admitting them to their life skills programme. The problem arises when the other diversion provider has a problem getting DSD funding for the services provided because the child was officially not referred to that programme by the courts. Similarly, if a diversion provider renders services to a child referred to it by the courts just to secure funding despite the fact that the child is actually in need of other services it becomes a problem for the child's rehabilitation prospects because the child will then not receive the services he or she requires to curb re-offending behaviour. The Minimum Programme Outcomes Standards specify that each child must be adequately assessed by both the probation officer as well as by the diversion provider before placement in a suitable programme. Therefore, in cases where a child is referred incorrectly, non-compliance with the Minimum Standards is the result. These findings will be discussed in more depth in the final chapter, which provides recommendations.

4.2.3 The Professional Qualification of the Programme Facilitator

The programme facilitator qualifications range from that of counsellors, facilitators, auxiliary social workers, social workers, psychologists, mentors and community members. In various cases a psychologist will conduct the in-house assessment and individual counselling, whereas the group work may be conducted by a social worker or auxiliary social worker. The Minimum Standards were developed to prevent children from being subjected to harmful and exploitative practices, and the Act provides a legal framework for diversion, which aims to provide the maximum amount of protection from risks, such as unskilled service providers. Therefore programme facilitators must be qualified

professionals that can ensure the best diversion practice possible to children in conflict with the law (Tserere, 2006: 37; Wood, 2003: 13). Findings from this study indicated that all programme facilitators are skilled as they have the necessary qualifications as indicated above. Respondents facilitating mentorship programmes also confirmed that it is often the case that a mentor is a previous participant of a programme or a peer from the community, and that each mentor receives training by a qualified programme facilitator before being paired with a child and therefore they comply with the requirements of the Minimum Standards to ensure qualified personnel deal with the rehabilitation of children referred to them.

4.2.4 Programme Methodology

Table 11: Programme Methodology

Programme Methodology	Number of Programmes utilising Methodology
group work	13
individual & group work	13
interactive learning	7
individual counselling	3
total	36

Source: Own data.

Table 11 shows that most programme types incorporate either group work, or individual counselling and group work in their methodologies, while seven programmes use only interactive learning, and another three programmes use only individual counselling, as can also be seen in the table below.

Table 12: Methodology utilised per Programme Type

Programme Type / Methodology	life skills	sex offender	substance abuse	wilderness experiential	combination	mentorship	restorative justice	community service	vocational skills
group work	6	1	3	2			1		
individual & group work	4		4		3	1	1		
interactive learning				3				2	2
individual counselling	2						1		

Source: Own data.

The programme methodology is linked to the aim and content of the programme type, but as Table 12 shows, the same programme types may utilise various methods to achieve the programme goal. As can be seen above, six life skills programmes use group work as their main method, whereas four life skills programmes use individual counselling in combination with group work in their methodology. In addition, a two further life skills programmes use mainly individual counselling as their methodology. Group-based activities provide an opportunity to learn about multiculturalism and develop important

life skills such as communication, positive expression of feelings, conflict management, leadership styles and facilitation, decision making and team work (Wood, 2003: 14). Interactive learning promotes self-awareness, self-sufficiency, and increased self-esteem and the programmes aim to engage youth in problem-solving activities either through an adventure-based experiential outdoor intervention model, community service or vocational skills. The aim is to empower the youth to take control of their own lives (Mbambo, 2005: 80; Van Eeden, 1997: 50). Counselling and therapeutic programmes focus on children who have behavioural, substance-related and mental health-related problems, and therefore need intensive individual counselling (Mbambo, 2005: 88).

The Minimum Standards place the emphasis on ensuring properly designed programmes, in which the objectives, activities and targeted behaviour changes are clearly defined (Dawes & van der Merwe, 2004: 5). It is not within the scope of this study to examine the merits of each methodology, but the Minimum Standards specify that each programme must be developed in accordance with a specific behavioural change focus, including the methodology most conducive to reaching that goal. Again, the management of possible risks must be evaluated to ensure the most beneficial treatment to each participating child. It can therefore be concluded that each programme aiming to comply with the Minimum Standards will be properly designed.

4.2.5 Referral of Cases to the Provider

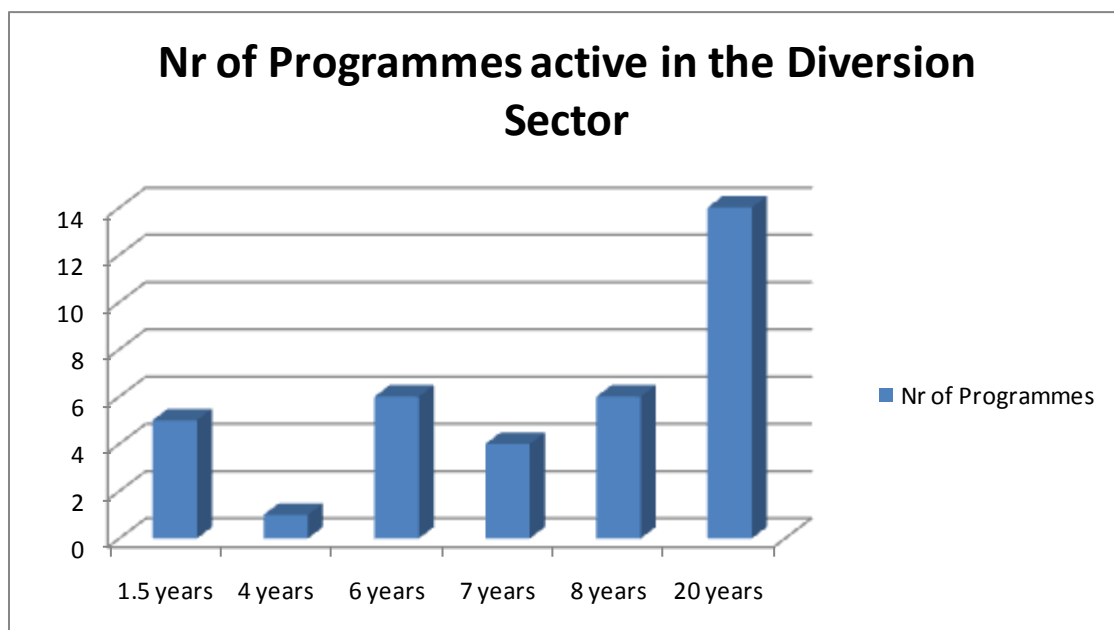
Findings from this study indicated that in all cases, referrals to diversion programmes were received by a probation officer. This is interesting to note because the regulations of the Act specify that the prosecutor or the magistrate must make the official referral of a child to a diversion programme. In this regard it should be noted that the referral by a prosecutor or magistrate will be made in accordance with the recommendation made by the DSD probation officer after conducting the assessment of the child and the DSD probation officer is responsible for monitoring the diversion order of the child, most providers acknowledged the probation officer as the referral source. It could not be established if the signature on the referral form is that of the magistrate or prosecutor. It is most likely to be the case in adherence with the regulations of the Act, even if the referral order is then forwarded on to the diversion provider by the probation officer. It therefore seems to be the prevailing referral practice in the Western Cape that a probation officer makes a recommendation after assessment and the magistrate or prosecutor makes the official referral to a diversion provider located in the closest vicinity to the child, as well as to a provider offering a programme considered beneficial to the rehabilitation of the child.

Yet, some respondents of this study revealed that they are faced with various referral-related challenges. These challenges have also been confirmed by Badenhorst (2012: 15). There is no standardised form that is currently being utilised to refer children to programmes and therefore courts use different, sometimes unrelated, forms to refer children to diversion programmes, such as a detention warrant. The Act states, in section 52(5), that the presiding officer must “*make an order for diversion in respect of the child*”, but the Act does not specify how the order must be written. Not all

courts specify what programme the child has been referred to, or the length of attendance in the programme, and probation officers often do not confirm whether or not there is place available for the child in the programme. Some courts require reports by the probation officer on completion of the diversion programme and others just want to know whether the child was compliant or not. Section 58 of the Act specifies that if the child successfully completes the diversion, the probation officer must submit a report to the prosecutor who deals with the matter. Respondents participating in this study confirmed the problems stated above and noted that the probation officers often did not specify the programme a child was expected to take part in and that they never confirmed the availability of space for the child. Even though these challenges were not the focus of this study, they are still of importance and have to be reviewed and improved upon for an optimal implementation process.

4.2.6 Number of Years the Provider / Programme has been operational within the Child Diversion Programme Sector

Figure 09: Number of Diversion Programmes active in the Diversion Sector



Source: Own data.

The programmes offered by diversion providers that participated in this study, have been active in the child diversion sector for a number of years, ranging from 1.5 years to 20 years, with the majority of programmes having been active in the diversion sector for 20 years. The DSD noted that they have approached other potential providers to apply for child diversion accreditation, because the programmes they offer programmes were identified as suitable for children in conflict with the law, but had not been utilised as such previously (South Africa, Department of Social Development, 2012). This seems to point to the opportunity for new providers to enter the child diversion market after the enactment of the Act. Paradoxically there has been a marked decrease in referrals to providers lately and providers have noted that their funding has therefore also decreased dramatically (Smit, 2012). As explained earlier, the DSD probation officers are responsible for recommending diversion referrals and the DSD is responsible for the funding for diversion service delivery. Thus if the number of referrals by

the DSD drops and in turn the funding, many NGO diversion providers will not be able to continue providing diversion services. This is also confirmed in the literature review, where it was noted that the number of referrals to the main non-governmental and non-profit diversion service providers has dropped on an annual basis since the enactment of the Act due to various implementation challenges (Badenhorst, 2012: 9). This could result in the loss of valuable skills offered by service providers who have many years of experience offering diversion services to children in conflict with the law.

In this regard Ms. Smit (2011), NICRO's Head of Research and Programme Development, stated that the reason for this decrease could lie in the fact that the DSD is both the custodian of the Act and, as mentioned, responsible for referrals and funding, while at the same time also being a service provider offering its own diversion programmes instead of merely ensuring accessibility to existing programmes from longstanding diversion providers. A further aspect affected by the centralised powerbase of the DSD is that, as the accreditation authority, it requires access to the service provider's programme content and tends to prescribe what the nature and focus of the programmes should be (Smit, 2011). The service providers are reluctant to do this because, first, the DSD, as a programme provider itself, is in competition with other NGOs for the delivery of programmes and therefore they do not want to make the content of programmes they have developed available to their competitors. Secondly, the service providers who are experienced in working in the field of child justice are not willing to give up their discretion in terms of the nature and focus of the programmes they have developed. This can create a conflict of interest if the gatekeeper of the Act is also a service provider, which may be to the detriment of the NGO service providers. In this regard Smit (2011) noted that, due to the decrease in referrals and the decrease in NICRO's funding, NICRO could not continue their services in the majority of their offices, resulting in 34 of a total of 52 offices nation-wide being forced to close in December 2011. According to Badenhorst (2012: 7), the downward trend in referrals to diversion providers could also be due to a number of other implementation challenges, such as the lack of training of police officers and probation officers on how to handle youth offenders in keeping with the Act. It is estimated that the number of referrals will increase again once the Act is properly enforced and also that the number of diversion services will increase significantly over the next few years to cater for the increase in referrals (Steyn, 2005: 1; Khulisa Social Services, 2010: 12). The implications are that once referrals increase again there may not be enough providers to supply services to children in conflict with the law, as required by section 55 of the Act.

The challenges noted above may not only result in a number of providers closing their offices in certain areas, even though the Minimum Standards stipulate that the DSD has to ensure accessibility to diversion programmes, but may also have a negative impact on the implementation of the Act itself. The implementation of the Act might fail due to the inadequate training and the inadequate number of probation officers available, which are directly affecting the decrease in referrals and funding to NGO providers.

4.2.7 Summary

Findings from the analysis of the demographic information highlighted the fact that the DSD is the custodian of the Act, is mandated by the Act to implement it and to ensure that adequate diversion services are available. Therefore, the number of referrals received from the DSD for specific crime categories may inform the type of programmes the NGOs offer. The majority of charges against children are property-related or economical crimes. This is mirrored in the number of available programme types, which aim to teach children life skills. Wilderness type programmes, with a total of 5 programmes, substance abuse, with a total of 7 programmes, and life skills programmes, with a total of 12 programmes, form the majority of programmes offered by NGO diversion providers in the Western Cape. The DSD also provides its own in-house diversion programmes, which are offered at the regional DSD offices or in communities by probation officers and the department is busy training probation officers to start implementing additional diversion programmes, which have been newly developed.

Since the implementation of the Act probation officers play a much more central role than before and often don't always have the capacity and time to provide diversion programmes, especially in urban areas. The more populated DSD regions seem to rely on the programmes offered by NGOs, whereas in the rural areas, where there are no NGOs, the DSD probation officers have to ensure that diversion programmes are accessible and they are responsible for providing them. The fact that there are not enough probation officers at this stage poses serious challenges for the successful implementation of the Act.

The average number of hours per programme does not give information about the intensity or effectiveness of a programme. Some of programme sessions may be spread over weeks or months and some are fulfilled in a few days, such as wilderness programmes. As specified by the Act, each child in conflict with the law must be assessed by a probation officer and an individual management plan must be constructed, which addresses the unique circumstances of each child. This should ensure that each child is referred to an appropriate programme.

Findings from this study indicate that all programme facilitators are highly skilled. Qualifications range between counsellors, facilitators, auxiliary social workers, social workers, psychologists, mentors and community members. The programme methodology per programme is linked to the aim and content of the programme type, but the same programme types may utilise various methodologies to achieve the programme goal, such as individual counselling and group-work, or interactive learning or group-work.

In all cases included in this study, referrals to programmes were received by a probation officer. In reality the prosecutor or the magistrate is the official referrer, usually in accordance with the recommendation made by the DSD probation officer after conducting the assessment of the child. Most respondents acknowledged the probation officer as the referral source because the DSD

probation officer is responsible for monitoring the diversion order of the child and for communication with the provider.

The number of years the providers, which participated in this study, have been active in the child diversion sector, range from 1.5 years to 20 years. It is difficult to ascertain if there are enough child diversion programmes on offer at present because, as noted in the literature review, the number of charged children, assessments and preliminary enquiries have decreased to a large extent, which seems to have been caused by factors relating to the implementation of the Act. The number of referrals is expected to increase again and when they do, the DSD will have to ensure that enough programmes and probation officers are available to ensure that they adhere to the regulations of the Act, which stipulates that there must be both adequate and accessible services available to all children in conflict with the law.

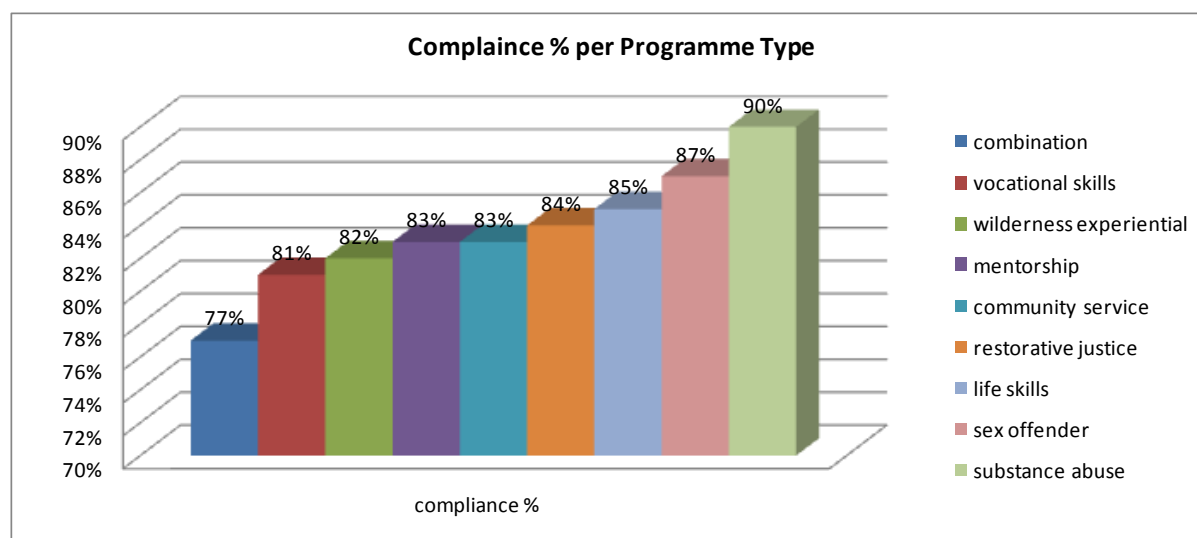
4.3 Minimum Programme Outcomes Standards Section

In this section of the questionnaire respondents were asked to rank their programmes' Minimum Standards compliance on an ordinal Likert scale for the 13 programme outcomes minimum standards. The Minimum Standards are intended to prevent children from being subjected to harmful and exploitative practices and aim to set a level of programme quality and performance that is not negotiable, thereby protecting the interests and rights of children diverted to diversion service providers and diversion programmes (Muntingh & Ehlers, 2006: 51).

The Minimum Programme Outcomes Standards place the emphasis on properly designed programmes in which "*the objectives, activities and targeted behaviour changes are clearly defined*", as well as on the monitoring of diversion providers in order to ensure that they adhere to good diversion practice (Dawes & van der Merwe, 2004: 5). Sections 55 and 56 of the Act mandate the Minister of Social Development to develop an accreditation system based on the Minimum Standards for diversion programmes (Muntingh & Ehlers, 2006: 51). Accreditation has the primary purpose of accountability, monitoring and improvement of services delivered to children in conflict with the law (South Africa, Department of Social Development, 2010: 7; Muntingh & Ehlers, 2006: 51; Dawes & van der Merwe, 2004: 5).

The findings of this study, visually displayed in Figure 10 and Table 13, show that the overall compliance percentage rate per programme type and standard, which ranges between 77% and 90%, and the average compliance of all programme types per standard, ranging between 18% and 100%.

Figure 10: Compliance Percentage (total) per Programme Type



Source: Own data.

Table 13: Programme Type average Compliance per Standard

	Substance abuse	Sex offender	Life skills	Restorative justice	Community service	Mentorship	Wilderness experiential	Vocational skills	Combination	Average compliance per standard
Standard 01	96%	100%	94%	92%	88%	100%	95%	100%	100%	96%
Standard 02	71%	100%	54%	67%	50%	0%	60%	100%	100%	67%
Standard 03	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%
Standard 04	100%	100%	100%	100%	100%	100%	80%	50%	58%	88%
Standard 05	100%	100%	100%	100%	100%	100%	100%	100%	83%	98%
Standard 06	100%	100%	100%	100%	100%	100%	100%	100%	92%	99%
Standard 07	100%	100%	100%	100%	100%	100%	80%	50%	67%	89%
Standard 08	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%
Standard 09	100%	100%	100%	100%	100%	100%	100%	100%	75%	97%
Standard 10	100%	100%	100%	100%	100%	100%	100%	100%	92%	99%
Standard 11	86%	75%	73%	67%	63%	75%	80%	100%	92%	79%
Standard 12	68%	25%	63%	58%	75%	50%	60%	50%	42%	54%
Standard 13	46%	25%	25%	8%	0%	50%	10%	0%	0%	18%
Compliance per programme type	90%	87%	85%	84%	83%	83%	82%	81%	77%	83%

Source: Own data.

Substance abuse programmes showed the highest compliance rate, whereas combination programmes showed the lowest compliance rate. The high compliance result of substance abuse programmes may be due to the intensively therapeutic and structured process inherent in these types of programmes. Counselling and therapeutic programmes focus on children who have committed

crimes and have behavioural, substance-related and mental health-related problems, and therefore need intensive counselling (Mbambo, 2005: 88). Combination programmes, on the other hand, consist of various content foci, such as life skills training, family group conferencing, mentorship, vocational skills training, family support and adventure therapy.

It is interesting to note that specialised or uni-modal programmes, such as substance abuse and sex offender programmes, showed higher compliance results than the non-specialised or multi-modal programmes, such as combination programmes. In contrast, Dawes and van der Merwe (2004: 36) have noted that information they collected pointed to multi-modal and social skills oriented programmes being the most effective, and that highly structured, cognitive-behavioural interventions directed at the development of skills have been shown to be at least twice as effective and have longer lasting effects than other interventions. As noted by Mbambo (2005: 86) there is a greater need for specialised programmes that address specific needs of children. One of the respondents commented that it is important to keep each programme and programme type separate and to improve communication between the programme providers, as was described in an example above, where some providers have good relationships with other providers and in certain cases they will refer the child to a another provider before admitting them to their own programme if it is in the best interest of the child.

An analysis of the findings per programme type indicates an overall average compliance rate of 83% with the 13 minimum standards. This shows that service providers in general comply with the DSD Minimum Standards for diversion practice. It may also indicate that providers have been complying with the Standards before they were regulated by the Act, due to the fact that they have been providing these services for a number of years and were responsible to ensure good practice outside of any legislative framework. This would then imply that, although the child justice sector needed to be regulated in terms of referrals made and also so that all children in conflict with the law would have equal access to diversion services, Minimum Programme Outcomes Standards would not be required to ensure good diversion practice, because providers have been aware of the need to provide positive programme outcomes. It should be noted here that the sample consisted only of NGO diversion providers based in the Western Cape and that it is not clear if similar results would be obtained in other South African provinces.

4.3.1 An Analysis of Compliance per Standard

Table 14 displays the compliance results per standard from lowest to highest compliance.

Table 14: Average Compliance per Standard (lowest to highest)

Standard	description	Average % of compliance per standard
standard 13	Does programme provider receive or request information on previous participants re-offending behaviour	18%
standard 12	Is a formalised follow-up or after-care strategy available	54%
standard 02	If prior assessment done by a probation officer, does the provider have access to the report	67%
standard 11	Programme content is subject to regular evaluation by staff or provider	79%
standard 04	Programme assessment includes information on risk factors present in child's life	88%
standard 07	The programme is based on research evidence, i.e. behavioural change principles and sound methodologies	89%
standard 01	Every referred child has been assessed by a probation officer	96%
standard 09	The programme has a monitoring system to check child's progress, e.g. individual evaluation report	97%
standard 05	Programme assessment includes psycho-social functioning	98%
standard 06	The programme is reasonably geographically accessible for the participant	99%
standard 10	The programme has a monitoring system to check child's compliance, e.g. attendance register	99%
standard 03	Every child is (re)-assessed by programme provider before participation	100%
standard 08	The programme encourages active participation	100%

Source: Own data

In terms of the individual standards, standard 13, asking if diversion programme providers receive or request information about any previous participant's re-offending behaviour, was complied with least (18%). Standard 03, asking if every child referred to the diversion programme is assessed by a programme provider, manager or staff member before participation in the provider's programme, and standard 08, asking if the manner in which the programme is delivered encourages the active participation of the young offender, were complied with most, both at 100%. With the exception of standard 13 the remaining standards achieved an above 50% compliance rate, and, as noted previously, the overall minimum standards compliance rate is very high with an average of 83%. There are only four standards with a compliance rate of less than 80%.

Each standard will now be evaluated individually to understand the results and to see what effect the results may have on the participants and / or on the accreditation process.

4.3.1.1 Standard 01

Every child referred to the diversion programme was assessed by a referrer (probation officer, prosecutor, magistrate) prior to participation in the programme?

Standard 01 Compliance Rate per Programme Type

	Sex offender	Mentorship	Vocational skills	Combination	Substance abuse	Wilderness experiential	Life skills	Restorative justice	Community service	Average compliance per standard
Standard 01	100%	100%	100%	100%	96%	95%	94%	92%	88%	96%

Source: Excerpt from Table 14.

According to section 34 of the Act, every child who is alleged to have committed an offence must be assessed by a probation officer before the preliminary inquiry takes place and/or before being diverted. Therefore, even though the result of 96% compliance is very high, it is not adequate, as 100% compliance is essential to ensure effective service delivery. In theory every child charged must be assessed by a DSD probation officer and diversion should be considered in every case. Only the prosecutor can dispense with the assessment if it is in the best interests of child (Gallinetti, 2009: 45). As the 2011/2012 NPA statistics showed, only 31% of charged children were assessed (South Africa, Intersectoral Child Justice Committee, 2012: 9-10; South Africa, National Prosecuting Authority, 2012). These statistics indicate that a lot of work remains to be done to ensure that the Act is implemented successfully. The Act requires 100% compliance, but at present only one-third of all children in conflict with the law are being assessed.

According to Khumalo (2010: 79) a further challenge is that probation officers do not always conduct a thorough assessment due to an influx of cases and a shortage of probation officers, and the required detail in the assessment reports is often not being provided due to time constraints. This, despite the fact that probation officers use a standardised assessment form as required by section 40 of the Act. A further challenge identified by Khumalo (2010: 79) is that the incomplete assessment report by probation officers makes it difficult for prosecutors to decide on the best option for the child offender and may result in children being diverted to the wrong programme. Findings, previously mentioned in section 4.2.2, indicated that children are often sent to service providers without a programme being specified, which is one of the reasons why NGO providers re-assess the children referred to them. The providers' aim to ensure that the programme chosen will actually benefit the participant and is in line with the child's educational level, cognitive ability and domestic and environmental circumstances. Proper assessments after arrest and prior to programme participation are an essential requirement to ensure that the child is placed in the appropriate programme (Muntingh, 2005: 6). It should be kept in mind that the diversion service providers receive funding for each child referred to their programme and that if the assessment is not thorough and the child is referred incorrectly there may be some danger that the provider accepts the referral even if their programme(s) is not the most beneficial for that particular case. This would negatively impact on the rehabilitation chances of the referred child.

4.3.1.2 Standard 02

If an assessment was conducted by a referrer, does the programme provider have access to the assessment documentation or report?

Standard 02 Compliance Rate per Programme Type

	Sex offender	Vocational skills	Combination	Substance abuse	Restorative justice	Wilderness experiential	Life skills	Community service	Mentorship	Average compliance per standard
Standard 02	100%	100%	100%	71%	67%	60%	54%	50%	0%	67%

Source: Excerpt of Table 14.

The result for standard 02 shows that only 67% of service providers have access to the assessment documentation from the probation officer. The Minimum Standards indicate that the provider's assessment should build on the probation officers assessment: *"Assessments prior to programme inclusion build on the probation officers assessment and accurately and concisely reflect the clients psycho- social functioning and risk factors to be addressed"* (South Africa, Department of Social Development, 2007: Standard 71 indicator). The Probation Services Amendment Act 35 of 2002 defines assessment as

...an evaluation of a person, the family circumstances of the person, the nature and circumstances surrounding the alleged commission of an offence, its impact on the victim, the attitude of the alleged offender in relation to the offence and any other relevant fact (Gallinetti, 2009: 33).

Service providers need to ensure that every child receives an appropriate intervention that will benefit them and contribute to their re-integration and rehabilitation. The probation officer's assessment report contains valuable information, not only for the recommendation regarding diversion, but for most of the decisions regarding the child. The probation officer's assessment report is expected to make recommendations regarding the following (Gallinetti, 2009: 34):

- whether a child can be diverted including to what type of programme and to which service provider the child should be referred to;
- whether the child can be released;
- if the child cannot be released, a recommendation regarding placement options;
- whether the matter should be transferred to a children's court;
- the possible criminal capacity of the child if the child is 10 years or older but younger than 14 years;
- measures to be taken if the child is under 10 years of age;
- an estimation of the child's age if it is uncertain; and
- if a more detailed assessment of the child is needed.

The question remains if the finding from standard 01, which indicated that in 96% of cases an assessment was conducted by a probation officer before referral, is accurate when compared to the finding regarding standard 02, which indicates the contrary. In standard 02 respondents indicated that only 67% of providers have access to the probation officers report, so in only 67% of the cases the providers are actually sure that an assessment was conducted by a probation officer. The researcher is of the opinion that this discrepancy might be ascribed to the expectation of respondents that all children are assessed by a probation officer, this being a requirement of the Act. It might also be the case that the child indicated that he/she has been assessed previously by a probation officer.

The Act does not stipulate that the probation officers assessment report must be forwarded to the diversion service provider because it is expected that the prosecutor or magistrate will refer a child to the appropriate service in accordance with the recommendation made by the probation officer. But, as indicated by the Minimum Standards, having access to the probation officers report would allow the provider to compare information obtained through their own assessment, thus providing them with the most comprehensive information on each referred child and ensuring that each child receives the most beneficial service.

An analysis of the findings per programme type indicates that compliance with standard 02 is the lowest for community service and mentorship type programmes. This might be because the NGO providers will have re-assessed children that were referred to them by the court and these providers may refer some children on to other providers, such as community service or mentorship programmes. Therefore these programme types will not have access to the probation officers report even if the original providers, those receiving referrals directly from the courts, do. Community service programme types place young people in suitable community service settings, depending on their skills and where they are needed most, such as libraries, police stations, old age homes, children's homes and hospitals, where they conduct tasks such as picking up trash, painting community institutions, planting trees and starting small vegetable gardens (Steyn, 2005: 60; Mbambo, 2005: 82). Mentorship is often utilised as an aftercare support and monitoring programme after the child has completed a diversion programme, and therefore, again, the child will probably have been assessed prior to programme participation, by the service provider (Wood, 2003: 14).

Standard 02 shows that not all service providers have access to the probation officers assessment documentation, despite the desirability of all having access thereto. The findings of standard 02 therefore indicate that communication between service providers, and between service providers and probation officers, is lacking despite being vital to ensure that a child is referred appropriately.

4.3.1.3 Standard 03

Every child referred to the diversion programme is assessed by a programme provider, manager or staff member before participation in the organisation's programme?

Standard 03 Compliance Rate per Programme Type

	Sex offender	Vocational skills	Combination	Substance abuse	Restorative justice	Wilderness experiential	Life skills	Community service	Mentorship	Average compliance per standard
Standard 03	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%

Source: Excerpt from Table 14.

The compliance result for standard 02 indicated that the probation officer's assessment documentation is not received by the service provider in 33% of the cases. If the findings of standard 02 are taken into consideration, the fact that the programme provider does not have access to the assessment documentation allows the assumption that the provider therefore does not know if and how thorough a referred child was assessed by a probation officer, which necessitates the re-assessment of the child.

According to findings from standard 03 it can be deduced that in 100% of cases every child referred to the diversion programme is assessed by a programme provider before participation in the organisation's programme. The findings from standard 03 confirm that it is accepted practice for service providers to conduct their own in-house assessments of children referred to them. Respondents noted that this is done, not only because it offers an internal quality-control mechanism, but also because, as mentioned above, in many cases the service provider must compensate for insufficient information received. For instance in cases where the probation officer does not specify the programme the child should participate in or because the provider does not have access to the probation officer's assessment report.

If both the probation officer and the service provider conduct an assessment of each child, then a lot of time is invested in the same task. It also means putting a child through a full assessment twice instead of the service provider being able to build upon the probation officers assessment. On the other hand, respondents have mentioned that the children sometimes feel intimidated by the court environment and are more honest and open about the information they give to the NGO diversion providers. Respondents stated that this is another reason why they do their own assessments, even if they receive the probation officer's assessment report. Yet another reason may be that the service providers also carry a part of the responsibility of ensuring that each child receives the most appropriate intervention. They need to be sure that the probation officer or prosecutor has made a suitable recommendation or referral and that the child is placed in a programme that will benefit him / her. The re-assessment of the child will thus ensure compliance with section 55 of the Act, which requires that children are channelled into diversion interventions that are appropriate to their age and maturity, and that these should ideally impart skills. The current situation speaks of quality control on the one hand and of over-administration on the other hand. If each child were to be re-assessed, which is currently the case, then this time consuming task may defeat the purpose of focussing on the rehabilitation of the child.

One respondent mentioned to the researcher that the DSD enquired why they re-assess referred children, as the DSD is of the opinion that this practice creates unnecessary work. The provider responded that the re-assessment of children referred to them is necessary because, as mentioned, they often do not receive the probation officer's assessment report, or that, often, the probation officers do not make the most appropriate diversion recommendation. In this regard, The Act stipulates that children can be placed in any registered diversion option as long as it fulfils the objective of diversion, namely rehabilitating the offender in accordance with restorative justice principles, and can provide an individualised response to each child offender (Wood, 2003: 11). Haphazardly placing children in programmes is counterproductive and not in the best interest of the child. Choosing a suitable diversion option includes ensuring that the child receives an intervention based on his or her individual circumstances and produces the best outcome for the child, considering the needs of the victim and promoting public safety. This is why it is so important that probation officers, prosecutors and magistrates are informed about and knowledgeable about all available diversion options in their region. The researcher was informed by the Western Cape Provincial DSD office that it was planning to launch a booklet for the courts, which lists all available diversion options per region (Coetzee, 2012). To date (November 2012) the researcher could not obtain any further information regarding this booklet. The courts must ensure that a child is referred to an option that is in their best interest and will most benefit the child. In accordance with the Act (section 56(b)(i)) each order and programme must adhere to the Minimum Standards, which provide the assurance of best practice and upholds the child's rights. Providers' re-assessment of the participants shows that they are committed to providing a high standard of diversion practice, thus complying fully with this Minimum Standard.

4.3.1.4 Standard 04

The assessment includes detailed information on factors associated with offending ('risk' factors) present in the child's life, such as a child's family circumstances, social relationships, history or antisocial behaviour, education and scholastic functioning?

Standard 04 Compliance Rate per Programme Type

	Sex offender	Substance abuse	Restorative justice	Life skills	Community service	Mentorship	Wilderness experiential	Combination	Vocational skills	Average compliance per standard
Standard 04	100%	100%	100%	100%	100%	100%	80%	58%	50%	88%

Source: Excerpt from Table 14.

Even though findings from standard 03 showed that all providers conduct a re-assessment of the children referred to them, findings from standard 04 indicate that the content of some of the providers' assessments differ, depending on the programme type they present. Where the majority of programme types include risk factors associated with the causation of crime - the child's family circumstances, social relationships, history or antisocial behaviour, education and scholastic functioning, in their assessment - wilderness, vocational skills and combination programmes exclude information on various risk factors in their assessment. It is not clear why this is the case. Either these programme types rely on the probation officer to recommend the most suitable diversion service for

the child and they therefore only include general, demographic information in their assessment, or their programme content is based on a specific methodology that, as in the case of vocational skills, focuses on skills development and not behaviour modification. The implication of this finding in terms of the Minimum Standards is that even if certain diversion programmes do not provide services specifically related to rehabilitating children or curbing offending behaviour, they should still adhere to the Minimum Standards and include these risk factors in their assessments. This may otherwise impact negatively on their overall compliance with the Minimum Standards, which in turn would impact on their eligibility for accreditation.

4.3.1.5 Standard 05

The assessment includes detailed information on the child's psycho-social functioning, such as medical/psychiatric history, offence and diversion history, strengths and skills deficits?

Standard 05 Compliance Rate per Programme Type

	Sex offender	Substance abuse	Restorative justice	Life skills	Community service	Mentorship	Wilderness experiential	Vocational skills	Combination	Average compliance per standard
Standard 05	100%	100%	100%	100%	100%	100%	100%	100%	83%	98%

Source: Excerpt from Table 14.

With regards to assessment information on the child's psycho-social functioning, combination programmes presented an 83% compliance rate, but the balance complied 100%. This may be due to the fact, as mentioned earlier, that combination programmes consist of various different programme elements and therefore may rely on the assessments conducted by the probation officer.

The purpose of standards 04 and 05 is to ensure that a child is referred to a programme/diversion option that is in their best interest and will most benefit the child. In order to do this, a holistic and comprehensive assessment of the child's psycho-social functioning is required. In practice it is assumed that the probation officer will conduct an in-depth assessment of each child in conflict with the law and will refer such a child to the appropriate intervention/diversion option. It should therefore not be necessary to re-assess each child, but as shown in the analysis of standard 03, the NGO providers participating in this study always conduct their own assessments nonetheless. This relates to the results of standard 01 that indicates that not all providers have access to the probation officer's assessment documentation. Next to the re-assessment being a requirement of the Minimum Standards, this can be seen as an additional quality control mechanism for the service providers to ensure that the child participates in an appropriate programme.

4.3.1.6 Standard 06

The diversion programme is reasonably geographically accessible to the participant?

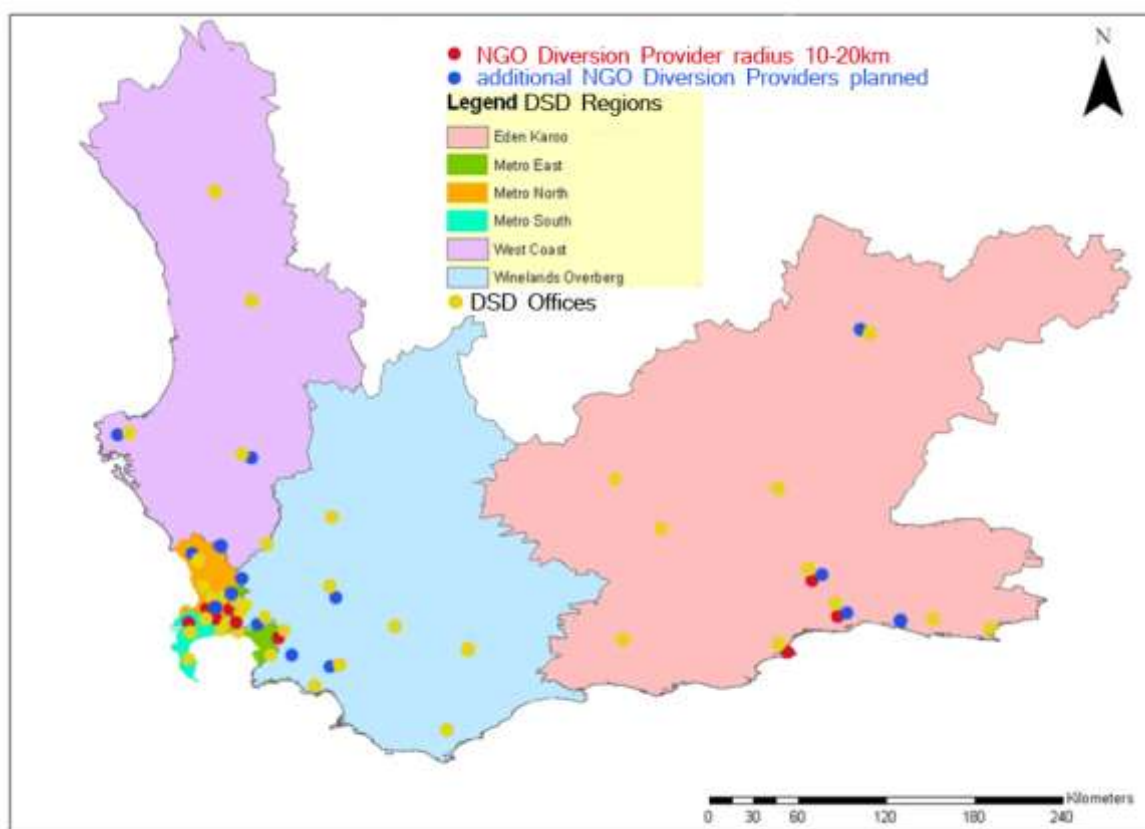
Standard 06 Compliance Rate per Programme Type

	Sex offender	Substance abuse	Restorative justice	Life skills	Community service	Mentorship	Wilderness experiential	Vocational skills	Combination	Average compliance per standard
Standard 06	100%	100%	100%	100%	100%	100%	100%	100%	92%	99%

Source: Excerpt from Table 14.

Findings indicated that 100% of programmes were reasonably geographically located to their participants, with the exception of combination programmes (92%). Respondents answered that they believed their programmes were reasonably located and that they often utilised satellite offices, such as community centres and / or libraries to make their programmes as accessible as possible to all potential participants in a specific region. The respondents stated that they usually catered for an area with an approximate 10-20km radius. Figure 11 below provides an overview of the providers' distribution, including the NGO providers that participated in this study, future NGO providers and all DSD offices in the six regions of the Western Cape.

Figure 11: Diversion Service Providers Western Cape, 2012



Source: Figure constructed with own data.

The location of service providers on the map indicates that, at present, NGO diversion providers are catering mainly for the larger urban areas. In this regard section 55 of the Act promotes the development of mechanisms to ensure that diversion occurs in a consistent and regulated manner and is accessible across the country, in rural and in urban areas (Mqonci, 2012; Tserere, 2006: 37). The availability of many more providers and programmes for diversion throughout the province is therefore required. This implies that more programmes have to be identified, designed and implemented to ensure that they are accessible in all areas, particularly in rural areas (Mbambo, 2005: 83).

According to section 55 of the Act, diversion programmes must not interfere with a child's schooling, and economic factors are not allowed to become a barrier to a child's inclusion in a diversion programme (Wood, 2003: 13). Therefore, the programmes must be geographically accessible. The national audit on diversion programmes conducted in 2000 by the National Prosecuting Authority (NPA) concurs with the findings of this study. That audit too indicated that there were few diversions occurring in the rural areas when compared to the urban areas where there seemed to be more available resources and better trained prosecutors and other diversion role-players (Mqonci, 2012; Badenhorst, 2011a: 15; Tserere, 2006: 37). As mentioned in section 4.2.1, the DSD is the custodian of the Act and has to ensure that there are an adequate number of accredited programmes available in all regions (Skelton, 2007: 44).

As stated previously, the number of diversions of children under 18 has decreased since the implementation of the Act, which was also confirmed in research conducted by Badenhorst (2012: 12). Khulisa Social Solutions reported that referrals to their diversion services nationwide had dropped from 5890 cases in 2009/2010 to 2065 cases in 2011/2012 and that current funding challenges impacted negatively on their ability to render diversion services, especially in rural areas (Badenhorst, 2012: 12). It is therefore interesting to note that Khulisa Social Solutions developed the five new child diversion programmes for the DSD and will be opening 13 new offices throughout the Western Cape Province in the near future (van der Merwe, 2012). As mentioned earlier, the DSD is responsible for ensuring the availability of diversion programmes nationwide, thus determining the allocation of targets and funding. In this regard Khulisa received the approval of an annual target of 2000 diversions for the financial year 2012/2013 from the DSD, even though they have stopped providing child diversion services in the Western Cape since 2010 (see Table 15; Khulisa Social Solutions, 2012; Badenhorst, 2012: 12). The annual target refers to the expected number of diversions as calculated by the service provider and approved by the DSD for one financial year for each province. In other words, targets are aligned to the deliverables in the business plans submitted by the service providers and contracts approved by the Provincial DSD offices (Mqonci, 2012).

Table 15: Khulisa Diversion figures 2009-2012 Western Cape only and Total Nation-wide

Referrals to Khulisa	2009/2010	2010/2011	2011/2012
Western Cape only	3322	0	0
TOTAL Nation-wide	5890	4020	2065

Source: Badenhorst (2012: 12).

This alludes to a conflict of interest, where the DSD is the referral agent, funder and service provider, as discussed earlier. As a result of this power dynamic and the DSD's discretion in terms of the allocations of funds, NICRO had to close 10 offices in the Western Cape in 2011, despite having provided services for a number of years due to a decrease in funding (Smit, 2012). The DSD in turn indicated to NICRO that NICRO's funds were decreased because they had not been reaching their targets (Smit, 2012). This dichotomy indicates that the DSD acts as the 'gatekeeper' of diversion referrals and controls which providers receive referrals and to whom funds are allocated.

Smit (2012) furthermore stated that NICRO does not have the capacity to focus on rural areas where there are very few referrals and that it would not be financially viable to deliver diversion services in these sparsely populated areas. This decision by NICRO should not influence the allocation or decrease in funding by the DSD, because, as Figure 11 makes clear, both the existing NGO providers as well as the newly planned providers, as decided by the DSD, will be located in the more densely populated urban areas. As is currently the practice, the DSD will remain primarily responsible for the delivery of diversion services in the rural areas. That said, it remains questionable why one provider, which has been providing diversion services for many years, closed a number of offices only for a new provider to relocate to these same areas. Although outside the scope of this study, it raises questions about the power of the DSD to act as 'gate keeper' and the influence this might have on the delivery of services to children referred for diversion.

4.3.1.7 Standard 07

The diversion programme is based on research evidence of "what works" in reducing criminal behaviour, which means it is based on behavioural change principles, sound methodologies and accords with good programme design practice?

Standard 07 Compliance Rate per Programme Type

	Sex offender	Substance abuse	Restorative justice	Life skills	Community service	Mentorship	Wilderness experiential	Combination	Vocational skills	Average compliance per standard
Standard 07	100%	100%	100%	100%	100%	100%	80%	67%	50%	89%

Source: Excerpt from Table 14.

Findings for standard 07 indicate that the majority of programme types are based on methodologies that are aimed at reducing offending behaviour. The majority of programme types showed 100% compliance with this standard, except wilderness, combination and vocational skills. Yet even vocational skills programmes, which are aimed at skills development for the job market and do not prioritise behavioural modification or specifically reducing offending behaviour, showed a 50% compliance rate with this standard. Section 51 of the Act states that one of the objectives of diversion is to reduce the potential for re-offending and therefore diversion programmes must comply with this minimum standard. Substance abuse and sex offender programmes are specialised programmes aimed at changing specific behaviour, whereas life skills programmes focus on adding skills associated with more self-confidence, self-esteem and team-work, and making make use of interactive

and experiential learning techniques to facilitate these skills (Mbambo, 2005: 79; Wood, 2003: 2; Van der Sandt & Wessels, 1997: 15; NICRO, 2012).

Steyn (2010: 5), in consultations with programme officers at the Open Society Foundation South Africa, postulates that diversion programmes are often planned and implemented without the intervention being rooted in some form of theory and therefore these programmes risk failing to address the rehabilitative needs of child offenders. Evidence shows that theoretically-informed programmes are more likely to succeed than those without clear theoretical understandings (Steyn 2010: 5). Muntingh (2005: 6) also noted that the most important requirement for any provider of diversion is that it must thoroughly understand its own programme. This implies that more focus should be placed on how the individual goals of each programme type are reached, instead of purely focussing on reducing offending behaviour. Diversion programmes should focus on one or more diversion objectives, of which reducing the potential for re-offending is only one. Sections 51 and 55(2) of the Act set out other diversion objectives:

- encouraging the child to be accountable for the harm caused by him or her;
- meeting the particular needs of the individual child;
- promoting the reintegration of the child into his or her family and community;
- promoting the dignity and well-being of the child, and the development of his or her sense of self-worth and ability to contribute to society;
- imparting useful skills; and
- including a restorative justice element that aims at healing relationships, including the relationship with the victim.

Looking at the objectives stated above, the researcher finds that all of these objectives could contribute to reducing offending behaviour in one way or another.

4.3.1.8 Standard 08

The manner in which the programme is delivered encourages the active participation of the young offender?

Standard 08 Compliance Rate per Programme Type

	Sex offender	Substance abuse	Restorative justice	Life skills	Community service	Mentorship	Wilderness experiential	Combination	Vocational skills	Average compliance per standard
Standard 08	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%

Source: Excerpt from Table 14.

The respondents who participated in this study are of the opinion that all the targeted programmes included in this study fully comply (100%) with this minimum standard and promote and encourage the active participation of their participants, either through group work, interactive learning or individual counselling. The respondents confirmed that the method of presentation of the programmes they offer

are not theory- or teaching-based, but focus on the active participation of each child. This therefore acknowledges that children learn more through role- or game-playing than being taught theoretical concepts. Past participant feedback on diversion programme content, researched by Muntingh (2001: 49) supports this finding. Muntingh (2001: 49) states that his respondents' experiences were

...very positive and most participants stated that the programme they attended had a long-lasting effect on them, especially programmes with experiential and adventure education techniques. The majority of participants said that they experienced a positive personal change after the programme, with the emphasis being on more responsible decision-making.

Life skills programmes make use of interactive team-work techniques so that participants can learn more effective communication skills, as well as conflict resolution and mediation skills (Mbambo, 2005: 79; Wood, 2003: 2; Van der Sandt & Wessels, 1997: 15; NICRO, 2012). A Western Cape probation officer, who chose to remain anonymous, commented that he often has to adapt the DSD diversion programmes to be more active and less focussed on writing exercises so that children with a low level of literacy can also participate. Other examples of interactive participation are mediated restorative justice programmes, such as Victim-Offender-Mediation (VOM) and Family Group Conferencing (FGC). These focus on accountability and the active involvement of victims, offenders and communities in the decision making process, encouraging dialogue and negotiation (Smit, 2011b: 3; Steyn, 2005: 27; Batley, 2005: 21-22; Muntingh, 1997a: 1). The findings above confirm that providers place an emphasis on and understand the value of active participation. This is largely due to the positive responses from their participants and also because it is expected in terms of programme compliance.

4.3.1.9 Standard 09

The diversion programme has a system for monitoring participant progress after every intervention activity, group session or at the end of the programme, for instance through an individual evaluation report?

Standard 09 Compliance Rate per Programme Type

	Sex offender	Substance abuse	Restorative justice	Life skills	Community service	Mentorship	Wilderness experiential	Vocational skills	Combination	Average compliance per standard
Standard 09	100%	100%	100%	100%	100%	100%	100%	100%	75%	97%

Source: Excerpt from Table 14.

Compliance with standard 09 is high as can be seen in the table above, where all programmes complied 100%, except combination programmes. According to the findings, respondents indicated that all programmes place emphasis on monitoring the progress of the programme participants. This is achieved through internal quality-control mechanisms, such as evaluation reports per participant, which can then also be utilised in assessing the effectiveness of the programmes in terms of behaviour modification and crime prevention. In this regard the DSD encourages and supports service

providers to develop their own internal quality assurance processes complimentary to the departmental quality assurance and accreditation system (Department of Social Development, 2010a: 18). The quality assurance process of the service providers should enable the delivery of services to the agreed standards, as accreditation only sets the minimum level of competence in the providers' organisational and programme outcomes areas (Department of Social Development, 2010a: 18). The programme design should be clear on the aims it wants to achieve, and how the outcomes will be monitored and measured. It could not be ascertained which criteria the programme facilitators use to evaluate and monitor the progress of the participants. As highlighted in the findings from standard 07, it is assumed that the evaluation is in accordance with good programme practice and that the design and delivery of the diversion programmes is based on behavioural change principles and sound methodologies, which is supported by the findings in standard 07. These are factors that the DSD accreditation team take into consideration when they make decisions for or against awarding accreditation to programme providers.

4.3.1.10 Standard 10

The diversion programme has a system for monitoring the child's compliance with the conditions of the diversion order, for instance through an attendance register?

Standard 10 Compliance Rate per Programme Type

	Sex offender	Substance abuse	Restorative justice	Life skills	Community service	Mentorship	Wilderness experiential	Vocational skills	Combination	Average compliance per standard
Standard 10	100%	100%	100%	100%	100%	100%	100%	100%	92%	99%

Source: Excerpt from Table 14.

All programmes except combination programmes comply fully with standard 10 and have a system for monitoring the participants' compliance with the conditions of the diversion order. In accordance with the Act, the diversion provider is responsible for monitoring the compliance of the diversion order made by the court and must report back to the probation officer designated by the court to monitor compliance with the diversion order. In terms of section 57 of the Act, when making a diversion order, the magistrate, inquiry magistrate or child justice court must designate a probation officer to monitor the child's compliance with the diversion order. If the child successfully completes the diversion, the probation officer must submit a report to the prosecutor who deals with the matter. If the child fails to comply with the diversion order, section 58 stipulates that the magistrate, inquiry magistrate or child justice court may issue a summons or warrant of arrest for the child to bring the child before the court (Gallinetti, 2009: 48). Only if a child complies with the order and completes the programme will they be exempt from further criminal proceedings. Research conducted by Muntingh (2001: 49) indicated that avoiding re-arrest and conviction was identified as the single most important reason for participants complying with the conditions of the diversion programmes. This indicates that participants acknowledge the second chance they have been given to avoid a criminal record and this ensures that they participate in the full programme. It also indicates that service providers understand the responsibility they carry in ensuring that they monitor the participation of the children.

4.3.1.11 Standard 11

The diversion programme content is subject to regular evaluation by programme staff and/or programme provider?

Standard 11 Compliance Rate per Programme Type

	Vocational skills	Combination	Substance abuse	Wilderness experiential	Sex offender	Mentorship	Life skills	Restorative justice	Community service	Average compliance per standard
Standard 11	100%	92%	86%	80%	75%	75%	73%	67%	63%	79%

Source: Excerpt from Table 14.

Standard 11 received mixed results. The compliance rate for this standard lies between 100% and 63%. It should be noted the Minimum Standards do not specify what time period is meant by the term 'regular', thus the findings may be due to the different interpretations of the term. The term may have been interpreted as monthly, quarterly or annually, and therefore the rating of this standard may have varied. If a provider interpreted the term 'regular' as monthly but only evaluate their programmes on an annual basis they would have rated this standard on the scale with 'seldom' instead of 'often'. The lowest compliance rate for standard 11 was at 63% and it can therefore be assumed that even if 'regular' was interpreted differently by each programme type, the programmes and the programme content is evaluated by the staff at regular intervals. The Minimum Standards do not specify the programme review period other than that "*Diversion programmes are subject to regular outcomes evaluation*" and "*A senior staff member regularly supervises diversion programme staff members*" (South Africa, Department of Social Development, 2007: 23). This indicates that there is a gap that needs to be addressed because there can be no effective quality control if the review period is not specified.

Standard 09 is also of relevance in the interpretation of the findings of standard 11. Standard 09 evaluated if participant progress is monitored by the programme provider. Findings from standard 09 indicated a 97% compliance rate, which points to the fact that emphasis is placed on the evaluation of participant progress by the providers. It can therefore be assumed that if a majority of participants show unsatisfactory progress for a certain programme then the programme facilitators would question the content of the programme and would re-evaluate the programme. It could not be ascertained what steps the programme providers follow if one of their programmes is negatively evaluated or if the participants of their programmes do not show any progress.

The Minimum Standards do not place any responsibility on the providers in this regard, but, again, the accreditation team will consider these factors when evaluating the programmes and participant progress before awarding accreditation to the providers. Therefore the accreditation system contains:

- criteria for the evaluation of diversion programmes to ensure they comply with the minimum standards;

- criteria for the evaluation of the programme content to ensure that they reflect a meaningful and adequate response to the harm caused by the offences committed by children, to achieve the objectives of diversion;
- mechanisms to monitor diversion programmes and service providers regarding their ability to deliver quality services that achieve the objectives of diversion and to promote compliance with orders; and
- measures for the removal of diversion programmes and service providers from the system (Gallinetti, 2009: 50).

4.3.1.12 Standard 12

Is a formalised follow up and aftercare strategy available, for instance do staff or management track participants within one year of programme completion to check on any re-offending behaviour?

Standard 12 Compliance Rate per Programme Type

	Community service	Substance abuse	Life skills	Wilderness experiential	Restorative justice	Vocational skills	Mentorship	Combination	Sex offender	Average compliance per standard
Standard 12	75%	68%	63%	60%	58%	50%	50%	42%	25%	54%

Source: Excerpt from Table 14.

Compliance with standard 12 is very low, ranging between 75% and 25%, indicating that very few programme providers have a formalised follow-up strategy. A formalised follow-up strategy would allow for the evaluation of the effectiveness of the diversion programmes and their programme content. At this stage very few providers have a follow-up mechanism in place to assess the long-term effectiveness of the diversion services they offer.

Limited research has been done to evaluate the effectiveness of child diversion programmes in terms of re-offending rates and the research which is available is often contradictory. According to research conducted by Muntingh (2001) only a small percentage of South African participants re-offended, 6.7% in the first 12 months and 9.8% up to 24 months after participation in a diversion programme; there appears to be a fair amount of offence specialization, as the majority of South African re-offenders again committed economic offences (Muntingh, 2001: 49; Wood, 2003: 16). In contrast, an outcome evaluation of wilderness/adventure therapy programmes in North America showed a very high (92%) re-offending rate among its participants (Dawes & van der Merwe, 2004: 35). Similarly when considering life skills programmes, research in South Africa found recidivism rates between 17% and 25%, which suggests that up to one in four children re-offend following participation in this type of diversion programme (Steyn, 2010: 26).

Regarding the effectiveness of treating young sex offenders, Meys (2003: 17) pointed out that empirical evidence of successful programmes is lacking both locally and internationally. Reliability of re-offending studies depends on apprehension and self disclosure, and five-year re-offending rates

from the United States and South Africa ranged between 5 and 14% (Meys, 2003: 57). It is not clear if the re-offending was related to sexual offences or other type of offences.

Victim-Offender Mediation interventions did not produce significant reductions in repeat offending for young property offenders and shoplifters, which has implications for this programme type in South Africa, where the majority of young offenders are apprehended for this type of offence (Dawes & van der Merwe, 2004: 31). Similarly, recent research focusing on community panels and family group conferences for South African youths demonstrated that, at six-year follow-ups, three-fifths of the sample had been reconvicted (Dawes & van der Merwe, 2004: 32).

Community service showed the highest compliance rate with standard 12. This may be due to the fact that some participants continue to be involved in community service, either as volunteers or in paid positions, even after the charges against them have been formally dropped (Steyn, 2005: 60; Mbambo, 2005: 83). Mentorship programmes often provide aftercare support and monitoring of participants after the child has completed a diversion programme and therefore then function as a programme and as a follow-up strategy at the same time (Wood, 2003: 14).

A review of South African diversion initiatives by Steyn (2010: 5) revealed that the rapid expansion of diversion programmes seems to have left research on their impact and effectiveness far behind. It was found that recidivism and other outcome data are lacking across most diversion programmes in South Africa (Steyn 2010: 5). The programme evaluation results regarding the effectiveness of certain programme types have wide-ranging implications for the programmes offered. It is very important that programme effectiveness and re-offending is researched more widely.

As shown in the table above, a follow-up and aftercare strategy is available on average only 54% of the time. The majority of respondents indicated that follow-ups are only done at irregular intervals and that they intended to implement a formalised follow-up strategy as soon as possible, but that a lack of resources is a major obstacle. Non-compliance with this standard will impact negatively on the eligibility for accreditation.

4.3.1.13 Standard 13

Diversion programme provider receives or requests information about any previous participants re-offending behaviour, for instance from probation officers?

Standard 13 Compliance Rate per Programme Type

	Mentorship	Substance abuse	Life skills	Sex offender	Wilderness experiential	Restorative justice	Community service	Vocational skills	Combination	Average compliance per standard
Standard 13	50%	46%	25%	25%	10%	8%	0%	0%	0%	18%

Source: Excerpt from Table 14.

Similar to standard 12, standard 13 also showed a low compliance rate with all programmes rating below 50%. Requesting information on re-offending from the courts and/or probation officers is a type of follow-up strategy that providers can incorporate for programme evaluation purposes. Providers noted that requesting such information is not possible at this stage due to a non-existent electronic diversion register, which, in terms of section 60 of the Act, should be implemented by the Department of Social Development. Section 60 of the Act makes clear that the main reason for an electronic register is that previous diversions have a bearing on decisions to divert and therefore a credible system for maintaining diversion records must be implemented and be accessible. It goes on to provide another reason, namely, being to allow for research relating to the effectiveness of diversion and trends relating to diversion to be conducted. The same section stipulates that a register of children in respect of whom a diversion order has been made must be established and maintained, which must include the personal details of each child; details of the offence in relation to which the diversion order was made; the diversion option or options as described in the diversion order; and particulars of the child's compliance with the diversion order. Information systems, such as computerised information management systems and registers to trace former participants of programmes through official records have not been implemented yet, but are non-negotiable for the proper administration, management and tracking of juvenile justice services and service delivery, and would ensure reliable data on diversions as well as compliance and re-offending rates (Western Cape Probation Officer, 2012; Tserere, 2006: 37; Muntingh, 2001: 49).

In conclusion, the Minimum Programme Outcomes Standards place the emphasis on properly designed programmes in which "*the objectives, activities and targeted behaviour changes are clearly defined*", as well as on the monitoring of diversion providers in order to ensure that they adhere to good diversion practice (Dawes & van der Merwe, 2004: 5). Findings from this section of the study indicated that the overall compliance percentage rate per programme type ranged between 77% and 90%, and the average compliance per standard ranged between 18% and 100%. Substance abuse programmes showed the highest compliance rate with 90%, whereas combination programmes showed the lowest compliance rate with 77%.

An analysis of the findings per programme type and standard indicates an average rate of 83% compliance with the 13 minimum standards. This shows that organisations and service providers have made provisions to comply with the Minimum Standards for diversion practice. It may also indicate that providers have been complying with standards before they became mandatory, due to the fact that they have been providing these services for a number of years and acted responsibly to ensure good practice outside of a legislative framework. Of all the standard compliance rates compiled in this research study, Standard 13, asking if diversion programme providers receive or request information about any previous participants re-offending behaviour, was complied with least (18%). Standard 03, asking if every child referred to the diversion programme is assessed by a programme provider, manager or staff member before participation in the provider's programme, and Standard 08, asking if the manner in which the programme is delivered encourages the active participation of the young offender, had the highest compliance rates (100%). It could not be ascertained if the DSD expects a

100% compliance rate before accrediting a programme or if, for instance, a 75% compliance rate is adequate for the accreditation of a programme.

According to the Minimum Standards, every child charged with a crime must be assessed by a probation officer and then re-assessed by a service provider before participation in a diversion programme. Results indicated a compliance rate of 96% and 100%, respectively. NPA statistics from 2011/2012 showed that assessments by a probation officer were only conducted in 31% of cases and this indicates various challenges relating to the implementation of the Act as well as staff shortages and inadequate training. Providers conducted a re-assessment in all cases to ensure appropriate referral to one of their programmes and to gauge any relevant information about the child not included in the probation officers assessment report, including risk factors and psycho-social functioning. Most providers are located in urban areas where they are ensured more referrals, on which the providers are dependent for financial viability. The DSD is responsible for ensuring access to diversion in all areas and also for the provision of services in areas without independent service providers, especially in rural areas. Referrals have been decreasing because less children are being charged. This may point to problems at a grass-roots level in terms of the police not knowing how to handle offending children in accordance with the regulations in the new Act. The biggest problem resulting from the decrease in referrals of children to diversion services is that a number of NGO service providers are closing down and once the Act is properly enforced, there may not be enough diversion services available. There also seem to be other forces at play influencing the referral process, as long-standing NGO providers are not receiving many referrals, whereas providers that have been contracted by the DSD to develop new in-house DSD diversion programmes are getting the majority of referrals.

Questions remain about the effectiveness of diversion programmes in terms of re-offending rates, which have been difficult to evaluate due to a lack of research as well as a lack of monitoring systems such as an electronic diversion register, the regular evaluation of programme content or formalised follow-up strategies.

4.4 Open-ended Question Section

The diversion service providers participating in this study were asked one open-ended question regarding their opinion on what effect or influence the new Act has had on the delivery of the child diversion programme(s) they offer. Not all participants chose to respond to this question and some responded that the Act had not had any effect on their programme delivery. The answers that were received from the programme providers are tabulated below:

Table 16: Open-ended question answers

1. The Act has had an influence, mostly very positive. The organisation only started offering youth diversion programmes last year and was able to align these programmes with the standards set out in the new legislation. The organisation received accreditation for the programmes last November and is therefore abiding by the minimum standards. The Child Justice Act has, and is, guiding the programmes.
2. There have not been any negative effects as the organisation has a professional board which keeps up to date with any legal requirements.
3. The Act has not had a big effect. The organisation has accreditation and the programme continues to be offered as before the implementation of the Act. There are some concerns though regarding the DSD as the organisation has been audited three times but has not received any reports or certificates. The organisation individually assesses each case and ensures that each child receives the necessary attention: motivational learning, experiential learning, or family counselling.
4. The DSD wants to offer their own programmes and there has been a marked decrease in the number of referrals and a decrease in funding.
5. Satellite offices and community centres are utilised to ensure accessibility. There is a big focus on aftercare and follow-ups as the organisation has its own information system to ensure this.
6. The organisation supposedly has full accreditation but no documentation yet. The DSD is funding specific providers and not others which have been offering services in certain areas for a much longer time.
7. The Act is a piece of legislation and it seems that it is far from the practical reality of what children in conflict with the law require. Every step is regulated and providers always have to be sure they comply. Much time is wasted referring to the Act. It is positive that the Act formalises the practice of diversion but there are also many dynamics that were not at play when the Act was a Bill, for instance the Tik (methamphetamine) epidemic. These types of unforeseen dimensions include more far-reaching problems that are not regulated by the Act.

Evaluating the answers received from the respondents stated above shows that the majority of providers have not noticed any negative effects since the implementation of the Act. The newer providers were able to base their programmes and content on the provisions of the Act and could use the legislation as a guideline in offering their services. The longer-standing providers noted that they had quality control mechanisms in place before the Act was implemented and therefore did not have to make any big changes.

Concerns were raised regarding the DSD and the non-issuing of accreditation certificates, as well as the decrease in diversion referrals and funding to providers by the DSD. This correlates with the literature review, where similar concerns were raised. In accordance with the DSD's National Framework Policy on Accreditation, candidacy status is a pre-accreditation status awarded to an organisation or provider pursuing accreditation (South Africa, Department of Social Development, 2012a: 3). The Policy Framework on Accreditation also stipulates that diversion programmes and diversion service providers that have been granted candidacy status are allowed to continue operating until they receive full accreditation (South Africa, Department of Social Development, 2012a: 3; South Africa, Department of Social Development, 2010a: 40). Therefore, the providers may continue providing their services even in the absence of accreditation certificates. It has been noted by Smit (2012) and Badenhorst (2012: 5-6) that various challenges are experienced by service providers during the accreditation process. The application processes and systems are labour intensive and complex and respondents have noted that the DSD Provincial Site Verification and Quality Assurance Committees do not adhere to uniform assessment standards. Some committees accredit the programmes separately from the site whilst other committees do both together, resulting in diversion programmes being accredited in one province whilst the same programme is not accredited in another province (Smit, 2012; Badenhorst, 2012: 6). An inconsistent and costly accreditation process may have an adverse effect on the number of diversion services made available. If providers do not have sufficient financial resources to apply for accreditation as well as to ensure that they have the correct mechanisms in place to comply with the Minimum Standards, they will be forced to discontinue offering diversion services. This may have the effect that an inadequate number of diversion services are available, even though the Act specifies that diversion services must be available and accessible to children in conflict with the law.

One of the respondents noted that the DSD refers children only to certain providers instead of to those that have been operating in certain areas for a longer time, and attributed this to the DSD planning to offer only their own programmes. This would account for the fact that there has been a marked decrease in the number of referrals and also a decrease in funding, as confirmed by Smit (2011).

The DSD noted that some of the non-profit / non-governmental providers seemed too dependent on the DSD for funding. They argue that if such providers wanted to remain truly non-governmental organisations, without any interference from government, they ought to be responsible for the majority of their own funding needs (Mqonci, 2012). As mentioned before, the DSD is mandated by the Act to ensure the adequate provision of diversion services countrywide, but a number of respondents have acknowledged that they will not provide services in sparsely populated areas because they cannot afford to, therefore the onus remains on the DSD to provide services in these areas. On the other hand the DSD has noted that they will continue to work with NGO service providers in the urban areas and that once the implementation challenges are sorted out the number of referrals will increase again (Mqonci, 2012). Questions still remain as to which providers the DSD will refer the majority of cases to once the numbers increase.

One of the respondents answered that the Act is a piece of legislation that does not take into account the practical realities and circumstances within which the providers work and for which they cater. Legislation can then end up being an obstacle to providing what the communities really need. In an interview with another provider, the respondent noted that their programmes were developed on a needs-basis and were annually re-evaluated to ensure the type of interventions were consistent with what the community requires. This respondent also noted that their programmes place an emphasis on following up with past participants to ensure that their programmes are as effective as possible. The respondent also noted that the DSD, on the other hand, seems to be seeking a formula to be applied nationally by developing specific programmes and then providing training to their probation officers to offer these programmes in all areas, thereby negating the experience of long-term NGO providers. One specific example was mentioned by a respondent regarding the 'tik' (methamphetamine) epidemic in the Western Cape. The respondent noted that diversion providers that are confronted by these changing dynamics within communities should be able to more easily adapt their services to cater for these fluid problems instead of being hindered by the rigorous application of Minimum Standards and accreditation policies.

In summary, the majority of respondents noted that they have not noticed any negative effects since the implementation of the Act and that they either use the new legislation as a guideline in designing their programmes or that they had quality control mechanisms in place before the Act was implemented and therefore did not have to make any big changes after its implementation. Respondents did note that they were dealing with other challenges, namely the accreditation process and a marked decrease in referrals from the DSD probation officers and the courts.

4.5 Conclusion

The overall compliance findings of this study have shown that combination programmes displayed the lowest compliance rates and substance abuse programmes the highest rates. The overall minimum standards compliance rates for the different programme types are very high, namely between 77% and 90%. As mentioned previously, it could not be ascertained from the DSD which criteria or level of compliance is acceptable for accreditation, but the researcher is of the opinion that these results imply that the Western Cape NGO service providers are eligible for programme accreditation by the DSD. As mentioned previously, the providers have candidacy status at the moment and have applied for full programme accreditation. The full programme accreditation will allow them to continue providing diversion services and thus they should continue to receive referrals from the courts, as well as funding for the diversion services they provide, from the DSD.

The review of the findings and recommendations, and the conclusion will be presented in the following chapter.

CHAPTER 5

RECOMMENDATIONS AND CONCLUSION

5.1 Introduction

The Act introduces the requirement that a child may only be referred to a service provider or programme that is accredited by the Department of Social Development (South Africa, Department of Social Development, 2010: 5). Accreditation can only be achieved if service providers comply with specific programme and organisational standards as reflected in the Minimum Standards developed for good diversion practice (Smit, 2011: 2; South Africa, Department of Social Development, 2010b: 15; Tserere, 2006: 37; Wood, 2003: 13). Dawes and van der Merwe (2004: 5), who developed the Minimum Programme Outcomes Standards, state that the purpose of the Standards is to ensure that diversion programmes comply with these Standards *“in terms of their design, delivery and monitoring, thereby actively protecting the rights of the programme participants and ensuring the accountability of diversion programme providers”*.

Therefore the aim of this study was to assess the Western Cape’s non-governmental diversion programmes’ level of compliance with the Minimum Programme Outcomes Standards developed for accreditation and good programme practice. In other words, to explore to what degree child diversion programmes and non-governmental diversion providers in the Western Cape comply with the Minimum Programme Outcomes Standards and if their level of compliance makes them eligible for accreditation, thereby ensuring the continuation of these diversion programmes. The research questions to be answered was, to what extent do diversion programmes offered by non-governmental organisations comply with the Minimum Programme Outcomes Standards and what does their level of compliance imply.

This chapter will continue by reviewing the research methodology and the findings of the study, after which recommendations and further areas of research will be discussed.

5.2 Summary of Research Methodology

The study “Child Diversion Programme Outcomes Minimum Standards Compliance in the Western Cape” is exploratory in nature, the findings are to be applied for practical purposes and a multi-method approach was followed. The findings derived from this exploratory study have a practical application and fall within the realm of applied research. A mixed method approach was utilised.

The implementation of the Act as well as the provisions it contains, including diversion and accreditation procedures, is still in the beginning stages of implementation. Therefore, the level to which diversion programmes comply with the Minimum Standards may assist diversion service

providers and policy-makers in decisions regarding the practical implications of providing, regulating, monitoring and accrediting diversion programmes. As will be discussed in the recommendations section of this chapter, the compliance levels obtained through this study delivered valuable information for the various diversion stakeholders as well as possible improvements to the processes involved in diversion and accreditation.

No previous research has been done on the topic of NGO child diversion programme compliance with the Minimum Outcomes Standards in the Western Cape and therefore initiating the exploration into the different aspects of this topic was a first step into this field of research. This research study utilised a structured questionnaire of 10 general demographic information questions, 13 minimum standards and one open-ended question on the influence of the new legislation on programme delivery, which was applied to a representative sample of non-governmental diversion programme providers to determine the level of compliance with the Minimum Programme Outcomes Standards, as well as to ascertain opinions on the effect of the Act on programme delivery. Further information and comments made by the respondents during the interview process were also integrated into the study. The mixed method approach worked well for this study, as it incorporated quantitative and qualitative sources of information, which were collected, analysed and evaluated for the purpose of this study.

The results of this study are subject to limitations that tend to be typical in exploratory studies, such as:

- the data was gathered only in one South African province, the Western Cape, and this made it difficult to generalise the findings of the study to the whole of South Africa;
- the questionnaires were completed by a sample of diversion providers that may not represent the larger population of all diversion providers and diversion programme types in South Africa;
- self-reporting techniques were used, and therefore respondent biases may exist;
- the survey was in English and, although English is one of the 11 officially spoken languages in South Africa, there is a chance that some respondents may have misunderstood some terminology; and
- the Minimum Standards for child diversion programmes and practice consist of 95 Standards in total and the questionnaire was based on only a limited number of programme design and delivery Standards.

However, the study paves the way for further studies into this area of enquiry and increases the value of understanding compliance of child diversion programmes with the Minimum Standards and its effect on diversion and accreditation, which the researcher feels outweigh the limitations of the study.

5.3 Summary of Research Findings

The overarching aim of the study was to explore to what degree child diversion programmes and non-governmental providers in the Western Cape comply with the Minimum Programme Outcomes

Standards. It furthermore aimed to establish if f their level of compliance makes them eligible for accreditation.

In order to achieve this the following objectives were formulated to evaluate what implications the compliance results may hold for the participants of diversion programmes, for the NGO programme service providers as well as for the DSD's accreditation committee:

1. Establish the level of compliance of child diversion programmes offered by non-governmental providers with the Minimum Programme Outcomes Standards.
2. Establish the Minimum Standards with which programmes comply the least and, respectively, the most.
3. The DSD Accreditation Committee decides on the eligibility or non-eligibility for accreditation of programmes, depending on their Minimum Standard compliance rate. Non-eligibility implies that programmes will be discontinued. Therefore, what are the implications of the compliance rate results for each of the programmes' possible accreditation?
4. Establish if a minimum level of compliance would serve or defeat the ends of juvenile justice in South Africa, meaning if a certain number of programmes would have to be discontinued because of low compliance rates, what would the implications for the practice of diversion be?
5. Evaluate the opinions that service providers have on the implementation of the Act and the effect it has had on their programme delivery.

The study, in view of the aims and objectives, revealed the following results.

5.3.1 Establish the level of compliance of child diversion programmes offered by non-governmental providers with the minimum programme outcomes standards

The overall compliance percentage rate per programme type with the Minimum Standards ranged between 77% and 90%, and the average compliance per Standard ranged between 18% and 100%. No information could be obtained from the DSD accreditation committee outlining the level of compliance deemed to be acceptable for purposes of accreditation. Based on the literature review and findings from this study, the researcher is of the opinion that that organisations and service providers have either made provisions to comply with the Minimum Standards for diversion practice or that their programmes were originally designed to ensure good diversion practice outside of a legislative framework.

Substance abuse programmes showed the highest compliance rate, with 90%, whereas combination programmes showed the lowest compliance rate with 77%. As has been noted, the higher compliance result of substance abuse programmes may be due to the intensively therapeutic and structured process inherent in these types of programmes, whereas combination programmes consist of various content foci and may therefore have slightly lower compliance results.

5.3.2 Establish the Minimum Standards with which programmes comply the least and, respectively, the most.

Findings from the study indicated that standard 13, if diversion programme providers receive or request information about any previous participants re-offending behaviour, was complied with least (18%). Standard 03, if every child referred to the diversion programme is assessed by a programme provider, manager or staff member before participation in the provider's programme, and standard 08, if the manner in which the programme is delivered encourages the active participation of the young offender, were complied with most (100%).

Results of standard 01 indicated a compliance rate of 96% even though, according to the Act, every child must be assessed and therefore the result ought to have been 100%. The Minimum Standards dictate that every child charged with a crime or alleged to have committed an offence must be assessed by a probation officer and then re-assessed by a service provider before participation in a diversion programme. NPA statistics from 2011/2012 showed that assessments by probation officers were only conducted in 31% of cases nation-wide and of these only 35% were diverted. Service providers have noticed a decrease in referrals to their programmes, which has also negatively impacted on their funding. Providers only receive funding per referred child and when referrals decrease so does the funding, which will in turn affect the number of diversion services offered by NGO providers in the long run. The low number of assessments conducted by probation officers and the resulting decrease in referrals indicates various challenges relating to the implementation of the Act, including court staff shortages and inadequate training of police officers and probation officers regarding the provisions of the Act.

Standard 02 indicated that providers only have access to the probation officers report in 67% of the cases referred to them. The Act does not stipulate that the probation officers assessment report must be forwarded to the diversion service provider because it is expected that the prosecutor or magistrate will refer a child to the appropriate service in accordance with the recommendation made by the probation officer. Yet, as indicated by the Minimum Standards, having access to the probation officers report would allow the provider to compare information obtained through their own assessment, thus providing them with the most comprehensive information on each referred child.

Standard 03, which explored if every child referred to the diversion programme is assessed by a programme provider, manager or staff member before participation in the provider's programme was one of the two standards complied with most, resulting in a 100% compliance rate. Respondents noted that they conducted a re-assessment in all cases to ensure the appropriate referral to one of their programmes and to gauge any relevant information about the child not included in the probation officers assessment report. This information might include risk factors and factors associated with the psycho-social functioning of the diverted child. In this regard standard 04 and standard 05, which measured if risk factors and psycho-social information is included in the diversion providers' assessment, achieved compliance results of 88% and 98% respectively. The findings of these standards indicate that communication amongst service providers, and between service providers and

probation officers, is vital to ensure a child is referred appropriately. If both the probation officer and the service provider conduct an assessment of each child, then a lot of time is invested in the same task. It also means putting a child through a full assessment twice instead of the service provider being able to build upon the probation officer's assessment. On the other hand, respondents mentioned that the children sometimes feel intimidated by the court environment and are more honest and open about the information they give to NGO providers. Respondents stated that this is another reason why they do their own re-assessments, even if they receive the probation officers assessment report. Respondents also noted that probation officers often do not conduct a thorough assessment due to an influx of cases and a shortage of probation officers and the required detail in the assessment reports is often not being provided due to time constraints. Providers' re-assessment of the participants shows that they are committed to providing a high standard of diversion practice and aim to ensure the child is referred to an appropriate programme. It could not be ascertained what would happen if a service provider noticed that the child should have been referred to a different provider. As mentioned above, service providers are reliant on the funding they receive from the DSD and it is not clear if the provider would forfeit the funding in the case of an incorrect referral.

Standard 06 resulted in a 99% compliance rate and indicated that the majority of providers believed their programmes were reasonably located for their participants. Most providers are located in urban areas where there are more referrals on which the NGO providers are dependent for financial viability. The DSD is responsible for ensuring access to diversion in all areas and also for the provision of services in all areas, which includes sparsely populated rural areas.

Findings from standard 07, with a result of 89% compliance, indicate that the majority of programme types and their programme content are based on methodologies that are aimed at reducing offending behaviour. Reducing offending behaviour is one of many diversion objectives and one could interpret that in the end all objectives, directly or indirectly, contribute to reducing offending behaviour. The different programme types have different content foci and different programme goals. Substance abuse programmes aim to rehabilitate a participant from his/her addiction and if a child commits a crime to support a drug habit, then the substance abuse programme is indirectly reducing offending behaviour whilst treating the addiction.

Standard 08, asking if the manner in which the programme is delivered encourages the active participation of the young offender, was the second standard which was complied with most, resulting in 100% compliance. The programme facilitators that participated in this study confirmed that the method of presentation of the programmes they offer are not theory- or teaching-based but focus on the active participation of each child. Providers that participated in this study have acknowledged that children learn more through role- or game-playing than being taught theoretical concepts or being given writing exercises. This method of programme delivery allows children with various levels of literacy to participate, considering that younger participants may not have the cognitive capacity yet to express their emotions and thoughts adequately, least of all in writing (Steyn, 2010: 38).

Compliance with standard 09 and standard 10 was very high, resulting in 97% and 99% respectively. According to the findings, all programmes place an emphasis on monitoring the progress and compliance of the participants partaking in their programmes through individual evaluation reports and attendance registers. The evaluation report may offer an additional quality assurance system, as it can be assumed that if a majority of participants show unsatisfactory progress for a certain programme then the programme facilitators would question the content of the programme and should re-evaluate the programme and its effectiveness. The attendance register is also vital, because only if a child complies with the diversion order and participates in the full programme will the child be exempt from having a criminal record.

Standard 11, standard 12 and standard 13 showed the lowest compliance results, with 79% compliance for reviewing programme content regularly, 54% compliance for having a formalised follow-up strategy after participation in a programme, and only 18% compliance for requesting follow-up information from the courts or probation officers on previous participant's re-offending behaviour. The Minimum Standards do not specify a programme content review period. This is a gap that needs to be addressed because there can be no effective quality control if the review period is not specified. Very few programme providers have a formalised follow-up strategy and the majority of respondents indicated that follow-ups are only done at irregular intervals, if at all. Respondents also noted that they intended to implement a formalised follow-up strategy as soon as possible because they see the merit in evaluating the effectiveness of their programmes through follow-ups. However, a lack of staff and financial resources are a major obstacle to these good intentions. Monitoring systems, such as an electronic diversion register, offers the possibility through which diversion programme providers could receive or request information about any previous participant's re-offending behaviour. An electronic diversion register has not been implemented yet. The implementation of such a register not negotiable for the proper administration, management and tracking of juvenile justice services and service delivery, and would ensure reliable data on diversions, as well as compliance and re-offending rates (DSD Probation Officer, 2012; Tserere, 2006: 37; Muntingh, 2001: 49).

As no information could be obtained from the DSD accreditation committee regarding the expected compliance level per Standard to ensure eligibility for programme accreditation, it is not clear how far the compliance level of each individual Standard will impact the accreditation outcome. It could not be determined if one Standard outweighs another in terms of importance or if an average compliance rate will be determined to grant accreditation or not. It may also be expected that each programme must comply 100% with all Minimum Standards before accreditation is granted, or that a minimum compliance rate per standard, for instance 80%, will be determined by the DSD before accreditation is granted. Even though the average compliance level of the 13 minimum programme outcomes standards of this study is 83%, and the researcher is of the opinion that this indicates a high average of compliance, not having access to this information from the DSD therefore limits the evaluation of the findings. This also impacts the discussion in 5.3.3.

5.3.3 The DSD Accreditation Committee will decide on the eligibility or non-eligibility for accreditation of programmes depending on their Minimum Standard compliance rate. Non-eligibility implies that programmes will be discontinued. Therefore, what are the implications of the compliance rate results for each of the programmes' possible accreditation eligibility or non-eligibility?

The results of the study revealed, in the researcher's opinion, a high level of programme outcomes minimum standards compliance, with an average of 83%. Again, in the researcher's opinion, these results should have a positive influence on eligibility for accreditation for these service providers and the programmes they offer. According to the level of compliance achieved by the programme providers in this study, it seems as though none of the programmes should experience any problems in attaining accreditation, yet as has been noted previously, various challenges are experienced by service providers during the accreditation process (Badenhorst, 2012: 6). The application process is labour intensive and providers have noted that the DSD accreditation committees do not adhere to uniform assessment standards (Smit, 2012; Badenhorst, 2012: 6). Some committees accredit the programmes separately from the site whilst other committees do both together, resulting in diversion programmes being accredited in one province whilst the same programme is not accredited in another province (Badenhorst, 2012: 6). This finding was supported by Smit (2012) who noted that NICRO had to submit "100's" of applications for the same programme for each provider location instead of submitting one application per programme. An inconsistent and costly accreditation process may have a negative effect on the total number of diversion services made available by NGO providers because they may not have sufficient financial resources at their disposal (Badenhorst, 2012: 6). Due to the decrease noted in referrals to NGO providers, which have already invested a lot of resources in developing their programmes, are not assured that they will receive referrals once they are fully accredited, even if they have service level agreements with the DSD. Findings from this study concur with the challenges above and it therefore seems that only a limited number of NGO providers are applying for the accreditation of their programmes at the moment, even though the DSD has been inviting NGOs to apply for accreditation at regular intervals.

These challenges may affect the number of available diversion programmes on offer, which may result in there not being enough services for the number of children in need of diversion services. The findings of this study indicate that diversion service providers have or are trying to ensure a high level of compliance with the Minimum Standards, but will only be able to continue providing diversion services if they receive accreditation and referrals.

5.3.4 Establish if a minimum compliance rate for the eligibility for accreditation would serve or defeat the ends of juvenile justice in South Africa, meaning, if a certain number of programmes show low compliance rates and would therefore have to be discontinued, what would the implications for the practice of diversion be?

As mentioned previously, it could not be ascertained how the DSD accreditation committee evaluates the Minimum Standards compliance of service providers during their accreditation process and site visits, and how the level of compliance is actually determined by the DSD. The researcher believes that service providers applying for accreditation should show a compliance level of at least 80% to be eligible for accreditation, and this should apply to NGO service providers as well as to DSD service providers. Yet, some of the Minimum Standards are non-negotiable and should always be complied with in full (100%), such as, programmes must be based on behavioural change principles and sound methodologies, participant progress and compliance with the diversion order must be monitored, programmes must be evaluated at regular intervals and a formalised follow-up strategy must be implemented. As noted above, the results of this study showed an average compliance rate of 83%. It should be also noted that the compliance information was received from the perspective of the NGO diversion service programme providers and that the information given to the researcher may be biased. It is not clear if the same results would be achieved if the DSD accreditation team measured the compliance of these diversion programmes with the Minimum Standards. It would be valuable to compare the findings from this study with a study conducted on the DSD accreditation policy, specifically focussing on the compliance levels and which criteria directly influenced accreditation.

The Act and its regulations place an emphasis on the fact that the rights of children participating in any diversion programme must be guaranteed. Therefore, if a service provider or programme shows low compliance results, these programmes must be discontinued or re-developed and re-assessed. It is the DSD's responsibility to ensure that an adequate number of services are available in all areas, but they are also responsible for ensuring that these programmes comply with the Minimum Standards before they can be eligible for accreditation. A minimum compliance rate for the eligibility for accreditation would therefore serve the ends of juvenile justice, as it provides a mechanism for quality assurance, quality improvement and monitoring of diversion services in the long term (South Africa, Department of Social Development, 2010: 23; Muntingh & Ehlers, 2006: 51).

5.3.5 Evaluate the opinions of service providers in terms of the effect that the Act has had on their programme delivery

Regarding the opinions of NGOs about the effect of the Act on their service delivery, the majority of providers stated that they have not noticed any negative effects since the implementation of the Act. The newer providers were able to base their programmes and content on the provisions of the Act and could use the legislation as a guideline in offering their services. The longer-standing providers, in turn, noted that they had quality control mechanisms in place already before the Act was implemented and therefore did not have to make any big changes. Two of the providers that participated in this study noted that the DSD seems to mainly refer children to one specific organisation instead of to providers that have been operating in certain areas for a long time and have more experience in the

field of diversion. The opinion of these providers is that it seems as if the DSD is planning to offer only their own programmes in future and that therefore, there has been a marked decrease in the number of referrals with a concomitant decrease in funding to certain NGO service providers to achieve this. Even though this claim could not be substantiated by the DSD, which noted that it is looking forward to working together with NGO providers in providing diversion services. It is their opinion that this has contributed to the marked decrease in the number of referrals with a concomitant decrease in funding to certain NGO service providers. Even though this claim could not be substantiated by the DSD, which noted that it is looking forward to working together with NGO providers in providing diversion services, it remains the opinion of some NGO service providers. Findings from literature and the empirical study confirmed that the decrease in diversion referrals was partly due to fewer children being charged as well as assessed for referral. This seems to be due to insufficient training resulting in officials, such as police officers and probation officers, not being sure of how to handle children in conflict with the law as stipulated in the provisions of the Act. This claim is supported by research conducted by Badenhorst (2012: 6). Another opinion from a respondent was that the Act is a piece of legislation that does not take into account the practical realities and circumstances within which the providers work in and for which they cater, such as communities with high rates of substance abuse. The Act could then end up being an obstacle to providing what the communities really need, because there may then not be an adequate number of programmes catering for these unique circumstances.

In conclusion, the compliance results of this study indicated that the majority of NGO service providers comply with the Minimum Standards for diversion, but that other challenges have emerged, which may hamper the successful implementation of the Act. The purpose of the following section will be to discuss these challenges and make appropriate recommendations.

5.4 Recommendations

The Act provides a legislative framework for dealing with children in conflict with the law and emphasises the increased use of diversion to rehabilitate child offenders. This legislative framework aims to provide mechanisms and procedures to deal with child offenders outside of the criminal justice system, and focuses on the effective rehabilitation and reintegration of these children back into their families and communities and on minimising the risk of re-offending and stigmatisation (Badenhorst, 2011: 36). Findings from this study acknowledge the potential value of the Act, but at the same time operational challenges and other implications for the DSD, NGO service providers and the programme participants were identified. These challenges and implications relate to the following areas that emerged during the evaluation of the findings of this study:

- referral forms;
- probation officers' assessment reports and service provider access to these reports;
- appropriate programme recommendations;
- inadequately trained officials;
- decrease in referrals and a decrease in funding;

- the evaluation of programme effectiveness; the accessibility to programmes and the lack of formalised participant follow-ups;
- an electronic diversion register that is yet to be implemented;
- and the time-consuming accreditation process.

It is therefore recommended that these areas be reviewed and re-evaluated to contribute to the successful and effective implementation of the Act.

5.4.1 Referral Forms, Probation Officer Assessment Reports and Service Provider Access

Findings indicated that there is no standardised referral form that is currently being utilised by probation officers to refer children to programmes. Findings also indicated that probation officers do not always conduct a thorough assessment due to an influx of cases, staff shortages and time constraints, and that often only general information is gathered during the assessment by probation officers in order to make a decision of whether to divert or not (Khumalo, 2010: 79). It is therefore recommended that instead of using different forms one standardised referral form should be used for referrals to ensure uniformity in all courts. It is also recommended that the assessment form, which is standardised, must be filled in thoroughly and in a detailed manner to include as much information as possible about each child. The referral form must indicate to which programme the child is being diverted and, where appropriate, how long the child should participate in the programme, because findings showed that probation officers often do not specify this information when they make a referral. The probation officer should also confirm that a space is available for the child in the recommended programme to make sure that there is no delay in a child receiving diversion services.

The findings of this study support that the staff shortage of probation officers and their unavailability after-hours must be reviewed (Badenhorst, 2011a: 37). Based on the aforementioned it is recommended that more probation officers must be employed in order to ensure that proper assessments and recommendations of child offenders are conducted and that probation officers have enough time to conduct thorough assessments. The findings showed that the Act has broadened the duties and responsibilities of probation officers to an extent that they often don't have the capacity and time required to spend on assessments. Once there is enough staff and thorough assessments are being conducted by probation officers, it would be invaluable for diversion service providers to gain access to these assessment reports, which at the moment, as findings have indicated, they do not. It is recommended that due to confidentiality issues it may be useful to load the assessments electronically and allow access only to password authorised individuals instead of working with paper files. The standardised probation officer assessment report form consists of the following information: probation officer details, personal details of the child, medical information, educational background, primary care-giver information, family information, socio-economic circumstances, case information and particulars of the offence, developmental assessment, and the probation officer's evaluation and recommendation (see Appendix E). The assessment form could easily be scanned and loaded on an electronic system for review by the service providers or the assessment could be conducted

electronically once an electronic system is implemented. Findings indicated that the NGO service providers include risk factors and information on psycho-social functioning in their re-assessments, but to varying degrees. Service providers are required to conduct their own assessments once they receive referrals and therefore it is recommended that all service providers also use a standardised form for their assessments, which could be supplied by the DSD so that all stakeholders can communicate more easily. Of course, if an electronic register is implemented and all parties have access, the information collected by the service providers could easily be added to the already existing file initiated by the probation officer.

The question remains if children in conflict with the law are being over-assessed. In the study, service providers noted that children get assessed twice, once by the probation officer and then again by the service provider, because this is required by the Minimum Standards. Service providers feel that multiple assessments offer a mechanism of quality control, which in turn offers the opportunity to ensure that the maximum amount of information is acquired per child and per case. The more information, the more beneficial and accurate the decisions regarding the child will be. It was also stated by various respondents that children open up more outside of a court environment and may give more information to service providers than they do to probation officers. It is therefore recommended that service providers continue conducting their own assessments but it is also very important that probation officers focus on conducting thorough and detailed assessments upon which the service provider can build. Children should not be unnecessarily caught up in ongoing assessments instead of receiving services aimed at their rehabilitation because service providers do not have access to the probation officers assessment report.

5.4.2 Referrals to Appropriate Programmes and Training of Officials

Findings from this study indicated that an incomplete assessment report makes it more difficult for probation officers to make recommendations and prosecutors to decide on the best option for the child offender (Khumalo, 2010: 79). A detailed assessment report which must include the child offender's social background, mental and psychological wellbeing, and whether the child is a re-offender or not, is imperative to ensure that appropriate programme recommendations are made.

Findings also indicate that not only staff shortages and time constraints experienced by probation officers influence the appropriate recommendation and referral to a programme, but also the level of training with regard to the Act of provided to officials, such as police officers and probation officers. As noted by Badenhorst (2011a: 36), with which the researcher concurs fully, it is recommended that *“the roll-out of training programmes to all professionals dealing with children should be accelerated as a matter of urgency to ensure the protection of the rights of children in conflict with the law”*. The DSD has noted that they are trying to resolve challenges, such as the poor quality of reports and the inconsistent and poor quality of statistical reporting from district offices by re-training probation officers on an ongoing basis (South Africa, Department of Social Development, 2011b).

A further challenge with regards to the budgetary constraints has also been an issue regarding the adequate rollout of training, as many departments such as the SAPS do not have dedicated budgets for implementation of the Act. It is recommended that the DSD must ensure access to the budget allocated to them for their department, as well as to ensure that budgets allocated to other departments for implementation purposes are distributed. It is essential for the quality of the administration of child justice that all professionals involved in law enforcement, social services, prosecution, the legal profession and the judiciary receive appropriate training on the content of the Act, as well as their duties and obligations (Badenhorst, 2011a: 36). Most importantly, as noted previously, if the probation officer is not well trained and the recommendation made is not the most beneficial for the child offender, the service provider may not voice this during re-assessment because they would not want to forfeit the funding received for the referred child. This would put the child at risk. It is therefore recommended that the DSD prioritises the training of officials to ensure each child is dealt with appropriately as foreseen by the Act and is referred correctly.

5.4.3 Decrease in Referrals and funding by the DSD

Findings indicated that the decrease in the number of children being charged and the associated decline in the number of diversions remains a challenge. The decreases were also highlighted during the submissions to Parliament on the implementation of the Act in June 2011 (South Africa, Department of Justice and Constitutional Development, 2011), as well as during a presentation on the progress during the second year of implementation of the Act by the South African Police Service (SAPS) at the Intersectoral Child Justice Committee in September 2012 (South Africa, Intersectoral Child Justice Committee, 2012). It appears that the decreases in the number of children being diverted are mainly attributable to the fact that fewer children are entering the justice system (Badenhorst, 2012: 6). Research has indicated that the decline in the number of children entering the justice system is because police officers have not been adequately trained on the provisions of the Act and they are uncertain about how to apprehend children suspected of committing offences (Badenhorst, 2012: 6). Police officers that are not trained on the provisions of the Act, thus they do not know how to deal with these children in terms of the regulations of the Act. The lack of training therefore not only impacts the number of children entering the system, but also has a negative impact on the children who do commit offences as they are being denied the benefits of early intervention programmes (Badenhorst, 2012: 6).

The findings also indicated that once the children are in the system, the lack of training amongst court officials as well as the shortage of staff becomes apparent. Every child entering the system must be assessed by a probation officer, but NPA statistics show that only 31% of charged children were assessed (South Africa, National Prosecuting Authority, 2012: 34). Again, it is recommended that the DSD must accelerate the roll-out of training programmes to all professionals dealing with children in conflict with the law, employ an adequate number of staff and should also continue raising awareness and sharing knowledge about the provisions of the Act, also with the public. As stated in the second annual implementation report, the Department of Justice and Constitutional Development developed an intersectoral communication strategy with the Government Communication and Information Service

(GCIS) to raise public awareness about the Act (South Africa, Intersectoral Child Justice Committee, 2012: 3). In addition, Legal Aid SA held sports events at schools in all provinces to educate children on rehabilitation, the NPA held a radio campaign with the South African Broadcasting Corporation (SABC) which included a focus on child justice, and the SAPS and the Department of Basic Education (DBE) Safe Schools Programme established 6 091 school safety committees (South Africa, Intersectoral Child Justice Committee, 2012: 3). It is recommended that raising awareness about the Act should be continued because a public and child offenders who are aware of their rights will bolster the effective implementation of the Act.

Even though the DSD is inviting organisations and providers to apply for accreditation, the findings indicated that there is no assurance that the service provider will receive referrals from the DSD once they are accredited. The DSD controls when referrals are made and to which service providers they are made. Providers are reliant on the referrals they receive because the funding they receive from the DSD makes it financially feasible to provide the service the child needs. The relationship between the DSD and some of the NGO service providers therefore seems strained. This is understandable because the NGOs have been developing and providing diversion services for a number of years. On the other hand, the Act has now mandated the DSD to take full responsibility for all matters relating to diversion, its provision and the accreditation of service providers. At the moment the DSD still relies on the support of NGO service providers to provide diversion services, especially in urban areas, because probation officers often do not have the capacity to provide all the diversion services themselves.

It is therefore recommended that the DSD should be the sole provider of child diversion services and that the NGO providers should provide other services, such as preventive programmes or services within communities and at schools, such as anti-drug, anti-violence or anti-crime initiatives. Depending on their field of specialisation, they could furthermore negotiate service agreements with the DSD for which they would also receive funding. This is a contentious issue because this is exactly what NGO service providers have either been afraid of or have been expecting. A number of NGO service providers that have been providing diversion services for years feel as if they are being pushed out of the diversion field because they are not receiving sufficient referrals. It should not be forgotten that the past efforts of many NGO providers not only ensured the genesis and growth of the use of diversion over the last two decades but also pushed for dedicated legislation, which was eventually enacted in 2010. It should also be noted that the findings of this study indicated that the DSD outsources a number of programmes they themselves do not have the capacity to offer, especially wilderness programmes. These programmes have resulted in very positive feedback from participants. If the DSD were to become the sole provider of child diversion programmes it would have to be capable of providing this type of programme as well. Yet, the researcher is still of the opinion that if diversion is managed by the DSD and accredited diversion programmes are provided by the DSD, then diversion will be more ensured, increasing the likelihood that children's rights are upheld. Outsourcing diversion services to NGO providers carries risks that can be avoided if the DSD has adequate resources, trained staff, and finances at its disposal.

5.4.4 Accessibility of Diversion Services in Urban and Rural Areas

Some of the findings of the Diversion Indaba in March 2009 organised by the Western Cape DSD included the following: the identification of huge gaps in service delivery, including very few service providers in rural areas; the duplication of services, for instance similar life skills programmes offered by two or three different service providers operating in one service area; funding challenges and discrepancies; and lack of accredited skills training programmes (South Africa, Department of Social Development, 2011a: 2). These findings were supported by this study. Badenhorst (2012: 42) recommended that the funding of NGOs and civil society organisations should be reviewed to ensure that adequate, quality and sustainable services are rendered to communities, especially to rural communities. However, as has been pointed out by some NGOs, it is not financially viable for them to offer services in rural areas and therefore they do not want to establish offices in these areas. It is therefore recommended that the DSD should continue with the training of probation officers on all in-house DSD programmes to ensure accessibility to diversion programmes in all areas and not to review funding to NGO providers for rural areas.

The findings of this study indicated that specialised programmes with one main content focus, such as substance abuse, sex offender, life skills and restorative justice programme types, showed higher Minimum Standards compliance rates than the non-specialised programmes, often consisting of different content foci, such as community service, mentorship, wilderness experience, vocational skills and combination type programmes. The majority of crimes committed by youth and children in South Africa are economic or property-related crimes. These crimes are often committed by children from environments defined by poverty, unemployment, sexual abuse, substance abuse, and underdevelopment (Steyn, 2010: 6). These children therefore require different types of specialised diversion programmes to assist in their rehabilitation. The DSD has developed a number of new specialised programmes, including a substance abuse programme, a sex offender programme, a restorative justice programme, a personal development life skills programme and an after-care programme, but at the moment staff shortages and training challenges may inhibit access to these programmes in all areas (South Africa, Department of Social Development, 2012). It is therefore recommended that the DSD focuses on combating staff shortages and training challenges so that these programmes are accessible in all areas to all children in need of these programmes.

5.4.5 Evaluating Programme Effectiveness

Findings from various sections of this study have shown that it is not only statistics on children in the justice system that are lacking, but also that limited research has been conducted to determine the effectiveness of specific programmes and as their long-term impact. Accurate and detailed statistics on children in conflict with the law are essential for the effective application and administration of the Act (Badenhorst, 2011b: 30). It is recommended that concerted efforts should be made to undertake research and make accurate statistics available to all the role players on a regular basis, as this will assist with the identification of trends and early detection of challenges. This could enable early detection and interventions, thus eliminating an escalation of problems.

Findings have shown that even though wilderness programmes did not show the highest compliance rate in comparison to other programme types, these programmes are very popular with participants. It is recommended that more effort should be invested in ensuring Minimum Standard compliance of this particular programme type. It is furthermore recommended that further studies should be done to determine the impact and effectiveness of such programmes in reducing re-offending behaviour. The same applies to community service initiatives and mentorship programmes.

Combination programmes showed the lowest compliance with the Minimum Standards and it has been noted that specialised programmes seem to be more effective than combination type programmes.

It raises the question if combination type programmes should not be accredited for diversion. Findings from this study indicated a compliance rate of 77%. In the light of this it is believed that combination type programmes have much to offer when considering the potential benefits to child participants. When a child is referred to a provider that offers a combination type programme, the provider should re-assess the child and then decide on a management plan. This plan will usually include participation in the various programmes the provider offers. This could be more beneficial than for a child to be referred to one specific programme where, if the referral was misdirected, the provider may not re-refer to another provider because of the risk losing the funding. This fact supports the recommendation made earlier that diversion services should be managed and provided solely by the DSD. The DSD has numerous diversion programmes at their disposal and a probation officer can easily compile a management plan to suit the needs of the child offender without being concerned about the availability of NGO providers or with which NGO the DSD has service agreements.

5.4.6 Lack of After-care and Follow-up Strategies

Findings indicated that the majority of providers do not have formalised follow-up strategies in place even though providing after-care and follow-ups is a Minimum Standard with which programmes must comply. The purpose of the follow-up strategy is two-fold: on the one hand, if child offenders have concerns or need consultation or guidance, they have a place to go to, to receive professional support and guidance (Khumalo, 2010). On the other hand, a follow-up strategy can be used as an indicator for programme effectiveness and assist in finding out how well past participants have integrated back into their communities, how they are coping in school and if they have re-offended. This gives the providers invaluable information about the programmes they offer.

To ensure Minimum Standard compliance it is therefore recommended that employing more staff and investing more resources in follow-up services should be a priority for all child diversion providers. Data obtained from follow-up services should also be electronically recorded and kept on record over a pre-determined time period.

5.4.7 Lack of an Electronic Diversion Register

Section 60 the Act, a register of children in respect of whom a diversion order has been made must be established and maintained, which must include the personal details of each child: details of the

offence in relation to which the diversion order was made; the diversion option or options as described in the diversion order; and particulars of the child's compliance with the diversion order. Findings indicated that computerised information management systems to trace former participants of programmes through official records have not been implemented yet. At the moment each diversion is recorded manually in diversion registers at the various district offices and service providers monitor the attendance of participants. Diversion statistics are forwarded to the DSD provincial office on a monthly basis, but the accuracy of reported data depends on the reliability of the manually captured data in the registers. It is therefore recommended that an electronic diversion register must be implemented as soon as possible, if not nationally, then at least per province. The register is one of the most important building blocks of a successful child justice system and its implementation. This would mean that every child in contact and conflict with the law would be recorded, and progress and compliance could be monitored. After participation in a diversion programme the record of the child would be accessible if the same child is charged again. This would allow for the effectiveness of diversion programmes to be monitored and revised if necessary.

Findings suggest that the lack of data and research in general presents enormous problems in respect of planning and monitoring of services. At the moment there is no way, other than inconsistent statistics supplied by the SAPS and National Prosecuting Authority, to monitor the number of children that are prosecuted, convicted and sentenced, and it is not known what sentences convicted children are receiving on a national level (South Africa, Department of Justice, 2011; Muntingh, 2007a: 7). The collection of quantitative and statistical data on child justice promotes transparency and accountability by describing what is happening to children in the criminal justice system and how they are treated. It also informs the development and review of policy, and allows for the analysis of trends and interventions (Department of Justice & Constitutional Development, 2012: 11; Muntingh, 2007a: 7).

It is also recommended that once the electronic register is in place, it should be considered linking the diversion register to the information management system of the South African Police because this is the initial point of contact for every child in conflict with the law. Any decision regarding the child would be recorded from the beginning of contact, including if the charges were dropped or if the child was diverted or sentenced. This would ensure detailed and accurate statistics about children in contact with the justice system and the outcome of every case.

5.4.8 Accreditation Process and Challenges

Findings from this study have highlighted the various challenges that diversion service providers are experiencing with their applications for accreditation. As described by Badenhorst (2012: 6), the application processes and systems are labour intensive and complex. Respondents have noted that the DSD Provincial Site Verification Teams do not adhere to uniform assessment standards across the provinces. Some providers are of the opinion that assessments were subjective and in some areas unrealistic demands were made on the provider that had no bearing on the rendering of services. It is not clear if this can be attributed to obstructive behaviour on the part of the DSD in furtherance of their

aim to be the sole provider of diversion services. It is therefore recommended that any differences in accreditation processes and procedures must be streamlined by the DSD as an inconsistent and costly accreditation process may have an adverse effect on the number of diversion services made available.

It should be noted that all child diversion programmes must go through a uniform accreditation process, meaning that all DSD programmes must also be accredited. It does seem as if there is a double standard because, as some NGO providers have stated, every programme they offer in every location is accredited separately and the researcher is of the opinion that the DSD programmes will be accredited per programme and not per DSD office. Also, each NGO provider is responsible for the costs involving the accreditation process, whereas when DSD programmes are being accredited the government carries these costs. It is therefore recommended that the DSD should focus on the accreditation of their in-house diversion programmes and make sure these are accessible throughout the province and the country.

5.4.9 Summary of Recommendations

A number of the recommendations made above are interlinked. The lack of follow-up strategies is linked to the absence of an electronic diversion register, as both are required to evaluate programme effectiveness through accurate and detailed statistics. Accurate statistics are non-negotiable to indicate which programme types are required for the number of children entering the justice system and for the type of offences committed, as well as in which geographical areas these services are most needed.

The inadequately trained officials, such as police and probation officers, as well the shortage of officials in certain areas, means that children in conflict with the law are being denied access to services of benefit them to them. At the moment a number of officials are not sure how to deal with children in conflict with the law and therefore do not charge or arrest them. This affects the actual statistics of children in contact with the justice system, as well as the quality of assessments conducted by probation officers, and, in turn, the number of referrals and quality of recommendations made to service providers.

It has been recommended that, first and foremost, all officials must be adequately trained regarding the provisions of the Act. Probation officers must be trained in conducting thorough assessments and make informed recommendations to specific service providers and programmes. Specialised programme types must be accessible in all areas and probation officers must be knowledgeable about these programmes. The programmes must be developed in accordance with good programme practice, must be based on sound methodologies, and programme content should be aimed at reducing offending behaviour as well as rehabilitating children by teaching skills. Participant progress must be monitored and programmes must be evaluated at regular intervals. Programmes must have follow-up and after-care strategies in place to ensure programme effectiveness, and, most importantly, programmes must be accredited to ensure they comply with the Minimum Programme Outcomes

Standards. Electronic diversion registers must be accessible to all officials as well as service providers to conduct follow-ups and to recognise trends and patterns.

Even though a number of child diversion providers have been active in the field of diversion for a long time and have a lot of experience, which is supported by the high compliance results found in this study, the DSD is the custodian of the Act. The DSD is responsible for ensuring that enough services are available in all areas of the country, rural and urban, and that the programmes offered benefit the participants. Probation officers conduct the assessments, make the recommendations for the referral and monitor compliance with the diversion order made by the court. The DSD must ensure that their probation officers are adequately trained and raise awareness about the Act in communities. At the same time, the DSD has to ensure that they receive the budget allocated to them by the government and utilise it appropriately. The DSD has numerous diversion programmes, which have been developed in accordance with good diversion practice and impart valuable life or vocational skills to programme participants. Last but not least, the DSD is responsible for the accreditation of all diversion programmes as well as monitoring that the providers offer a consistent level and quality of services.

Therefore the researcher is of the opinion that the DSD should manage the practice of diversion as well as provide diversion programmes in accordance with the Act. Once all probation officers have received training on the in-house DSD diversion programmes, and these have been accredited, it can be ensured that the programmes are accessible throughout the province and country. The DSD should also evaluate specialised programmes developed by NGOs, which have shown successes with children in conflict with the law and buy these programmes from those providers. If the DSD is planning to manage diversion and make referrals mainly to their own programmes, they should communicate this openly so that NGO providers can focus on providing other necessary services such as prevention programmes in schools and within communities. It has been noted by various service providers that the DSD seems biased regarding referrals to certain providers. This indicates to the researcher that, if diversion is managed and offered by the DSD, these biases will fall away. As stated earlier, a number of service providers offer similar programmes in the same areas, so it is understandable that they may experience referrals to any other service provider as a bias towards them. As mentioned by Mqonci (2012), the DSD would like to work with civil society organisations and NGOs, but it seems as though the DSD is only keeping NGO providers as a 'back-up' should it not be able to handle the expected increase in diversions. This is not fair towards these service providers who invest resources and time to develop and accredit diversion programmes, only to then not receive any referrals or funding from the DSD. As mentioned earlier, this only makes sense when the DSD needs access to programme types which the DSD cannot offer, such as some substance abuse programmes and wilderness programmes with a residential component. The DSD has indicated that the way forward will include the accreditation of more diversion programmes, the re-orientation of probation officers to ensure that they are trained and knowledgeable about their duties and responsibilities, ongoing training of probation officers and assistant probation officers regarding relevant legislation, policies and processes, and a stronger emphasis on substance abuse and sexual

abuse interventions. This implies that the DSD intends to invest in, and increase the number of specialised training programmes (South Africa, Department of Social Development, 2011a: 7).

At the end of the day it is about children receiving the best services possible without any 'political' interference. As long as the DSD ensures that their programmes adhere to the accreditation process and comply with the Minimum Standards applicable to the practice of diversion, the researcher believes children in conflict with the law will benefit from diversion being managed and offered by the DSD.

5.5 Suggestions for further Research

Exploratory studies are used to make preliminary investigations into relatively unknown areas of research and one of the aims is to formulate more questions about where future research should direct its focus. (Bachman & Schutt, 2011: 9). The researcher therefore recommends that the following issues should be investigated.

DSD in-house diversion programmes were not included in this research study, but as these programmes also have to comply with the Minimum Standards, it would every interesting to research their level of compliance and compare these levels with those of the NGO providers.

The DSD is the custodian of the Act and the question remains if there would be a conflict of interest if the DSD were to offer diversion as well as monitor and accredit diversion. The discussion would be similar to the nationalisation debate. Does nationalisation inhibit healthy competition and stimulate corruption or would the free market encroach upon the rights and freedoms of its citizens in order to compete with others in the same market? In other words, if the DSD were the sole provider of diversion, would it benefit children or put them at greater risk?

Findings from this study indicated that programme effectiveness studies are lacking. It would be beneficial for the practice of diversion if evaluation studies which specifically focus on research about the different programme types and programme methodologies could be undertaken.

The accreditation process and the evaluation criteria used by the DSD accreditation team to measure compliance with the Minimum Standards should be evaluated.

5.6 Conclusion

Research has indicated that child diversion offers a viable alternative to the retributive approach by avoiding the negative effects of institutionalisation and formal legal proceedings which may stigmatise and label child offenders, and that diversion focuses on ensuring children's rights, can decrease re-offending rates, and is a more cost-effective juvenile justice option (Holman & Ziedenberg, 2006: 2). This will only happen if the Act is implemented properly and all its provisions are adhered to, including the application of the Minimum Standards, the accreditation process and the duties and

responsibilities of all role-players. Not only will the children in conflict with the law benefit but the country as a whole as well.

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Informed Consent Form

Researcher: Sonja Berg (Student 40770052)
Department of Criminology / University of South Africa

Title of Thesis: Youth Diversion Programme Outcome Minimum Standards Compliance in the Western Cape - An Explorative Study

Purpose of Study: The exploration of diversion service providers' compliance with diversion programme minimum outcome standards and the effect this may have on youth diversion programmes.

Procedures: The researcher will send questionnaires to various diversion service providers in the Western Cape, South Africa to gather information on the outcome minimum standard compliance of diversion options and programmes offered by diversion service providers. The questionnaire consists of 14 questions which are rated on a scale by the respondent and one open-ended question which is optional.

Risks and Discomforts: Risks and discomforts are minimal. The respondent may be required to collect and review internal programme data to answer the questionnaire.

Benefits: The respondents partaking in this study will feel the satisfaction of contributing to a new era of juvenile and child justice in South Africa and facilitating in illuminating any problems which may help other diversion programme providers in the future.

Respondent's Rights: Participation in this study is voluntary and may be withdrawn at any time without negative consequences for the respondent. All information is treated as confidential and anonymity is assured by the researcher. The data shall be destroyed should the respondent wish to withdraw.

The researcher (Sonja Berg) and her study leader (Dr. Marelize Schoeman) are the only individuals who will have access to raw data from the questionnaires, and hereby ensure that data will be treated as stipulated above.

Right of Access to Researcher: Respondents are free to contact the researcher at the email address as stipulated on this form, in connection with questionnaire particulars, if they so wish.

THANK YOU FOR YOUR PARTICIPATION IN THIS STUDY.

I, the undersigned, agree to participate in this study voluntarily without duress.

Signature:

Signed aton this.....day of2012

Dear Respondent

This questionnaire has been compiled to explore the Western Cape Province's youth diversion programmes' level of compliance with the programme outcome minimum standards developed by the Department of Social Development for accreditation and monitoring purposes and the effect this may have on youth diversion programmes.

The information gathered through this questionnaire will be confidential and will not be disclosed to any third parties or used in any way that could be linked to individual programmes or representatives of diversion service providers. **Kindly confirm your participation by signing the attached Informed Consent Form and sending it together with the filled in questionnaire to the fax number: 086 6180507, or to the email address: 40770052@mylife.unisa.ac.za.**

The questionnaire consists of 13 answer items in Likert-Scale format and 1 optional open-ended question. Complete the scale by ticking one of the response options available for each of the 13 questions. **You are welcome to fill in the questionnaire electronically or manually. Please fill in one questionnaire for each diversion programme offered by your organisation and ensure that the answers stated are based on actual current practice and not on prescribed practice.**

<u>General Information</u>
1. Diversion Service Provider / Organisation Name (e.g. DSD, NICRO, Khulisa, Bosasa):
2. Diversion Programme Name (e.g. YES Programme, Victim-Offender-Mediation):
3. Type of Programme (e.g. wilderness programme, restorative justice initiative, vocational skills development, life skills, community service, sex offender programme):
4. Length of programme (total number of hours or sessions):
5. Professional qualification of programme facilitator (e.g. psychologist, social worker):
6. How does the programme address its objective (e.g. group work, individual counselling, inter-active learning):
7. Who are the referrers in most cases (more than 50%)? Probation Officer, Prosecutor, Magistrate, Police Officer, Other? If other , please specify:
8. Year since the provider / organisation has been operational within the youth diversion programme sector:

9. Respondent name:
10. Position you hold in the organization (e.g. manager, programme facilitator / director):

QUESTIONNAIRE: (Please complete the scale by ticking one of the response options available for each item)

Definitions:

Referrer = *anyone who refers a youth to a diversion programme*

Programme provider = *anyone who provides youth diversion services in the organisation, i.e. staff member, programme facilitator or programme manager*

STANDARDS						
1.	Every child referred to the diversion programme was assessed by a referrer (e.g. probation officer, prosecutor, magistrate) prior to participation in the programme?	always	often	sometimes	seldom	never
2.	If an assessment was conducted by a referrer, does the programme provider have access to the assessment documentation or report?	always	often	sometimes	seldom	never
3.	Every child referred to the diversion programme is assessed by a programme provider, manager or staff member before participation in the organisations programme?	always	often	sometimes	seldom	never
4.	The assessment includes detailed information on factors associated with offending ("risk" factors) present in the child's life, e.g. child's family circumstances, social relationships, history or antisocial behaviour, education and scholastic functioning?	always	often	sometimes	seldom	never
5.	The assessment includes detailed information on the child's psycho-social functioning, e.g. medical/psychiatric history, offence and diversion history, strengths and skills deficits?	always	often	sometimes	seldom	never
6.	The diversion programme is reasonably geographically accessible to the participant? How far is the furthest district /town the programme caters for (in km):_____	yes	often	sometimes	seldom	no

7.	The diversion programme is based on research evidence of “what works” in reducing criminal behaviour, i.e. is based on behavioural change principles, sound methodologies and accords with good programme design practice?	yes		to a degree		no
8.	The manner in which the programme is delivered encourages the active participation of the young offender?	yes	often	sometimes	seldom	no
9.	The diversion programme has a system for monitoring participant progress after every intervention activity, group session or at the end of the programme, e.g. through an individual evaluation report?	yes	often	sometimes	seldom	no
10.	The diversion programme has a system for monitoring the child’s compliance with the conditions of the diversion order, e.g. through an attendance register or an individual evaluation report?	yes	often	sometimes	seldom	no
11.	The diversion programme content is subject to regular evaluation by programme staff and/or programme provider?	yes	often	sometimes	seldom	no
12.	Is a formalized follow up and aftercare strategy available, e.g. does staff or management track participants within one year of programme completion to check on any re-offending behaviour?	always	often	sometimes	seldom	never
13.	Diversion programme provider receives or requests information about any previous participants re-offending behaviour, e.g. from probation officers?	always	often	sometimes	seldom	never

Open-ended Question:

What effect or influence has the new Child Justice Act had on the delivery of the youth diversion programme(s) you offer?

PROGRAMME STANDARDS

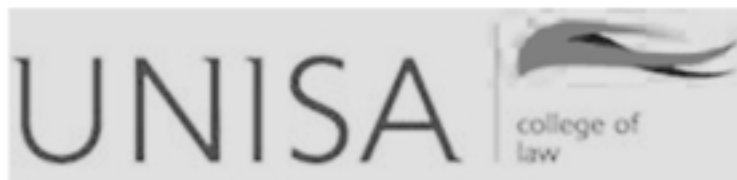
PROGRAMME OUTCOMES

Post-arrest assessment before referral

Standard	Indicators										
61. Every arrested child is assessed within 48 hours of arrest by a probation officer before the prosecutor makes the decision to (or not) to divert.	Every arrested child is assessed within 48 to 72 hours of arrest by a probation officer.										
62. Probation officers use a standard national assessment procedure.	<table><tr><td>5</td><td>4</td><td>3</td><td>2</td><td>1</td></tr><tr><td>ALWAYS</td><td></td><td>SOMETIMES</td><td></td><td>NEVER</td></tr></table>	5	4	3	2	1	ALWAYS		SOMETIMES		NEVER
5	4	3	2	1							
ALWAYS		SOMETIMES		NEVER							
63. Probation officers have been trained in conducting the assessment procedure.	A national standardised assessment procedure exists and is described in policy and procedure documents?										
64. The purposes of the probation officer's assessment, and the procedures immediately following the assessment are explained to the child in a manner appropriate to the child's age.	<table><tr><td>5</td><td>4</td><td>3</td><td>2</td><td>1</td></tr><tr><td>YES</td><td></td><td>SOMETIMES</td><td></td><td>NEVER</td></tr></table>	5	4	3	2	1	YES		SOMETIMES		NEVER
5	4	3	2	1							
YES		SOMETIMES		NEVER							
65. The assessment is appropriate to the child's age and conducted in a language the child understands.	A standardized assessment tool/form exists and is used by all probation officers nationally?										
66. The probation officer's assessment includes the following:	<table><tr><td>5</td><td>4</td><td>3</td><td>2</td><td>1</td></tr><tr><td>YES</td><td></td><td>SOMETIMES</td><td></td><td>NEVER</td></tr></table>	5	4	3	2	1	YES		SOMETIMES		NEVER
5	4	3	2	1							
YES		SOMETIMES		NEVER							
- basic descriptive information, including:	All Probation officers have been trained in assessment practice?										
• the child's name, age and gender;	<table><tr><td>5</td><td>4</td><td>3</td><td>2</td><td>1</td></tr><tr><td>YES</td><td></td><td>SOME</td><td></td><td>NO</td></tr></table>	5	4	3	2	1	YES		SOME		NO
5	4	3	2	1							
YES		SOME		NO							
• contact details for child's parent/guardian;	Probation Officers interact in a developmentally appropriate way with the child and explain procedures and rights to the child in laymen's terms?										
• the school the child attends; and	<table><tr><td>5</td><td>4</td><td>3</td><td>2</td><td>1</td></tr><tr><td>ALWAYS</td><td></td><td>SOMETIMES</td><td></td><td>NEVER</td></tr></table>	5	4	3	2	1	ALWAYS		SOMETIMES		NEVER
5	4	3	2	1							
ALWAYS		SOMETIMES		NEVER							
• the child's place of residence	Probation officers make use of creative, developmentally impact full ways to build rapport with children, when assessing the child? (For example play therapeutic interviewing techniques).										
• description of the context and type of offence	<table><tr><td>5</td><td>4</td><td>3</td><td>2</td><td>1</td></tr><tr><td>ALWAYS</td><td></td><td>SOMETIMES</td><td></td><td>NEVER</td></tr></table>	5	4	3	2	1	ALWAYS		SOMETIMES		NEVER
5	4	3	2	1							
ALWAYS		SOMETIMES		NEVER							
• assessment of the child's motivation for committing the offence, and the immediate circumstances surrounding the offence	Assessments are conducted in a language that the child understands and can speak?										
• assessment of the child's acknowledgement of responsibility	<table><tr><td>5</td><td>4</td><td>3</td><td>2</td><td>1</td></tr><tr><td>ALWAYS</td><td></td><td>SOMETIMES</td><td></td><td>NEVER</td></tr></table>	5	4	3	2	1	ALWAYS		SOMETIMES		NEVER
5	4	3	2	1							
ALWAYS		SOMETIMES		NEVER							
• assessment of the child's understanding of the meaning of acknowledging responsibility	Assessments by Probation Officers contain all the basic information as described under standard 66?										
• case administration details	<table><tr><td>5</td><td>4</td><td>3</td><td>2</td><td>1</td></tr><tr><td>YES</td><td></td><td>SOME</td><td></td><td>NO</td></tr></table>	5	4	3	2	1	YES		SOME		NO
5	4	3	2	1							
YES		SOME		NO							
• relationship to the victim where applicable	Assessments are conducted in privacy, away from public interference with only relevant individuals (parents, guardians) in attendance?										
- And to the extent possible, detailed information on factors associated with offending ("risk" factors) present in the child's life:	<table><tr><td>5</td><td>4</td><td>3</td><td>2</td><td>1</td></tr><tr><td>ALWAYS</td><td></td><td>SOMETIMES</td><td></td><td>NEVER</td></tr></table>	5	4	3	2	1	ALWAYS		SOMETIMES		NEVER
5	4	3	2	1							
ALWAYS		SOMETIMES		NEVER							
• social relationships, including family and peers	Assessments provide a concise picture of the client, the crime committed, and risk factors to be addressed through programmes?										
• education, including school grade, attendance and performance	<table><tr><td>5</td><td>4</td><td>3</td><td>2</td><td>1</td></tr><tr><td>ALWAYS</td><td></td><td>SOMETIMES</td><td></td><td>NEVER</td></tr></table>	5	4	3	2	1	ALWAYS		SOMETIMES		NEVER
5	4	3	2	1							
ALWAYS		SOMETIMES		NEVER							
• history of antisocial behaviour											
• substance abuse											
• medical psychiatric history											
• whether the child has been found in need of care (in terms of the Child Care Act (No 74 of 1983) as amended)											
- the child's skills in the area that the programme is designed to address											
67. The child's rights to privacy, confidentiality, appeal of decisions and participation during the probations officer's assessment are protected.											
68. The prosecutor's (and/or preliminary inquiry magistrate's) decision to (or not to) divert is informed by the probation officer's assessment											
69. The prosecutor (and/or preliminary inquiry magistrate) has sufficient knowledge about the nature of available diversion programmes to make an informal referral.											

Standard	Indicators										
Post-arrest assessment before referral cont...											
70. The prosecutor's referral of the child to a particular diversion programme is based on the needs and circumstances of the child.	Assessments contain concise recommendations regarding diversion options available and intervention/developmental plans to be put in place?										
	<table><tr><td>5</td><td>4</td><td>3</td><td>2</td><td>1</td></tr><tr><td>ALWAYS</td><td></td><td>SOMETIMES</td><td></td><td>NEVER</td></tr></table>	5	4	3	2	1	ALWAYS		SOMETIMES		NEVER
	5	4	3	2	1						
	ALWAYS		SOMETIMES		NEVER						
	The prosecutor's or preliminary enquiry magistrate's decision to divert or not divert is informed by the probation officer's assessment?										
<table><tr><td>5</td><td>4</td><td>3</td><td>2</td><td>1</td></tr><tr><td>ALWAYS</td><td></td><td>SOMETIMES</td><td></td><td>NEVER</td></tr></table>	5	4	3	2	1	ALWAYS		SOMETIMES		NEVER	
5	4	3	2	1							
ALWAYS		SOMETIMES		NEVER							
Prosecutor's decision's as written down makes reference to the probation officer's recommendations in motivating his/her decision to divert or not to divert/											
<table><tr><td>5</td><td>4</td><td>3</td><td>2</td><td>1</td></tr><tr><td>ALWAYS</td><td></td><td>SOMETIMES</td><td></td><td>NEVER</td></tr></table>	5	4	3	2	1	ALWAYS		SOMETIMES		NEVER	
5	4	3	2	1							
ALWAYS		SOMETIMES		NEVER							
Diversion Programme Design and Delivery											
71. Every child referred to a particular diversion programme is assessed before participation in the programme, and the assessment includes the following: <ul style="list-style-type: none">- detailed information on factors associated with offending ("risk" factors) present in the child's life:<ul style="list-style-type: none">• social relationships, including family and peer relationships• education including school grade, attendance and performance• history of antisocial behaviour• substance abuse• medical/psychiatric history• whether the child has been found in need of care (in terms of the Child Care Act (No 74 of 1983) as amended).- the child's skill in the area that the programme is designed to address- the child's motivation for participation	All participants in diversion programmes are assessed prior to participation in programmes?										
	<table><tr><td>5</td><td>4</td><td>3</td><td>2</td><td>1</td></tr><tr><td>ALWAYS</td><td></td><td>SOMETIMES</td><td></td><td>NEVER</td></tr></table>	5	4	3	2	1	ALWAYS		SOMETIMES		NEVER
	5	4	3	2	1						
	ALWAYS		SOMETIMES		NEVER						
	An assessment procedure and/or protocol exist with formalized assessment guidelines and/or tools that are used during assessment?										
<table><tr><td>5</td><td>4</td><td>3</td><td>2</td><td>1</td></tr><tr><td>ALWAYS</td><td></td><td>SOMETIMES</td><td></td><td>NEVER</td></tr></table>	5	4	3	2	1	ALWAYS		SOMETIMES		NEVER	
5	4	3	2	1							
ALWAYS		SOMETIMES		NEVER							
Assessments prior to programme inclusion build on the Probation officers assessment and accurately and concisely reflect the clients psycho- social functioning and risk factors to be addressed?											
<table><tr><td>5</td><td>4</td><td>3</td><td>2</td><td>1</td></tr><tr><td>ALWAYS</td><td></td><td>SOMETIMES</td><td></td><td>NEVER</td></tr></table>	5	4	3	2	1	ALWAYS		SOMETIMES		NEVER	
5	4	3	2	1							
ALWAYS		SOMETIMES		NEVER							
72. Diversion programmes include post-intervention assessment that measure changes in factors assessed in the pre-intervention assessment.	Assessments prior to programme inclusion provide an appropriate behavioural baseline against which client progress can be measured?										
73. The diversion programme is reasonably geographically accessible to the child.	<table><tr><td>5</td><td>4</td><td>3</td><td>2</td><td>1</td></tr><tr><td>ALWAYS</td><td></td><td>SOMETIMES</td><td></td><td>NEVER</td></tr></table>	5	4	3	2	1	ALWAYS		SOMETIMES		NEVER
5	4	3	2	1							
ALWAYS		SOMETIMES		NEVER							
74. The programme is appropriate to the child's age, physical, and cognitive ability	All programme participants are assessed post intervention in order to measure client progress?										
75. The development of diversion programmes is based on research evidence of what works in reducing criminal behaviour in children and adolescents	<table><tr><td>5</td><td>4</td><td>3</td><td>2</td><td>1</td></tr><tr><td>ALWAYS</td><td></td><td>SOMETIMES</td><td></td><td>NEVER</td></tr></table>	5	4	3	2	1	ALWAYS		SOMETIMES		NEVER
5	4	3	2	1							
ALWAYS		SOMETIMES		NEVER							
76. Diversion programmes have clearly articulated programme objectives and outcomes	Diversion programmes are geographically accessible to all participants?										
77. Diversion programme design and activities can be shown to address the factors directly associated with offending, and are therefore likely to reduce the problem of re-offending.	<table><tr><td>5</td><td>4</td><td>3</td><td>2</td><td>1</td></tr><tr><td>ALWAYS</td><td></td><td>SOMETIMES</td><td></td><td>NEVER</td></tr></table>	5	4	3	2	1	ALWAYS		SOMETIMES		NEVER
5	4	3	2	1							
ALWAYS		SOMETIMES		NEVER							
78. Diversion programmes have a system for monitoring the quality of programme delivery	Programmes provided are appropriate to participant's developmental, physical and cognitive levels and abilities?										
	<table><tr><td>5</td><td>4</td><td>3</td><td>2</td><td>1</td></tr><tr><td>ALWAYS</td><td></td><td>SOMETIMES</td><td></td><td>NEVER</td></tr></table>	5	4	3	2	1	ALWAYS		SOMETIMES		NEVER
5	4	3	2	1							
ALWAYS		SOMETIMES		NEVER							

Standard	Indicators										
Diversion Programme Design and Delivery cont...											
79. Diversion programmes have a system for monitoring the child's progress, including his/her compliance with the conditions of his/her diversion order, and a record of reasons for non compliance, if applicable.	The design of the diversion programme has been informed by research evidence of "what works" in reducing youth offending										
80. The intensity of diversion programmes (frequency and duration of programme activities) vary according to the level of risk recorded in the pre-intervention assessment of participants (i.e. the most intensive services are delivered to higher risk cases; and less intensive services are delivered to lower risk cases).	<table><tr><td>5</td><td>4</td><td>3</td><td>2</td><td>1</td></tr><tr><td>ALWAYS</td><td></td><td>SOMETIMES</td><td></td><td>NEVER</td></tr></table>	5	4	3	2	1	ALWAYS		SOMETIMES		NEVER
	5	4	3	2	1						
	ALWAYS		SOMETIMES		NEVER						
	The design and delivery of diversion programmes is based on behavioural change principles and sound methodologies?										
	<table><tr><td>5</td><td>4</td><td>3</td><td>2</td><td>1</td></tr><tr><td>ALWAYS</td><td></td><td>SOMETIMES</td><td></td><td>NEVER</td></tr></table>	5	4	3	2	1	ALWAYS		SOMETIMES		NEVER
	5	4	3	2	1						
	ALWAYS		SOMETIMES		NEVER						
	The design of the diversion programme accords with good programme design practice?										
	<table><tr><td>5</td><td>4</td><td>3</td><td>2</td><td>1</td></tr><tr><td>YES</td><td></td><td>SOMETIMES</td><td></td><td>NO</td></tr></table>	5	4	3	2	1	YES		SOMETIMES		NO
	5	4	3	2	1						
	YES		SOMETIMES		NO						
	The programme design is clear on what it wants to achieve, and how the outcomes will be monitored and measured?										
	<table><tr><td>5</td><td>4</td><td>3</td><td>2</td><td>1</td></tr><tr><td>YES</td><td></td><td>SOMETIMES</td><td></td><td>NO</td></tr></table>	5	4	3	2	1	YES		SOMETIMES		NO
	5	4	3	2	1						
	YES		SOMETIMES		NO						
Activities undertaken in the programme allows for therapeutic input as to enable behaviour change in participants?											
<table><tr><td>5</td><td>4</td><td>3</td><td>2</td><td>1</td></tr><tr><td>YES</td><td></td><td>SOMETIMES</td><td></td><td>NO</td></tr></table>	5	4	3	2	1	YES		SOMETIMES		NO	
5	4	3	2	1							
YES		SOMETIMES		NO							
Participant's progress is monitored after every intervention/ group session in relation to programme and individual outcomes?											
<table><tr><td>5</td><td>4</td><td>3</td><td>2</td><td>1</td></tr><tr><td>YES</td><td></td><td>SOMETIMES</td><td></td><td>NO</td></tr></table>	5	4	3	2	1	YES		SOMETIMES		NO	
5	4	3	2	1							
YES		SOMETIMES		NO							
Participant's progress is evaluated and monitored after the entire programme?											
<table><tr><td>5</td><td>4</td><td>3</td><td>2</td><td>1</td></tr><tr><td>YES</td><td></td><td>SOMETIMES</td><td></td><td>NO</td></tr></table>	5	4	3	2	1	YES		SOMETIMES		NO	
5	4	3	2	1							
YES		SOMETIMES		NO							
Each participant in a diversion programme has an individual monitoring/evaluation plan?											
<table><tr><td>5</td><td>4</td><td>3</td><td>2</td><td>1</td></tr><tr><td>YES</td><td></td><td>SOMETIMES</td><td></td><td>NO</td></tr></table>	5	4	3	2	1	YES		SOMETIMES		NO	
5	4	3	2	1							
YES		SOMETIMES		NO							
All staff members facilitating diversion programmes are supervised at least once a month by an experienced senior staff member?											
<table><tr><td>5</td><td>4</td><td>3</td><td>2</td><td>1</td></tr><tr><td>YES</td><td></td><td>SOMETIMES</td><td></td><td>NO</td></tr></table>	5	4	3	2	1	YES		SOMETIMES		NO	
5	4	3	2	1							
YES		SOMETIMES		NO							
A formalized follow up and aftercare strategy is available											
<table><tr><td>5</td><td>4</td><td>3</td><td>2</td><td>1</td></tr><tr><td>YES</td><td></td><td>SOMETIMES</td><td></td><td>NO</td></tr></table>	5	4	3	2	1	YES		SOMETIMES		NO	
5	4	3	2	1							
YES		SOMETIMES		NO							



COLLEGE OF LAW RESEARCH ETHICS SUB-COMMITTEE

P O Box 392
0003 PRETORIA

☎ : +27 12 429 2941
✉ : mnyonfd@unisa.ac.za

🏠 Cas van Vuuren Building 4-91
☎ : +27 12 429 3442

11 August 2012

Dear Ms Berg

REQUEST FOR ETHICAL CLEARANCE: A Criminological Assessment of South African Youth Diversion Programme Outcome Minimum Standards Compliance.

The UNISA College of Law Research Ethics Sub-Committee is pleased to inform you that ethical clearance for the above research project has been granted. We hope and trust that as you proceed with your interviews you will continue to adhere to the values and principles expressed in the UNISA Research Ethics Policy, which can be found at the following website:

http://www.unisa.ac.za/contents/research/docs/ResearchEthicsPolicy_apprvCounc_21Sept07.pdf.

Yours faithfully

A handwritten signature in black ink, appearing to read "FD Mnyongani". The signature is written in a cursive, flowing style.

FD Mnyongani (Mr)
Chairperson



-DEPARTMENT OF SOCIAL DEVELOPMENT

**Assessment Report for Children In Conflict With the Law[in terms of section 40
of the Child Justice Act]**

Probation Officer:

Office Address:

Officer Telephone Number:

Magisterial District:

Assessment Date: /...../...../2012 Assessment Time [Start]:

Court: CAS Number:

Supervisor Name:

PERSONAL DETAILS [CHILD]

Name: Surname:

Alias:

Address:

Date Of Birth/...../19... Confirmation Of Date Of Birth ☐ Y ☐ N

Gender: ☐ Male ☐ Female

Identity Number: Age Verification / Estimation: Years

Age Verification Source: ☐ birth certificate ☐ ID ☐ baptismal certificate

Population Group:

- ☐ Asian
- ☐ Black
- ☐ Coloured
- ☐ White
- ☐ Other (Specify)

Nationality:

Religion:

Language:

- ☐ English
- ☐ Afrikaans
- ☐ Xhosa
- ☐ Zulu
- ☐ Tswana
- ☐ SeSotho
- ☐ Sepedi
- ☐ Venda
- ☐ Tsonga
- ☐ Ndebele
- ☐ SeSwati
- ☐ Other (Specify)

B: MEDICAL INFORMATION:

Health Status (Physiological / Physical):

Injuries:

Medication:

Future Medical Appointments:

C: EDUCATIONAL BACKGROUND

First School Attended: [Grade 1]

Name Of Previous Schools Attended:

Name Of Current School:

Date Last Attended:

School Address:

Grade Completed: **Year:**

Name of Educator:

Additional Information:

.....

.....

Verification Sources:

D: PRIMARY CAREGIVER INFORMATION

Name:

Surname:

Relationship:

Residential Address:

.....

Years with Current Caregiver: Years

Work Address

Telephone (H): Telephone (W):

Cell:

Other:

E: FAMILY INFORMATION

Composition:

Relationship	Name	Surname	Date Of Birth / Age
Father			
Mother			

Family Background:

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F: SOCIO-ECONOMIC CIRCUMSTANCES

☐ **Social Circumstances**

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☐ **Previous Interventions**

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☐ **Interpersonal Relationships**

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☐ **Peer Group Pressure / Gang Involvement:**

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☐ **Substance Abuse**

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U

[illegible]

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7

[illegible]

G: CASE INFORMATION [PARTICULARS OF ALLEGED OFFENCE]

Nature of Offence:

Charge:

Circumstances of Offence:

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.....

.....

.....

Value Of Goods: R.....

Value Recovered: R.....

Does the Child accept/acknowledge Responsibility for the Offence: ☐ Y ☐ N

Date Of Arrest: /...../...../20.....

Time Of Arrest : am/pm

Arresting / Investigating Officer:

SAPS Station: **Telephone Number:**

Place of Detention:

Date of First Appearance:

Number Of Days In Custody:

Co - Accused: ☐ Y ☐ N

Name Of Co-Accused	Age

Legal Representation: ☐ Y ☐ N

Legal Representative: (Name)

Previous Involvement in Crime / Arrests / Convictions:

Date Of Conviction	Nature Of Offence	Sentence / Outcome

Abscondments / Escapes:

Date	When?	Where?

Victim Particulars:

Name: **Surname:**

Age: **Gender:** ☐ M ☐ F

Care Giver Full Names (If Victim Is A Minor):

Residential Address:

.....

Telephone (H): **Telephone (W):**

Cell: **Other:**

Intervention Services / Referrals ☐ Y ☐ N

H: DEVELOPMENTAL ASSESSMENT

Belonging

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Mastery

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Independence:

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Generosity:

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I: EVALUATION:

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J: RECOMMENDATION

☐ **Diversion**

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☐ **Conversion**

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☐ **Placement:** **Placement Confirmed:** ☐ Y ☐ N [supported
by current and reliable info- accommodation – clause 40 (2)]

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☐ **Normal court procedures to be followed**

K: SOURCES CONSULTED:

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L: EFFORTS TO TRACE FAMILY:

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M: GENERAL:

Assessment Time [Finish]:

Additional Information:

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.....

Probation Officer:

Date: