

**A PENOLOGICAL PERSPECTIVE ON THE HANDLING  
OF THE DRUG OFFENDER**

by

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*To my family Mark,*

*Rott, Jarryd and Tarn*

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**Deo Gloria**

**Michelle Ovens**

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**Promoter: Prof C H Cilliers**

**Joint promoter: Prof R P Maiden**

**Department: Criminology**

**Degree: D.Litt et Phil.**

### **----Summary----**

Drug policy and the treatment of drug offenders' is an area that receives much attention worldwide. Because of the authorities' apparent inability to deal with this form of crime, it has universally been deemed necessary to look generally at the punishment of this category of offender and specifically at alternative methods to deal with these perpetrators. An extensive study of drug treatment approaches and models used by various countries merely highlights and emphasises the need for the creation and implementation of a suitable treatment modality for drug offenders. Other countries do not and cannot offer solutions to South Africa's dilemma in the handling of its large offender population. It is for this reason that the researcher has selected workable aspects from various systems in a **multidimensional and multidisciplinary management approach** to the handling of drug offenders in the South African context.

### III.

The researcher utilises certain components of the systems theory to describe the manner in which the criminal justice system processes drug offenders. For this purpose, the researcher uses the systems theory as a framework for the application of the **drug model** that takes place on all levels within the criminal justice system. The researcher aims to use existing drug policy to form the basis of the **drug model**, and sets structural and procedural guidelines for dealing with this category of offender. The researcher furthermore calls for the implementation of such a model.

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## **CHAPTER ONE**

### **INTRODUCTION**

#### **1.1 INTRODUCTION**

Societies worldwide are faced with a general lawlessness. This places them under pressure to constantly seek remedial measures in an attempt to create order out of the disorder caused by crime. Symptomatic hereof, is an increase in drug use, drug dependency and drug-related crime. Literature indicates that the authorities are unable to cope with the problem universally, and that drug policy is inadequate and does not address the drug problem effectively. Historically, drug policy has shown its relative nature, reflecting current social values and norms. Modern day drug policy is influenced by a renewed look at human rights. The crux of the matter lies in the statement whether it is an individuals free right to use (or abuse) illegal substances. In contrast, society deems it fit to protect itself from those who may harm it, and the use and abuse of substances by its members may do so.

It is the latter perspective which must be kept in mind when examining the handling of the drug offender. It is, therefore, necessary to address the handling of the drug offender from a systemic, and multidisciplinary approach where society can play a larger role in the adjudication of the drug offender. All role players within the criminal justice system should co-operate to develop a model for an approach to the handling and effective treatment of drug offenders. Against the above mentioned, the aim of this study is to identify the growing drug problems with which societies worldwide are faced

and specifically the current international dilemma and constant search for solutions for the handling of the drug offender. The solution to this problem may lie within a multidisciplinary answer, but for the purpose of this study it will be examined from a penological and criminological perspective.

## **1.2 JUSTIFICATION**

Drug policy and the treatment of drug offenders is an area which receives much attention worldwide. Because of the authorities apparent inability to deal with this form of crime, it has universally been deemed necessary to look generally at the traditional forms of punishment of this category of offender and specifically at alternative methods to deal with these perpetrators in the community. Research has frequently shown the link between drugs and crime. According to a report by the British Executive Summary (Turnbill 1996:1) imprisonment is "common to a drug-using lifestyle". The report indicates that half to three quarters of intravenous drug users have been incarcerated at least once and that drug offenders form a large percentage of the collection of crimes leading to the phenomenon of recidivism.

According to Inciardi, Martin, Butzin, Hooper and Harrison (1997:262) extensive follow up studies by Ball, Shaffer and Nurco (1983) conducted in Baltimore found that heroin users showed high rates of criminality during periods where they actively used drugs and lower crime rates during non-use. They also refer to studies by Johnson (1985) which indicate a clear correlation between the quantity of drugs used and the extent of crime committed. This fact substantiates the researcher's aim to develop a suitable

system for the handling of drug offenders in order not only to punish them but furthermore, also to rehabilitate and deter them and the general community from committing further crimes.

The researcher aims to develop a model that may reduce and control the level of drug-related crime and decrease the recidivism rate, by developing a treatment approach and a model that effectively deals with the drug offender, and that addresses the latter problems.

### **1.2.1 The cost of drugs to society**

Drug use has enormous financial cost implications for individual societies within a country or the whole country on a wider spectrum. One should not only consider the social cost encapsulated by users who become a burden to their families and the community, but also the cost of drug-related crime to the criminal justice system. According to the Australian Parliamentary Group for Drug Law Reform (1997) the illicit drug trade is the second largest industry in the world and nets approximately \$500 billion a year worldwide. This is not only an illustration of the global dilemma, but also an indication of the challenge to states and legislators to combat the problem. The drug problem not only impacts on society but has a direct effect on the criminal justice system.

### **1.2.2 The drug problem: a worldwide epidemic**

A major problem faced by role players within criminal justice systems is, not only the interpretation and application of legislation but also, the overcrowding of penal systems and a general inability to deal with drug offenders effectively. The escalating crime rate in communities further exacerbates the problem worldwide. Diverse factors ranging from the growing population of the world, economic and social problems such as unemployment, all increase the level of criminality.

Authors such as Inciardi (1981) and Clinard and Meier (1975) have identified drugs, the use, effect, possession and trafficking there in, as contributory factors that are not always as apparent as the above. They view drugs and/or alcohol and the use thereof as a major contributory factor to the increased levels of crime in society. Inciardi (1981:10) postulates that drugs and criminality go hand in hand and that crime results on two levels because of the use thereof. He states that firstly, crime can be committed to attain drugs. The buying and selling of illegal substances, or theft and robbery to acquire money to buy them are examples hereof. Secondly, crime may also be caused by the effect of these substances. The causal relationship between the two, however, is not clearly defined and various interpretations are made. McMurran (1996:211) believes that a model that follows the approach that substance use and crime have a direct causal relationship, is ineffective and over simplistic. It will also incorrectly address the association between these "two complex behaviours" (McMurran 1996: 211). According to Clinard and Meier (1975:321) for most drug users criminal involvement becomes a way of life. In a previous study by the researcher (Ovens

1992:85), research findings indicated that drug dependency contributes to deviant behaviour such as prostitution, drug dealing and possession, assault and child abuse. According to the report of the National Task Force on Correctional Substance Abuse Strategies (1991:1) in the United States of America, drug dependants are involved or represented in crimes committed three to five times more than nonusers. Furthermore, drug dependants also have a significantly higher arrest rate than non drug-involved arrestees. The report notes that substance abuse accelerates and increases the level of criminality among those already involved in crime. This problem is not unique to the United States of America, and other countries such as Britain also experience problems with drug related crime and dealing with drug offenders. Williams (1993:3), an expert in the field of drug addiction, asserts that drug abuse and the spread of HIV infection in Britain has led to a change in the approach to the drug problem. To counteract the problem additional funds are being spent on drug services. Furthermore, the increased attention "has culminated in a raised awareness of drug misuse among the population, including among the offender population" (Williams 1993:3). South Africa is not immune to the drug problem faced by the rest of the world and Chapter eight addresses the South African scenario.

The globalisation of crime has further contributed to an increase in drug trafficking and drug use. Baynham (1997:2) submits that foreign crime syndicates have targeted Britain for years. He mentions the attempts by the Jamaican Yardies and Possies, the Hell's Angels, the Russian Mafia, Japanese Yakuza, the Colombian drug cartel, and various gangs from West Africa, Italy, Indian/Pakistani, and the Turkish\Kurdish, as well as the Chinese triads to infiltrate the English market. He believes that these

syndicates and others have been successful in the establishment of a foothold in the United Kingdom. The same applies to the United States of America. In Russia the drug problem was exacerbated by the war against Afghanistan from 1979 to 1989. Soldiers came into contact with substances to which they had previously not been exposed. Russia has furthermore become a transit route for cocaine from Afghanistan, Iran and Pakistan. The Russia authorities believe that they currently have about two million drug users.

Literature shows that most countries who have been fighting the battle against drugs have not yet won the battle and many experts believe that they never will. At a recent workshop on the **Illegal drug trade in South Africa** (1997) organised by The South African Institute of International Affairs, it became apparent that other countries see that South Africa is approaching its entry into this "war". South Africa is fast becoming a market for substances such as crack, cocaine, heroin and ecstasy. It is also a transit route for drug trafficking. Many foreign and local exponents expressed concern about the manner in which local authorities are dealing with the problem. India, for example, can be compared to South Africa. India is a popular transit route in the East. According to Rao (1997:2), from the Institute for Defence Studies and Analysis in New Delhi, high rates of unemployment and underemployment contribute to individuals becoming involved in drug dealing. The same can be said for South Africa, especially with the current high rates of unemployment.

### **1.3 DRUGS AND THE JUSTICE SYSTEM**

Drug related crime has a major impact on the criminal justice system. According to the report of the National Task Force on Correctional Substance Abuse Strategies (1991:1) in the United States of America, drug dependants are involved or represented three to five times more in crimes committed than nonusers. Furthermore, drug dependants also have a significantly higher arrest rate than non drug-involved arrestees. The report notes that substance abuse accelerates and increases the level of criminality among those already involved in crime. This problem is not unique to the United States of America, and countries such as Britain also experience problems dealing with drug offenders. According to the Communicable Diseases Unit (1993:1) drug use is growing and the number of offenders entering the prison setting with a drug problem is steadily climbing. The unit reports that since 1986, the number of drug offenders in prisons has risen by 20 percent. A study conducted by the Home Office in 1994, showed that the number of drug dependant prisoners in England and Wales had risen from nineteen per one thousand of the population during 1988 to twenty-four per thousand of the population in 1992 (Rhyan and Sim 1995:109). Between February 1995 and January 1996, an average of two in every five prisoners tested positive in mandatory drug tests conducted in all the prisons in Britain (Turnbill 1996:1, Penal Affairs Consortium 1996:3). According to Trace (1997:2) medical studies (he does not refer to specific studies) show that 12 percent of the males and 24 percent of the females in prison were diagnosed to be "clinically dependent" on psychoactive substances.

In 1993, prisoners in England and Wales committed more than 100, 000 disciplinary

offences during the period of their incarceration. This figure was 13 percent higher than in 1992. According to Ford (1994:3), the Home Correspondent for the Observer, drug-related violence made up twelve percent of this figure. A local daily newspaper, The Independent Times (1994:5) substantiates this finding and reports that 14,700 drug-related incidents were dealt with in prisons during 1993. Most of these offences were either punished by extended sentences, or by a reduction of the perpetrator's prison earnings.

Research indicates that most societies have lost faith in the correctional facilities ability to reform drug offenders (Torres 1996:19, Brooks 1996:42). The biggest impediment in the treatment of drug offenders is both the general public and the correctional officials lack of faith and confidence in their ability to change offenders (Torres 1996:19, Williams 1996:36). The researcher believes that this problem can be addressed by the establishment of a treatment model for the handling of the drug offender. The model should be multidisciplinary in order to bring about a co-operation between the role players in the justice system.

#### **1.4 AIM OF STUDY**

Many systems have been developed throughout the world to deal with drug offenders and drug-using offenders. Among others, attempts have been made to divert drug offenders and drug-using offenders from criminal justice and penal systems and to channel them into a system that aims to be more beneficial to their rehabilitation. Other systems make provision for these offenders to be placed into voluntary and statutory

treatment programmes (Collison 1993:382).

It appears, however, that measures utilised to counteract the above are not successful, if the recidivism rate and the apparent inadequacy of present rehabilitation programmes for drug offenders are examined. Changing the angle of approach when dealing with drug offenders is thus necessary. Possibly the adoption of a new discourse by which more emphasis is placed on the identification and management of drug offenders and less on their actual punishment and rehabilitation is necessary. According to Feeley & Simon (1996:368) this would not eliminate these crimes but rather make them more tolerable. They mention that the utilisation of systematic coordination would move away from the use of ineffectual measures for the normalisation of these offenders.

As traditional models for the handling of the drug offender are frequently debated and criticised, a new point of departure should be considered. The contemporary view of the new penological school of thought towards offender handling may address the issue of the handling of the drug offender. The primary aim of the researcher, is not only to make an in-depth study of current international drug policy application, but also to put the handling of the drug offender into a penological perspective. Therefore, the researcher undertook a literature study on the above mentioned in order to come to certain conclusions and to make specific recommendations for the current South African situation. In order for a new penological perspective to be realised within the current debate on drug abuse and the handling of the drug offender, the researcher proposes to develop a model for the handling of the drug offender. The model will be based on the movement of the drug offender through the criminal justice system, from

the moment that he enters the system and will thus function on the three levels, namely; pre-trial, trial and post-trial. The researcher will highlight the philosophical perspectives (both past and present) and will follow a managerial approach to address the handling of this category of offender. The implications of a managerial approach will be reflected within the multidisciplinary model.

## 1.5 CHOICE OF RESEARCH

The need for a study of the *handling and treatment* of the drug offender was identified as a possible field of research after interviews with experts and a preliminary literature survey of available data. For many years the argument and debate concerning the handling of the drug offender has taken place on podiums and in articles in South Africa. Researchers, functionaries, legislators and communities have urged policy makers to forward solutions to South Africa's drug problem.

Van den Heever (1993), a South African Judge, identified a need for research into the handling of drug offenders as early as 1993. She approached De Miranda, a medical doctor and expert in the field of drug-related matters in South Africa, regarding the "draconian compulsory escalating sentences foisted on the courts... that were very expensive and often very unfair, without being necessarily very effective". Van den Heever (1993) identifies the following problems in the criminal justice system. She mentions the automatic escalation of sentences for successive offences and gives the example of a man sentenced in this manner for a petty crime because of a previous conviction. The authorities imprisoned him (gave a harder punishment) in an attempt

to deter him from further crime. Van den Heever notes that this is at the cost of the tax payer and leads to overcrowding of South African prisons. The experience of incarceration, furthermore, does not include the treatment of the actual problem, that of drug or alcohol dependence. She suggests the solution to the problem be the wider education of the public regarding the problems related to drug use and the reason why the use, abuse and dealing therein is detrimental to the individual and society. Van den Heever (1993:6) concludes that if courts impose more suitable sentences, additional space will be made available inside prisons for those offenders whom they cannot rehabilitate and who pose a serious threat to our society. In this regard the researcher fully supports the judge in her outcry to search for alternative handling mechanisms. Through the approach she advocates, the mission of the court and the judicial officer in the move towards the individualisation of punishment will be realised.

Bright (Des Moines Register 1996) a Senior Circuit Judge in Iowa, in the United States of America, has also expressed similar concerns regarding aggressive drug prosecutions and sentencing rules. He calculates that excessive sentences merely place a financial burden on the American Justice System. He adds that the unnecessary imprisonment of minor drug offenders costs the American tax payer approximately \$359 million each year. He further states that " These unwise sentencing policies that put men and women in prison for years not only ruin lives of prisoners and often their families, but also drain the American taxpayers of funds that can be measured in billions of dollars...This is the time to call a halt to the unnecessary and expensive cost of putting people in prison for a long time based on the mistaken notion that such an effort will win "The War on drugs". If it is a war, society seems not

to be winning, but losing" (Bright 1996:2).

This deficiency identified within the criminal justice system by the role players has prompted the researcher to make a theoretical study of the handling and treatment of the drug offender within various criminal justice systems. In order to comply with the stated aim of the study, namely; to the need for the research and the relevance thereof to society, it is the researcher's respectful conclusion that it forms a sound basis for an indepth study.

## **1.6 THEORETICAL RELEVANCE OF THE STUDY**

This study is based upon the precursive theoretical approach as illustrated by Gorrell (Mouton & Marais 1991:141). Gorrell states that this approach simplifies and systemises the domain under investigation by the acceptance of certain assumptions about the structural, causative or functional nature of the system under discussion, and in this case the criminal justice system. This study is not only based upon a theoretical point of departure, but the researcher also strives towards the practical application of the theory. During the adjudication of the drug offender there are certain factors present that play a role in the final judgement. Factors such as the seriousness of the crime, the victim of the crime and the application of the various theories of punishment come into operation. In this process the penological approach forms a partnership with the factors above, and facilitates the effective handling of the drug offender. By the utilisation of a penological approach to the handling of the drug offender, the theories or motives of punishment are built into the fundamental rationale behind the sentencing

and handling of the drug offender within the legal system. The approach adopted must promote the successful punishment and treatment of the drug offender . According to the Triad of Zinn (Zinn 1969 2 SA 855 (A)540) the punishment imposed upon an offender must always take the interests of the community, the victim and the offender into consideration, in view of the severity of the crime committed. The consideration of the theories of punishment in the handling and treatment process validates the theoretical relevance of the study. As a study of this nature must not only fulfil the role of a theoretical basis, the researcher also aims for the practical application of the study to the benefit of academics, legislators, students in criminology and penology, and functionaries within the criminal justice system.

#### **1.6.1 The researcher's involvement**

The interest in drug-related crime developed from the researchers study of the topic of drug-related child abuse (Ovens 1992). This research reflected that drug users are frequently involved in criminal activities. In May 1997 the researcher started a drug group at Central prison, Pretoria. This interaction with inmates within a correctional setting allowed the researcher to gain experience in the practicalities of the handling of drug offenders in prisons and to gain insight into the lives of drug offenders during their incarceration. After gaining the confidence of the first group of inmates which numbered 4, the group grew to 35. This experience not only culminated in the formation of this thesis, but also triggered new initiatives by psychologists and social workers in the establishment of a sound, scientific practical experiment dealing with drug offenders at Central Prison. The outcome of this experiment is vested in the

UNISA (University of South Africa) Drug Group. Another outcome of this venture was the researcher's involvement in the evaluation of offenders being considered for parole and the drafting of pre-parole reports. Examples of the reports are attached (Annexure 1,2 and 3).

## **1.7 OBJECTIVES OF THE RESEARCH**

According to Avery (1989:7) the main objective behind a penological investigation is "inter alia knowledge of and insight into the phenomenon of punishment with a view to the application of such acquired knowledge". The researcher's primary objective is to acquire knowledge of the handling and treatment processes utilised by various criminal justice systems, with special emphasis on the drug offender or drug-using offenders. From the discussion pertaining to the choice and need for research (Section 1.5) the following aims are identified:

### **Aim 1:**

**To develop a model for the handling and treatment of drug dependant offenders**

This approach should allow for the identification of a suitable drug treatment approach and programmes for the effective handling of drug offenders that can counteract the negative effect of drugs on our criminal justice system. The system should identify the needs of both the offender and the community and should consider these at all times. These systems should be implemented on three levels. On a **pre-trial level** to ensure the early identification of substance-using offenders by means of mandatory

drug testing on arrest. **On a trial level** to search for suitable sentencing alternatives for the drug offender. To, furthermore, develop a system by which drug offenders can be referred for assessment prior to sentencing. The system should also enable referrals to suitable rehabilitation programmes within either custodial settings or the community. **On a post- trial level** the establishment of Drug Clinics within penal institutions to house and treat the drug offenders.

From the discussion pertaining to the theoretical relevance of the study (Section 1.6) the following objective is sought:

**Aim 2:**

**To identify a system that allows for the motives of punishment by means of:**

- retribution, which enables the drug offender to atone for his crimes and at the same time appeases the community (enables them to accept the offender back into society after his rehabilitation)
- deterrence, where the drug offender is deterred from committing further crime(s) and the application of a utilitarian approach to drug offenders (a hardened approach that states that the offender must be held accountable for his actions and is punished accordingly)
- general deterrence, (setting an example of the offender to deter the rest of society from similar actions)

- protection of the community, (by the detention, incarceration and/or rehabilitation/education of the drug offender)
- rehabilitation of the offender (with special emphasis on the development of a treatment model) to further the orderly management of change within inmates
- prevention (by the utilisation of the above methods to prevent drug-related offences and the crimes that come about, namely; as the result of the use thereof, drug dealing, theft in an attempt to gain access to drugs, or crimes committed under the influence of these substances).

### **Aim 3:**

**To identify a theoretical approach by which to handle the drug offender within society:**

Any model should also have a sound theoretical base, which promotes a sound framework on which it can be developed. The model must be relative, and should be dynamic in order that it can be altered to fit into any society, at any given time. It must take various social structures, norms and values into account (Section 2.2).

The rationale for the above is apparent from studies undertaken on the systems of various countries. Many systems have a sound basis, yet they function in isolation from other related systems. It is important for countries to unify in their fight against drugs and share strategies and working formula's. Therefore, for countries to adopt

measures to combat the use of drugs, the application of the penological schools of thought towards offender handling, as well as the above mentioned points should be considered.

## **1.8 METHODOLOGICAL PROBLEMS REGARDING AN INVESTIGATION OF THIS NATURE**

The researcher encountered obstacles in the study with the gathering of data. In certain countries such as England and Wales and the United States of America, more information is available than in countries such as Australia, Singapore and South Africa. Although South Africa forms part of the African continent, reliable sources on other African countries were difficult to obtain. Thus, South Africa is examined alone, not in relation to other African countries. From limited sources available, however, it appears that African policies are based upon former Colonial models, such as the British, French and America approaches and that they do not reflect a pure African point of departure (Sinyani 1997:2).

On the other hand extensive research into drug treatment and drug policy has been undertaken in England and the United States of America. This creates a disproportionate emphasis in the researchers discussions of the various systems. The uneven balance in data should thus, be viewed in the above light and not that one system is necessarily less important or even less effective than another. This study merely wishes to describe the existing structures in the criminal justice systems of leading societies around the world that deal with drug offenders and to illustrate

positive or effective characteristics which can be derived from these systems to deal with drug offenders.

## **1.9 METHODOLOGY**

Data for this study was derived from *written sources* (literature in the form of books, scientific articles, journals and newspaper articles), and from *personal/ correspondence* with drug experts from the countries under evaluation. *Workshops* were also attended which dealt with drugs and drug related issues (Problem regarding the handling of offenders July 1997, Illegal Drug Trade in South Africa June 1997).

### **1.9.1 Literature study**

Written sources included books, periodicals, journals, governmental reports, Internet sources and debates relating to drugs, the abuse thereof, crime and the treatment of drug dependency and related problems. Of special value were sources derived from the Internet. Data from the Internet is of great value as it is recent and authors are easily contacted for further information or queries. This also allows for further debate about various drug-related topics.

### **1.9.2 Personal correspondence with drug experts from the countries under evaluation**

The researcher obtained *data from experts* in the field of drug dependence and drug-

related offences and the adjudication thereof from each of the countries (Chapters 4-8) selected for this study. For the handling of the drug offender in **Singapore** (Chapter 6), the Judicial Commissioner of the Supreme Court in Singapore, the Honourable Amarjeet Singh was contacted. He assisted with drug legislation, subsidiary legislation and highlighted drug-related court cases of importance within the **Singaporean** system. Judge Richard Gebelein, from the Superior Court in Delaware, assisted and gave advice regarding the system in the **United States of America** (Chapter 5). A criminologist from the Australian Institute of Criminology, Jennifer Norberry assisted with **Australian** (Chapter 7) drug policy and identified the Drug Assessment and Aid Panel, as well as other diversionary schemes presently in operation in Australia. Susan Williams, a senior probation officer at the Substance Harm Reduction Unit at South Glamorgan, Wales was a valuable source of information on the **English** (Chapter 4) and Welsh system. Her role as a probation officer and her experience in conducting pre-sentence evaluations and writing reports for offenders gave the researcher practical insight into the functioning of these systems on a practical level.

*Personal interviews* were also conducted with individuals working in the field of drug addictions and dealing with drug offenders within the criminal justice system in **South Africa** (Chapter 8). Dr De Miranda, a leading expert in the field of drug dependency and treatment in South Africa and a member of the **Drug Advisory Board** (Chapter 8 Section 8.4.1) was an invaluable source of information on the South African system. Judge Van den Heever, gave the researcher insight into the dilemma of the magistrate or judge when imposing effective sentences on the drug offender. She highlighted the need for effective legislation and alternative sentencing options for drug-related crime.

### **1.9.3 Attendance and participation at workshops**

*Workshops* were also attended for the gathering of data for this study. The international workshop held by the South African Institute of International Affairs on the **Illegal Drug Trade in Southern Africa** held at Jan Smuts House, in Johannesburg in South Africa, was attended from the 5-6 June 1997. Over 180 participants from countries including Ireland, China, Italy, Britain, the United States of America, the Netherlands, Argentina, Canada, Peru, Germany, Poland, India, Sweden and African countries were represented by Nigeria, Ethiopia, Zimbabwe, Tanzania, Ghana, Swaziland, Lesotho, Sudan, Botswana, and South Africa. Topics covered issues regarding the use of drugs in counties such as the United States, South Africa, Asia, and also gave a global perspective thereof. Related problems and issues such as drug trafficking and money laundering were also discussed.

The second *workshop* arose from a need identified by correctional workers at Central prison, Pretoria. The workshop held at Unisa on 8 July 1997 examined the handling of the drug offender within the correctional setting. Various problems regarding the handling and treatment of the drug offender were identified.

### **1.9.4 Empirical Research**

*Unstructured personal interviews* were conducted with both correctional workers and drug dependant inmates. The researcher chose to conduct unstructured interviews because this technique facilitated the requirements of an *exploratory research*

*methodology*. According to Mouton and Marais (1991:43) *exploratory research* is used to explore relatively unknown research areas and that it usually leads to insight and comprehension rather than the collection of accurate and replicable data. This technique was of relevance to this study because the researcher aimed to gain a practical insight into the personal experiences and accounts of offenders' who had entered the criminal justice system and who had been imprisoned for drug-related offences. *Exploratory research* is based upon in-depth interviews, analysis of case studies and data from informants. This technique was also suitable as time was not limited and interviews could easily be arranged. Correctional workers such as social workers, psychologists, warders and teachers from Central prison, were all interviewed at the prison. It was this contact that led to the identification of the need for a workshop to discuss and deal with the problem of the handling of the drug offender (Workshop held at Unisa 8 July 1997).

Initially, two morning sessions were held with drug dependent inmates identified by staff. All participants had been involved with and arrested for drug-related crimes. Attendance was voluntary. After gaining the confidence of the inmates they all admitted to continued use of psychoactive substances. The structure of the sessions took the form of *brain storming sessions* and *open debate* about set topics. The researcher opted to keep this open structure as inmates were reluctant to fill in structured questionnaires. Later inmates requested that the sessions be continued on a weekly basis. These sessions are used to assist prisoners with their drug problems and related issues, and institutional problems. Later the group became known as the UNISA group.

The technique of *participation and observation* was also used in this study. Mouton and Marais (1991:1) submit that this technique allows for a solid interpersonal relationship to develop between the researcher and participant and acts to neutralise distrust. This is essential when working with prisoners as they have a profound distrust of anyone within the correctional setting, and are especially suspicious of correctional workers. The establishment of the Unisa group allowed the researcher to *participate in and observe* the dynamics of the drug user within the correctional setting and in a group context. The Unisa group allowed these inmates to discuss a variety of problems they had encountered during their processing in the justice system, as well as problems they encounter within their daily lives in prison. They also discussed the dynamics of their criminal activities, and gave the researcher an understanding of the phenomenon of drug-related crime as they described their entrance into and involvement with crime.

The social work section at Central prison, Pretoria was an invaluable source of information for the researcher. Role players expressed a willingness to co-operate and a desire to set up measures which would increase affectivity in the treatment and handling of the selected group of offenders. Countless *interviews with social workers* Jeanette Theron and Marina Fivas were conducted in which the problems of the treatment and handling of drug offenders were discussed. Mrs Theron assisted in the establishment of the drug group at Central prison.

### **1.9.5 Reliability of data**

Because of the *technique of observation/ participation* used by the researcher, it is important to constantly monitor the reliability of the data. Reliability means that any other researcher applying the same methods at a different time or in another prison, will produce the same results (Mouton & Marais 1990:79).

Aspects such as the researcher, the individual participating in the research project, the measuring instrument and the research context, all influence reliability of data. The researcher consulted the social workers and psychologists at Central prison to verify that information gained from inmates was accurate and truthful. Access to prisoner files also made it easy to verify information given by prisoners. The technique of *participation and observation*, allowed for trust to develop between the researcher and prisoners. This neutralised their initial distrust and they communicated openly about their criminal histories.

### **1.10 DELIMITATION OF THE FIELD OF STUDY**

The delimitation of the study is reflected in the period of time in which the study was conducted and the geographical boundaries of the sample.

#### **1.10.1 Period of study**

The literature study was initiated in 1993 and was conducted up until September 1998.

Legislation includes all decisions and Acts up to July 1998. The contact with correctional workers and prisoners at Central prison commenced in July 1997 and is presently still being maintained (October 1998).

### **1.10.2 Geographical delimitation**

The researcher selected the following countries for inclusion within the *documentary study* of the handling and adjudication of drug offenders within various criminal justice systems. Britain, the United States of America, Singapore, Australia and South Africa were selected in order to conduct the study.

The *empirical study* was conducted within Central prison in Pretoria (Gauteng). For practical purposes it was not possible to widen the geographical area, as this was a long term study (July 1997-October 1998). The researcher visited the Prison once a week.

### **1.11 DEFINITION OF KEY CONCEPTS**

The following terms utilised and referred to in this study need to be defined and discussed to clarify their meaning contextually. In a scientific evaluation of this nature two types of concepts are used. The first being know, established and widely accepted terminology. Secondly, there are operational terms developed by the researcher to have special meaning and emphasis within the particular study (Mouton & Marais 1991:64).

### **1.11.1. Drugs or psychoactive substances**

According to Husak (1992:19) policy makers rarely define the substances that they are making decisions about or if they do, definitions are vague and ambiguous. He believes that the medical definition of a drug as “a substance other than food which by its chemical nature affects the structure or function of the living organism” is too broad. Both the drugs pharmacological effect and its legal status should be covered in the definition thereof. He explains that while the legislature can change the legal status of a drug, it cannot change the substance thereof. It is, therefore, necessary to include a medical explanation in the formulation of a suitable definition. Husak views legal definitions as moralistic and paternalistic and believes that they are not aimed at a rational regulation of the use of psychoactive substances. This view is supported by individuals who call for the decriminalisation of drugs (Schaffer 1997).

Schmallegger (1997:570) defines a drug as a substance which when ingested by swallowing, injection or absorption through the skin, has a noticeable effect on the body and mind of the user. He postulates that the definition of the substance is influenced by social conventions and laws. The latter aspects, he explains make the substance socially acceptable or not. He quotes the recent reclassification of alcohol, caffeine and nicotine as drugs in America, as an example hereof. Husak (1992:19) follows the belief that the labelling of a substance as a drug immediately evokes a public response.

For the purpose of this study of drug-related crime, *drugs or psychoactive substances are viewed as mind altering, mood changing illegal substances which have a*

*detrimental effect on the user's behaviour and cause the user to act in contravention with the social norms and laws of society.* The use of this substance(s) may or may not, be socially acceptable to the rest of the community in which the user or abuser of the substance resides.

### **1.11.2 Drug offenders and drug using-offenders**

The terms **drug offender** and **drug using-offender** will be used synonymously within this study. According to Holyst (1992:119) of Poland, drug addiction is the mental illness of the 20th century. He believes that the increase in drug use is the result of rapid socio-civilisational changes taking place within society, and the disintegration of values, classical ethics, rules and structures. He thus gives a *sociological* definition of the drug offender, and blames the structure or lack of structure within modern society for the development of this category of offender. McMurran (1996:228) a world renown expert in drug related matters views the drug offender as an individual who is heavily involved in a criminal lifestyle and usually has a *low level of social stability*. Walters (1994:4) adds an interesting dimension to the definition of the drug offender when he describes this offender as someone who becomes involved in crime to support a growing dependence on drugs.

For the purpose of this study the researcher adopts variables from the above views, and defines the drug offender as an individual who is dependent on a psychoactive substance, for whatever reason, social, individual or environmental, and *commits a crime to obtain the substance or as a result of the effect thereof*. The latter thus

includes situations where the substance impairs the mental process and influences the offender's mood and perception of a situation.

### **1.11.3 Correctional workers**

Counselling, therapy, treatment and rehabilitation are terms used to define those actions taken to bring about behavioural and cognitive changes within the drug offender. The counsellor, correctional worker and therapist are those individuals who volunteer to place themselves at the service of the prisoner, either for remuneration or as a voluntary free service. In order to be successful this individual needs to be empathetic towards the inmate and have an understanding of the processes taking place. It is also a necessity that the prisoner be receptive and co-operate in the process and have a desire to change or rehabilitate (Williams 1996:3). The correctional worker must therefore be someone who can initiate trust within the drug dependant prisoner and be able to obtain their co-operation.

Thus for purposes of this study the correctional worker, therapist and counsellor will be used as *synonyms for those individuals who accept responsibility for the handling and treatment of the drug offender within the criminal justice system. They should be correctly trained, have the necessary expertise and be able to work compassionately and empathetically with the drug offender.*

#### **1.11.4 The penologist**

According to Neser (1993:3) penology is the study of punishment in its totality. Penology examines the origin, development, objectives and application of punishment. Certain schools of thought also bring in the sentencing of the offender, while others look at alternatives to imprisonment, diversion, depenalisation and decriminalisation.

It is the researchers view that the penologist is someone who deals with all the latter aspects, that is, studies punishment in its totality, but more important can apply his theoretical, academic knowledge in the field on a practical level. The penologist must therefore work theoretically and practically in the field of penology and make both an academic and societal contribution.

#### **1.11.5 Restorative justice**

Restorative justice is a system of justice that is based on remedies and restoration rather than options such as imprisonment and punishment. Restorative justice thus places a renewed emphasis on the restoration of the balance or status quo within society. This approach also gives more attention to the victim of crime and advocates that any remedial measures should take the victims interests into account. Thus restorative justice is based upon the concept that society become more involved and that the caring community that plays a bigger role within the system.

### **1.11.6 Diversion**

Diversion is the process whereby the offender is channelled away from the criminal justice system. It minimises the full impact of the law on the offender. For this purpose it is a valuable mechanism by which to deal with first time or juvenile offenders. Diversion is an effective mechanism whereby non-violent offenders or those not regarded as a risk to society can be channelled into alternative facilities to relieve the justice system of its workload and prevent the stigmatisation and labelling of the offender. Diversion can take place on three levels within the criminal justice system, namely; on the pre-trial stage, trial stage and post-trial stage.

## **1.12 DIVISION OF CHAPTERS**

As the title of the thesis denotes, a penological study of the methods used by various criminal justice systems for the handling of the drug offender or the drug-using offender is made. The chapters within this study are as follows:

**Chapter 2** gives a theoretical perspective on the handling of the drug offender in the criminal justice system. A systemic approach is adopted in the analysis of the latter system. This chapter forms the theoretical structure on which discussions in Chapters 4 to 8 will be based.

**Chapter 3** discusses the divergent approaches to the treatment of drug offenders from a historical perspective. It includes traditional treatment approaches from as early as

1890, to contemporary philosophies applied in the 1990's.

**Chapter 4** examines the handling of the drug offender within the British criminal justice system. An important aspect in the system is the wide use of diversionary measures for drug offenders.

**Chapter 5** deals with the handling of the drug offender within the criminal justice system in the United States of America. The debate to decriminalise drugs in this system constantly emerges from those within the community who believe that morality is forced upon them and that legislation infringes upon their constitutional rights to free choice.

**Chapter 6** examines the handling of the drug offender within the criminal justice system in Singapore. This system is characterised by a prohibitionistic approach to drug use and strict legislation for drug-related offences.

**Chapter 7** discusses the Australian approach to the handling of drug offenders and their treatment. The South Australian system has developed a separate system whereby drug offenders are diverted from the formal criminal justice system to a mechanism (The South Australian Drug Assessment and Aid Panel), where these offenders receive specialised attention and which relieves the burden on the criminal justice system.

**Chapter 8** examines the handling of the drug offender within the South African criminal

justice system. The handling and treatment of the drug offender is based upon the ***Prevention and Treatment of Drug Dependency Act 20 of 1992*** and this Act also serves as the format for the foundation of this discussion.

**Chapter 9** illustrates the practical implications for the handling of the drug offender. It examines practical difficulties that surface when dealing with drug offenders who are processed through the criminal justice system. Of special importance is the problems created when the offender's drug dependence is not detected by the authorities and functionaries in the system. It also addresses the issue of treatment difficulties within the prison setting.

**Chapter 10** is the culmination of the previous chapters in the form of a model developed by the researcher to deal with the handling of the drug offender within the criminal justice system. The model is based upon a multidisciplinary, management approach, and incorporates the penological objectives of punishment.

In **Chapter 11** the researcher comes to a conclusion based upon the findings of the study and makes various recommendations pertaining to the establishment and maintenance of an effective **drug model**.

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**CHAPTER TWO**  
**THEORETICAL PERSPECTIVE ON THE HANDLING OF THE DRUG**  
**OFFENDER IN THE CRIMINAL JUSTICE SYSTEM**

### **2.1 INTRODUCTION**

It is a society's social and moral obligation to punish and rehabilitate those offenders it deems a threat both to the community and to themselves (Reichel 1994:114). In order to comply with this moral obligation a theoretical or practical approach may be applied to meet the requirements of a scientific point of departure and to be practically relevant. In this chapter the researcher utilises certain components of the systems theory to describe the manner in which the criminal justice system processes drug offenders. For this purpose, the researcher uses the systems theory as illustrated by Boulding (Becvar & Becvar 1982:2) when he says that it acts as a "skeleton of science by which to provide a framework or structure of systems on which to hang the flesh of the subject in an orderly corpus of knowledge". The argument under discussion contains the theoretical basis of the punishment and treatment of drug offenders and incorporates the latter ideals.

### **2.2 THE HANDLING OF THE DRUG OFFENDER FROM A SYSTEMIC APPROACH**

Many different systems exist in society. In Parsons' systems theory four systems can be identified (Wallace & Wolf 1980:24). The systems that exist are:

- cultural systems

- ⦿social systems
- ⦿personality systems
- ⦿behavioural organism systems.

The **cultural system** within society consists of religious beliefs, national values and languages. According to Ovens (1992:44) Parsons' views this system as the mechanism by which the individual internalizes society's values and incorporates them with his own ideas. On this level the drug offender may or may not accept the values of society. According to Mertons' **Anomie theory**, the drug offender rejects both the society's cultural goals as well as the institutional means available to him. Drug abuse may, therefore, be a symptom of a general rejection of society. The offenders entrance into crime, however, is a direct rejection of society and its norms and values. While society cannot punish the drug user for using substances, it may do so when he or she infringes upon the rights of other members of the community and becomes a direct threat.

Parsons' systems theory can be utilised to illustrate how society deals with members who deviate and contravene its laws and who pose a threat to the community. In society a **social system** exists where role interaction is based. Parsons (Parsons & Bales 1955:8) states that: "A **social system** consists of a plurality of individual actors, interacting with each other in a situation that has at least a physical or environmental aspect". This **social system** can therefore consist of any interpersonal interaction from a two-way relationship to the relationship in a formal setting, such as a court. These actors who are motivated in terms of a tendency to the optimization of gratification and

whose relation to the situations, and each other, is defined and mediated in terms of culturally structured and shared symbols (Wallace & Wolf 1980:24).

According to Parsons the **personality system** consists of an individual actor, the human whose main focus is on his own needs, motives, attitudes and motivation of gratification (Wallace & Wolf 1980:26). It is on this level that role players in the criminal justice system interact with the drug offender. In society sanctions and rewards are used in a group context to "influence and shape" the behaviour of group members (Schmallegger 1995:6). This process is also known as **social control**. According to Schmallegger (1995:6) **social control** is the "primary concern of social groups and communities, and it is the interest that human groups hold in the exercise of social control that leads to the creation of both civil and criminal statutes". Thus when the individual's drug use impacts on the rest of the community and is deemed to be a threat to society, **social control** takes place when the community acts against the offender. The drug offender is thus channelled into another system in society, namely the criminal justice system.

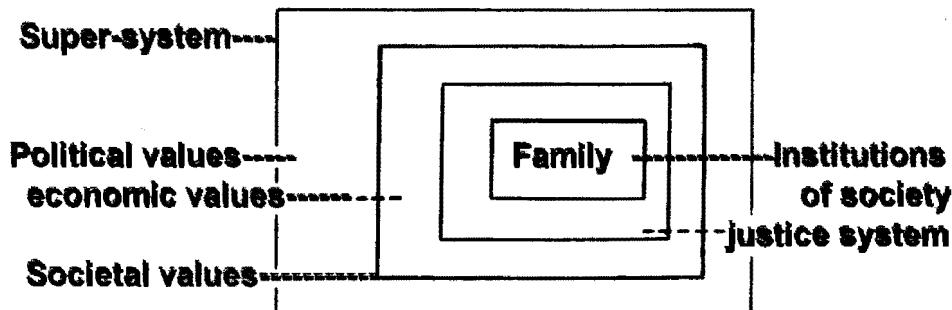
The systemic approach also explains the individual from a **behavioural organism** perspective. This system explains the individual's organic and physical environment. According to Parsons' theory of deviance if a disequilibrium occurs on this level deviant behaviour may result (Parsons & Bales 1955:7). In the case of the drug offender, the use of psychoactive substances affects both the individual's organic (physic and psychic) being and his environment. Thus, the drug user may commit crime as a result of the substance (the mood altering effect of the psychoactive

substance on his behaviour), or in an attempt to gain access to illegal substances.

In terms of Parsons theory the drug dependant offender may be equated with the individual actor whose needs and motivation of gratification will mainly concern a drug dependency. The behavioural changes brought about by the drugs may be a direct or indirect causality of this deviant behaviour. Parsons believes that in order for a society to survive, a certain equilibrium must be maintained (Wallace & Wolf 1980:34). This means that by applying Parsons' ideas, a state of balance must be maintained within society. Any deviant actions by a member or any contravention of its formal rules and regulations (laws) will cause a disequilibrium that can only be corrected by the punishment of such an offender. Thus formal laws and the driving mechanism thereof, namely the criminal justice system, are utilised by society as a means to protect itself and maintain the status quo.

The systems theory further describes interpersonal processes and the observable dynamics that occur when elements of a system interact. It also considers aspects such as systemic boundaries and the communication therein. According to Gil (1979:30) this theory consists of a super-system in the form of a circular structure.

Diagram 2.1 illustrates this super-system:



**Diagram 2.1: The super-system of society**

Within this circular structure the political, economic and societal values are found.

Another ring exists within this structure. This ring is defined by the institutions of the society in which it is placed. It is in this circle that the criminal justice system is found.

The diagram also illustrates how the criminal justice system is influenced by current and dominant political, economic and societal values. In the criminal justice system, further sub-systems are encountered. These are:

- ⇒ law enforcement
- ⇒ the prosecution
- ⇒ the courts
- ⇒ the correctional component.

Like any other system, the criminal justice system can also be seen as a unit consisting of various parts. According to Holten and Jones (Neser 1993:49) the various components of the system work towards a "specific common objective". Although

each system can be seen as an identifiable whole and has specific activities, objectives, functions and environments that distinguish it from other systems, it is important to remember that these aspects can be influenced by other systems. On the other hand Gil (1979:30), argues that systems also differ in their degree of organization. Some are well integrated and function smoothly, while others are characterized by a high degree of disorganization. The components of the system also determine the level of organisation and functioning thereof. The systems approach illustrates the dynamics of society as a system consisting of various sub-systems. These range from the smallest, the informal family setting, to larger more formal and complex structures such as the criminal justice system. All systems also have various components that either link them to other subsystems or which make them unique and unlike other subsystems. The following are components that characterise a system:

- ☞ boundaries
- ☞ communication
- ☞ relationships
- ☞ input and output
- ☞ entropy
- ☞ adaptation mechanisms.

Each system also exists within larger systems (Ovens 1992 :54). Studying the criminal justice system as a system within society is thus necessary. Thus, for purposes of this study the criminal justice system is seen as a component or subsystem of a larger network (supra system, i.e. society) and is influenced by the social processes and social structure thereof.

The systemic approach to the criminal justice system thus meets the aim of this study (aim 3), namely **to identify a theoretical approach by which to handle the drug offender within society and specifically, the criminal justice system.**

## **2.3 WHAT IS CRIMINAL JUSTICE?**

Prior to examining criminal justice as a system it is important to ascertain the meaning of criminal justice. Criminal justice and civil justice are aspects of a wider form of equity known as social justice. "Social justice is a concept that embraces all aspects of civilised life. It is linked to notions of fairness and to cultural beliefs about right and wrong...in the abstract, the concept of social justice embodies the highest personal and cultural ideals" (Cilliers 1997:3).

The problem created by the concept of **social justice** is the relativity thereof. Most modern societies are heterogenous, especially the South African society that consists of a melting pot of different nationalities and cultures. Cultural beliefs thus differ from group to group.

Criminal justice on the other side, deals with aspects of social justice, which concern the violation of criminal law. Cilliers (1997:4) illustrates the complexity of the function of criminal law. He postulates that while community interests demand that criminal justice apprehend and punish law violators, it must still ensure that it protects the innocent, treats offenders fairly and with dignity, and maintains fair play within the various components of the system (Further discussed in Section 2.5).

## **2.4 CRIMINAL JUSTICE AS A SYSTEM**

The systems model of criminal justice, postulates Cilliers (1997:9) is primarily characterised by the assumption that the components thereof function as a unit in order to achieve the wider purpose of "justice". He uses Benjamin Disraeli, the famous British philosopher and statesman's definition of justice, namely "truth in action".

In order for criminal justice to be seen as a system that strives for truth, the unit under analysis must have **processes** and **networks**. The **processes** involve decisions and actions taken by an institution (criminal justice system), the offender, victim and society. These decisions and actions influence the offender's movement into, through, and out of the justice system. Peak (1995:6) from the Department of Criminal Justice at the University of Nevada, believes that the failure to deal effectively with crime can be attributed to what he describes as the "organisational and administrative fragmentation among the components of the process, within the individual components, among political jurisdictions, and between persons". On the other side criminal justice also consists of a **network**. Peak (1995:6) describes this network as a ***three-dimensional model*** in which the public, legislators, police, prosecutors, judges, and correctional officials function in interaction with each other. It is seen as a three-dimensional model because some duties are shared by all role players, while others only fall under the jurisdiction of one or more component. For example, a common goal is justice and the fair handling of offenders. Specialised aims are the court component's task of sentencing offenders and that of the correctional component towards the safe incarceration of inmates.

According to Raine and Willson (1993:56) the most popular model of criminal justice is derived from the systems theory. It is utilised to illustrate the criminal justice system as an organised and complex whole, consisting of an assemblage or combination of things or parts that form a complex or unitary whole (Raine & Willson 1993:56). Cilliers (1997:9) extends the use of the model to that of a tool of analysis. According to this scientist the systems model of criminal justice serves as an analytical tool rather than being a reality. He postulates that any analytical model, be it in the so-called "hard sciences" or in the social sciences, is simply a convention chosen for its explanatory power. By explaining the actions of criminal justice officials (such as arrest, prosecution and sentencing) as though they are systematically related, it is possible to envision a fairly smooth and predictable process. The advantage gained from this convention is a reduction in complexity, which allows for the illustration of the totality of criminal justice at a conceptually manageable level.

The value of the use of the systemic approach to criminal justice lies in the fact that each level of the hierarchy can be conceptualised in order to reveal the communication of information that takes place to maintain the balance or homeostasis of the system. Another important characteristic that makes it suitable is its ability to identify the properties created by the introduction of less structured systems and their connection to each other. An example hereof is the increased use of community-based facilities and a greater level of community interest and involvement in the criminal justice system. This eventually results in the whole becoming larger than the sum of the parts (Raine & Willson 1993:57). The systems theory allows for the description of activities within the criminal justice system and explains the organisation within boundaries (See

Section 2.5.2 ). These boundaries in turn, illustrate the domain of its organisational activities. According to Raine and Willson (1993:57) the conceptualisation of criminal justice as a system enabled the visualisation of the working relationship between the role players and the various components of the system. A systemic approach allows for interdependencies and agreements to develop between the police, prosecution and correctional facilitators.

The criminal justice system, as with any other system, is characterised by specific structures, boundaries, inputs and outputs, entropy and adaptation. As postulated by Schmallegger (1997:19) and Neser (1993:56), it is important that these components function as a whole and strive towards a common objective in order to function as a unit or as a system, and not as a non-system.

Schmallegger (1997:19) believes that components of a system may either function well together or may come into conflict with each other. When conflict takes place, it may be seen as a non-system. According to Neser (1993:56) the criminal justice system may be viewed as a non-system when the functional tasks of the various components interfere with the aspiration towards the common goal thereof, namely the prevention and ultimately the control of crime. The criminal justice system may also be seen as a non-system when ineffective liaison and co-operation takes place within the system's various components. Ideological differences between role players in the system may also result in a non-system. Cilliers (1997:11) postulates that although the size of the criminal justice system makes effective co-operation between the various components and role players difficult, if the common goal of justice is served it will function as an

effective system.

Cavadino and Dignan (1997:6) at the Centre for Criminological and Legal Research at the University of Sheffield, believe that all criminal justice systems, and especially the English system, are unsystematic. They advocate that the various components work in isolation from each other and are not subjected to overall co-ordination or strategic control. From this perspective they view the criminal justice system as a non-system. However, they believe that the subsystems' interdependence lies in their tasks and functions which "intimately affect each other and they need to be studied within this context of interdependency" (Cavadino & Dignan 1997:6).

Raine and Willson (1993:62) raise the following points of criticism against the systems model. They argue that the definition, that examines the boundaries of the justice system, does not incorporate voluntary organisations and local authorities. The authors' do not elaborate upon this point and the researcher disagrees with their view. By means of application of the theory, the criminal justice system is part of a wider system, that is the society that it represents and strives to serve and protect. Why then would the community be exempt from the criminal justice system? The researcher believes that the larger society has an important and integral role to play in the smooth functioning of the system and must support it to ensure its success. The second point that Raine and Willson (1993:63) raise is that system thinking excludes the actual activities that make the system flow. They describe a situation in which conflict between role players arises which counteracts the smooth flow of cases and results in a bottle neck situation within the system. The researcher believes that if all involved

work together towards a common goal, namely justice (exercising of authority in the maintenance of rights), this critique may be overcome. No system is perfect, effort and will alone will prevail.

This point is corroborated by the ***consensus model*** that holds that the various components of the criminal justice system work together harmoniously to produce the social product of "***justice***" (Schmallegger 1997:18). The model assumes that all components of the criminal justice system strive towards a common goal, and the flow of cases through the system takes place as a result of co-operation between the role players within the various components (Cilliers 1997:9). The ***consensus model*** thus substantiates the view of the systemic approach.

## **2.5 COMPONENTS OF THE CRIMINAL JUSTICE SYSTEM**

The justice system and the components thereof, cannot function in isolation. The process must be maintained throughout the system. As Peak (1995:6) advocates although each component may operate in a vacuum, any actions and reactions which take place may affect the rest of the system. For example the early release of dangerous and unprepared offenders by the correctional component will have an impact on the police and the community that will be re-exposed to the criminal element. Peak (1995:6) views the criminal justice systems' failure to deal effectively with crime as a result of an "organisational and administrative fragmentation of the justice process". This fragmentation to which he refers may take place among components of the process, within individual components, among political jurisdictions and between

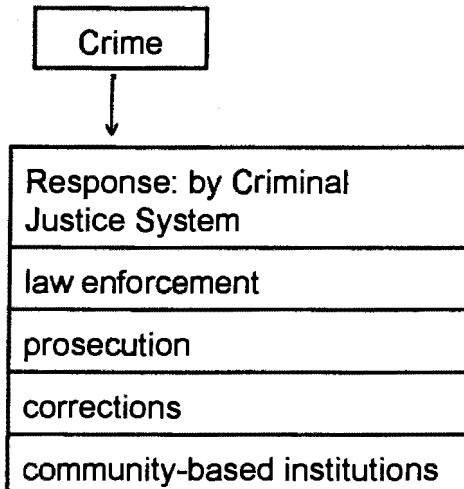
officials.

### **2.5.1 Structure of the criminal justice system**

Schmallegger (1997:18), the Director of the Justice Research Association, defines the criminal justice system as “the aggregate of all cooperating and administrative or technical support agencies that perform criminal justice functions”. His definition is wide and encompasses both informal (community-based organisations) and formal (law enforcement, courts and corrections) components.

Regoli and Hewitt (1997:3) bring in a further dimension to the definition. They extend the definition of the criminal justice system and focus on the relativity of society’s perceptions of crime and punishment. They believe that, when studying the criminal justice system, an understanding of the historical and social context of crime and justice is imperative. They postulate that the criminal justice system is a “complex of interrelated subsystems of the police, courts, and corrections created to respond to crime” (Regoli and Hewitt 1996:3).

Diagram 2.2 illustrates the criminal justice systems response to crime. When the offender deviates from the norms of society certain processes take place to restore order. The offender, once arrested, is processed through the various systems within the wider criminal justice system.



**Diagram 2.2: The criminal justice systems response to crime**

Nesers' (1993:50) description of the structure of the criminal justice system comprises of four components. His view corresponds to the diagram above and he adds a court component to the prosecutorial level. From his perspective the function of the prosecution is to charge and prosecute the alleged offender. It is, thus, the function of the court component to react on the charges brought about by the prosecution. The court component determines the guilt or innocence of the alleged offender, and the appropriate reaction thereto, in the form of punishment. The correctional component deals with the offender once the sentencing process has taken place. As Neser (1993:50) states this involves the infliction of both punishment and the handling and treatment of the offender in order to facilitate behavioural change within the prisoner. The latter are formal mechanisms within the system. Due to the current flexibility of the system and the continuous search for alternative methods for dealing with offenders (both in and outside the traditional criminal justice system), the researcher has included an informal level to the system, namely the community-based level. The community-based system, which moves away from the traditional to a more

contemporary perspective, facilitates the larger involvement of the community. The offender is thus in closer interaction with the community he has wronged.

Community involvement goes a step further. In order for the State to comply with the norms, values and expectations of the community regarding crime prevention and the reintegration of the released offender, the State cannot operate in isolation but should rather have the willing participation and commitment of the community. Examples of community involvement in the criminal justice system can be evaluated against the development, functioning and operation of community policing and the reintegration process of offender handling and treatment. In these operations the community stands in a central position in assisting, volunteering and the marketing of a well balanced criminal justice system. This shows that the community is part of the criminal justice system and that the boundary between the two systems is permeable from both sides.

### **2.5.2 Boundaries of the criminal justice system**

All systems are characterised by boundaries. According to Becvar & Becvar (1982:10) these boundaries are defined by "redundant patterns of behaviour which characterise the relationships within the system and by those values which are sufficiently distinct as to give a system its particular identity". Boundaries separate the system from its environment yet are sometimes permeable and let through inputs and outputs. The boundaries of the criminal justice system, are the region through which inputs and outputs pass. If a system accepts too much information from outside, its boundaries will become indistinct and difficult to discern from other systems. However, if it is too

rigid, it will not be able to process information received from the environment effectively. It may become isolated and outdated and will not allow data or new ideas to be integrated. In order for proper functioning of the criminal justice system to take place, Land and Kenneally (1977:15) postulate that these boundaries must be clear, allowing contact between members thereof and other role players in the environment such as community-based organisations. If boundaries are blurred, the differentiation of the system diffuses, and members encounter problems adapting. If boundaries are too rigid communication becomes difficult.

According to Neser (1993:54) it is difficult to demarcate or set up the boundaries of a correctional system, and the researcher believes the same is applicable to the other components of the criminal justice system such as the police and prosecution. Neser (1993:54) states that because of the increase in community interest and input, and because of a greater need for community involvement and co-operation, the boundaries tend to blur. These boundaries are further influenced by communication and information gained from the criminal justice system.

### **2.5.3 Communication and information in the criminal justice system**

Two communication methods can be identified within the criminal justice system, namely ***verbal*** or ***non-verbal communication***. ***Verbal communication*** consists of words or labels which are used to transmit information. This element is considered the least powerful in any relationship in the system. ***Non-verbal communication***, however, is the command or relationship defining mode of communication. These are

the voice tone, gestures, facial expressions and body posture which give meaning to the speaker's words. According to Becvar and Becvar (1982:12) these aspects of *non-verbal* communication, communicate to the receiver of the message what to do with it. The **context** is associated with the *non-verbal* communication, and a change in the **context** will bring about a change in the rules of the relationship. Together *non-verbal* communication and **context** form the **analog**. According to Metal (1977:53) communication provides two kinds of information. It indicates either a normality or an abnormality. However, according to Sherif and Sherif (1969:486) the importance of the communication lies rather in what the receiver does with the information. These early social scientists (Sherif & Sherif 1969) believe that the implication of the message received from the speaker and the likelihood of attitudinal change in the listener rests on the latter's evaluation thereof. If the message is pleasing and fair, and within the range of positions that can be assimilated, it may be positively accepted. If the communications fall outside the latitude of acceptance they will produce a negative effect or little effect at all. The implication hereof, in the handling and treatment of the drug offender is to communicate on such a level that the message (and treatment) will be accepted positively and thus be assimilated into the individual's psychological make-up. The latter authors thus postulate that if the individual is susceptible to change at all, any communication advocating positions within his latitude of acceptance will produce the greatest change. The implication of this ideal in the handling and treatment of the drug offender thus reflects that if the offender has any desire to change and be rehabilitated, positive communication may have the desired effect. The drug offender will thus be motivated to bring about personal change and reformation if communication is positively perceived.

It is a prerequisite that communication and information within the criminal justice system be adapted to the requirements as set by the above authors (Sherif & Sherif 1969:487). On a verbal level, the age of technology and rapid evolution of communication systems such as computers, modems, the Internet, facsimiles and cellular phones has created a closer communication network between the components of the criminal justice system. This enables the establishment and maintenance of a central data base to assist in the function of justice. Data pertaining to crime and the offender's involved can be kept up to date and can be immediately available to role players (workers) in the justice system. Communication between role players is made easier and as Schmallegger (1995:643) states these technological innovations allow for the reduction of crime, just and equitable administration of justice and relief from overcrowding of the system. The latter author also envisages the use of biomedical intervention for future drug offenders. Chemical substances may thus replace conventional methods to reform and treat this category of offender. While the advancement of communication methods has certain positive advantages for the system, on the down side, these new powerful technologies also have disadvantages. They produce further challenges to the already stressed criminal justice systems. Advanced technological methods and tools merely add to the problem of drug production and distribution, making it easier for drug producers and traders to manufacture or grow and distribute these substances. Schmallegger (1995:645) also predicts that advanced technology and legislation designed to control the drug problem, will lead to the creation of new forms of crimes. This, in turn, may lead to the creation of a new kind of legal system.

The reemergence of human rights and the **Constitution of the Republic of South**

**Africa , Act 108 of 1996**, function on both a verbal and non-verbal level. Non-verbally these mechanisms allow for the humane and fair treatment of both role players (workers) in the field of criminal justice and offenders' being processed thereby. On a verbal level they stipulate rigid laws which have implications for the treatment and handling of drug offenders. **Section 9 (1) of the Constitution of the Republic of South Africa , Act 108 of 1996** determines that every individual is equal before the law and has the right to equal protection and benefit of the law. This lays the foundation for the human and dignified treatment of both offenders' and victims of crime. **Section 34 of the Constitution of the Republic of South Africa , Act 108 of 1996** allows each individual to have access to court in order to settle disputes and to have a fair public hearing before an independent and impartial forum. These two sections determine and ensure that each drug offender receives a fair trial, and that the sentence and treatment which follows should also be based on these objectives.

Through interaction with other systems, or a lack thereof, a further form of communication is found. All living systems have some degree of exchange with the other systems in the environment. Becvar and Becvar (1982:14) postulate that a system accepts only input which is necessary for its continued existence. Entropy occurs when there is little or no energy or information which passes into the system. It is thus closed to influences or people who do not belong to it. Becvar and Becvar (1982:14) explain that while no system is totally closed, there are those which are more private than others. According to Metal (1977:57) systems which tend to be closed do not exchange materials, information and energy with their environment. This system will have limited contact with individuals outside the unit and will receive little

emotional, social and intellectual stimulation from the environment. "Closed systems do not utilize these offerings from their environment, but rather operate as self sufficient entities, they are characterized by what is known as "entropy" (Metal 1977:57). In other words, the energy flow in a "closed system" eventually becomes disordered and incapable of functioning effectively. By this example the criminal justice system would be rigidly controlled by a bureaucratic authority and leaders and functionaries who have little contact with the community.

As Metal (1977:59) argues, within this closed system the environment is not accepted to improve the systems performance or to modify goals which have been set. He adds that the system will suffer entropy because of problems caused by it being incapable of meeting the changing needs and constraints of its environment. The danger of entropy is that the system has a negative effect on the other subsystems and can affect the rest of society. Thus, an ineffective criminal justice system would result in an increase in crime rates and would thus not meet its ultimate objective, namely; to protect society. Minuchin (1974:55) also discusses the effect that a subsystem can have on the wider system (the community) when he postulates that the behaviour of one member has an immediate effect on others, and that stresses can flow across the systems boundaries into other subsystems. Thus an ineffective criminal justice system would contribute to higher crime rates and it would not achieve its objective of protecting society.

#### **2.5.4 Dynamics of the criminal justice system**

The dynamics of the criminal justice system are characterised by the level of interaction which takes place between the various components, that is between the police, courts and correctional systems and between the different sections within each of these. These systems are fed or driven by inputs which they receive from society or from other components of the criminal justice system. Input such as norms and values from the environment are accepted and influence the functioning of the specific system. In turn the system produces outputs. Outputs can be in the form of a product or information which is given out by the system. In the case of the drug offender, the society turns the offender over to the criminal justice system to be dealt with. The society's output (the deviant member) becomes the criminal justice systems input, to be dealt with and punished. The offender carries out the sentence metered by the court, and on release can be viewed as an output of the system. Neser (1993:51) postulates that inputs, outputs and the resulting feedback create a fluency of movement within the system and make up the dynamics thereof. When offenders are processed through the courts quickly and are incarcerated in suitable facilities, this can be seen as a fluency within the criminal justice system. However, modern criminal justice systems are characterised by a bottle necking of cases being processed through the courts and eventually prisons are overcrowded. Thus, the increase of crime in society is producing too many inputs to be dealt with by the criminal justice system.

According to Holten and Jones (Neser 1993:51) two types of inputs are *supportive inputs* and *inputs by means of claims*. The source of criminal justice system inputs

stem from the broader state system and range from financial and physical support to the community's moral support. Positive outputs from the criminal justice system are the detection and arrest of offenders, charging and sentencing and finally, the release of the offender. Failure to fulfil the latter functions can be seen as negative outputs.

Peak (1995:22) states that any organisation or system takes inputs, processes them, and thus produces outputs. In the criminal justice system for example the drug offender will be processed through the system (input). By doing so successfully, like any other system, the justice system attempts to satisfy the "customer", in this case the victim or society in general. The manner in which society reacts to the criminal justice system's outputs can be seen as feedback. When the criminal justice system turns out rehabilitated ex-offenders who return to society and become law abiding citizens, society gives positive feedback and has faith in the system created to protect them. However, when those released return to crime and therefore harm society, the community lose their faith in the criminal justice system and view it as a system that creates negative feedback. The criminal justice system must, therefore, adapt and change to satisfy the needs of its client (society).

### **2.5.5 Adaptation within criminal justice systems**

According to the systems theory, adaptation constantly takes place within a system. Changes created by the systems own members, as well as outside pressure, can have an impact on the members which requires a constant transformation of their position. This takes place in order for this system to maintain continuity (Minuchin 1974:60).

According to Benjamin Disraeli, in as early as 1867 he wrote “***Change is inevitable. In a progressive country change is constant.***” (Raine & Willson 1993:25). This change to which Disraeli refers can be seen within the relativity of punishment and the changing approaches and philosophies to the punishment, handling and treatment of offenders throughout the ages. These constant changes are an indication of the various criminal justice systems ability to change. The pressures of society and the changing needs, values and norms, place pressure on the criminal justice system and force it to change to accommodate these aspects. As Cilliers (1997:15) postulates demographic, ideological, and behavioural transformations within society have placed pressure on criminal justice systems to change. Examples he quotes are the changed perception towards victimless crime. This is clearly reflected in the decriminalisation of sex work in South Africa and a universal cry to decriminalise “soft drugs” such as dagga (marijuana). Society’s concern regarding the increase in drug use and drug-related crime in South Africa is a clear and direct example of the relevance of the ability of systemic adaptation to this particular study. This adaptation can be seen from a historical study of international drug policy (Chapters 4-8).

#### **2.5.5.1 Changing treatment approaches**

The various criminal justice systems worldwide, show many different treatment policies. Treatment policies evolve and change with time, and are influenced by social, economic, and political factors. Criminal justice systems constantly search for effective ways to deal with and reduce the use of drugs and eliminate drug-related crimes (Mackenzie & Uchida 1994:6). The following chronological chart depicts the various

scientific approaches to the treatment of drug offenders since 1875. The diagram reflects the models of approach utilised, with special reference to the American system.

DATE	MODEL or APPROACH	CREATION & IMPLICATION
1875	Control model	San Francisco Ordinance
1937	Drug prohibition model	Harrison Act and Marijuana Tax Act
1961	Medical model	Joint Commission of America Bar Association
1962	Decriminalisation approach	Robinson vs California: led to the decriminalisation of drug dependency
1970	Nothing works approach	
1972	Diversion from the Criminal Justice system	California Diversion Statute
1977	Justice model	Joint Commission of New York Drug Law: get tough on drugs
1992	Control model	National Commission on Substance Abuse & Habitual Behaviour
1995	New Penological approach	Management of groups of offenders and systems planning ( by implication the management of change within the individual)

### **Diagram 2.3: Changing philosophies in the handling of drug offenders**

The diagram above reflects the changing philosophies and approaches in the handling of drug offences in the United States of America since 1875. The aim of the diagram is to illustrate the relativity of philosophies with regard to the punishment and handling of drug offenders (Chapter 3). This chart will be referred to in the following chapters

where the application of the various drug policies, in the selected countries, is discussed.

Musto (1994:1), a professor of psychiatry and an expert on drug-related matters, views the lack of consensus and divergent drug policies worldwide as the greatest impediment in the fight against drugs. Further, Musto postulates that even if all nations could meet to discuss a standardised drug policy, they would still encounter problems in formulation. Cultural attitudes vary concerning the use of drugs and many smaller countries lack the funds to generate anti-drug campaigns.

The United Nations division dealing with the handling of the offender and the prevention of crime and the Council of Europe are currently involved in the creation of a world policy and standard treaties for the handling of the drug offender. In October 1997 the United Nations targeted South Africa, and other African countries such as Mocambique and Kenya, for research on ***The Drug Nexus in Africa***. This United Nations Drug Control Programme (UNDCP) study on Africa will be conducted by Tim Ryan, a senior scientist, and the Medical Research Council. The international workshop held in South Africa on the "**The illicit drug trade in Southern Africa**" during June 1997, also reflects the concern of both domestic and overseas experts. Findings from the workshop reflect that both functionaries and politicians realise that a drug centred policy cannot operate in isolation, but that it requires the input of different cultures, values and legislation. Thus, a united approach as advocated by Musto (1994:1), must be adopted in the fight against drugs.

## **2.6 FUNCTIONS OF THE MAJOR COMPONENTS OF THE CRIMINAL JUSTICE SYSTEM**

According to literature dealing with the components of the criminal justice system, two different schools of thought regarding the functions of the components of the criminal justice system exist. More popular is the ***traditional*** view, while others' such as King (Raine & Willson 1993:113) uphold a ***radical*** perspective. Cilliers (1997:4) describes the following ***traditional*** functions as they are filled by the law enforcement, court and correctional components of the criminal justice system:

### **2.6.1 Law enforcement**

These functions are fulfilled by police agencies at a municipal, provincial and national level:

- ☞ Prevention of criminal behaviour
- ☞ The reduction of crime
- ☞ The apprehension and arrest of offenders
- ☞ To protect life and property
- ☞ The regulation of non-criminal conduct.

According to **Section 205 of the Constitution of the Republic of South Africa , Act 108 of 1996**, the national police service must be structured in order to function on a national, provincial and local sphere. It proposes that national legislation must set out its powers and functions clearly for it to discharge its responsibilities effectively.

Section 205(3) stipulates that the objectives of the police are to prevent, combat and investigate crime, to maintain public order, to protect and secure the inhabitants of the Republic and their property and to uphold and enforce the law.

It is thus the duty of the police to apprehend and arrest drug offenders in order to maintain public order and protect the community. Their duties further include the safe detention of the accused until such time as the accused is processed into the next system, that is the prosecutorial component.

## **2.6.2 Courts**

Various countries have police officials who also serve a prosecutorial function. These are Bangladesh, Fiji, Nepal, New Zealand, and for this study, Australia (Report of the Third United Nations Survey 1992:20). The other countries under examination within this study, utilise the court component of the criminal justice system by which to prosecute offenders. The court includes the judicial agencies at all levels of government that perform the following tasks in the administration of criminal justice:

- Protection of the accused's rights
- To determine the accused's guilt by all available legal means
- To dispose of the property of those convicted of crimes
- The protection of society
- To prevent and reduce criminal behaviour.

According to **Section 165 of the Constitution of the Republic of South Africa, Act**

**108 of 1996** the judicial authority of the Republic is vested in the courts. The courts are independent and subject only to the Constitution and the law, which they must apply impartially and without fear, favour or prejudice. The act further deems that no person or organ of state may interfere with the functioning of the courts and that these organs should by legislation or other means, be assisted and protected to ensure their independence, impartiality, dignity, accessibility and effectiveness. According to Section 165 (5) any order or decision issued by the court is binding to all persons and organs of state to which it applies.

**Section 180 of the Constitution of the Republic of South Africa, Act 108 of 1996** makes further provisions which are relevant to the handling of drug offenders and has implications for positive changes and the successful implementation of a treatment model. **Section 180 (a)** makes provision for the creation of training programmes for judicial officers. Thus specialised training in the handling of drug offenders can be applied and available options for sentencing by functionaries dealing with this category of offender can be tried and tested. The researcher believes that if this training is offered in a setting which facilitates an interaction between all role players dealing with drug offenders, it could further contribute to the successful handling of drug offenders.

**Section 180 (c)** has further implications for the inclusion of other experts in the court process. This section stipulates that other persons may participate in court decisions. This allows for the use and input of probation officers, social workers, criminologists and experts on presentence reports.

### **2.6.3 Corrections**

The correctional component is responsible for the following tasks both directly and indirectly:

- The maintenance of institutions
- The protection of law abiding members of society
- The reformation of offenders
- To deter offenders from committing further crime.

Corrections are not pertinently referred to in the Constitution but for purposes of this study a general point of departure will be used. Thus the latter direct and indirect tasks listed are seen as the main objectives of the Department of Correctional Services. According to the proposed **Correctional Services Bill** of 1998 the purpose of the correctional system is to contribute to the maintenance and protection of a just, peaceful and safe society by means of:

- ⇒ the enforcement of court sentences in the manner prescribed by the Act
- ⇒ the detention of all prisoners in safe custody and ensuring their human dignity
- ⇒ promoting the social responsibility and human development of all prisoners and persons subject to community corrections.

According to Heyes and King (1996:19), prisons are dynamic organisations which are subjected to continual internal and external influences which constantly bring about change. It is this characteristic which the researcher believes, makes it possible for these institutions to adapt to changing times and changing policy.

The researcher utilises the ***radical*** point of view to illustrate a different approach to the functions of the criminal justice system. King (Raine & Willson 1993:115) discusses the **social function** of criminal justice and he developed six theoretical approaches towards the social function of criminal justice. These theoretical approaches are ***similar*** to the penological motives of punishment in that they include:

- ⇒ the motives of justice
- ⇒ punishment
- ⇒ rehabilitation
- ⇒ management of crime and criminals,

and that they differ when they include:

- ⇒ denunciation and degradation
- ⇒ the maintenance of class domination.

In his model King (Raine & Willson 1993:54) concentrates on the models social function, the process model and its implications for the court process. The researcher believes the effect on the correctional component would be the same as it is on the court level, and thus adds this aspect to his model.

LEVELS	SOCIAL FUNCTION	PROCESS MODEL	FEATURE IN CRIMINAL JUSTICE SYSTEM
LEVEL 1	Justice	<i>Due process model</i>	<ul style="list-style-type: none"> <li>* equity between parties</li> <li>* restraint of arbitrary power</li> <li>* presumption of innocence</li> </ul>
LEVEL 2	Punish-ment	<i>Crime control model</i>	<ul style="list-style-type: none"> <li>* disregard of legal controls</li> <li>* implicit presumption of guilt</li> <li>* high conviction rate</li> <li>* support for police</li> </ul>
LEVEL 3	Rehabil-itation	<i>Medical model (diagnosis, prediction and treatment selection)</i>	<ul style="list-style-type: none"> <li>* information collection</li> <li>* individualisation</li> <li>* treatment presumption</li> <li>* discretion of decision-makers</li> <li>* expertise of decision-makers</li> </ul>
LEVEL 4	Manage-ment of crime and criminals	<i>Bureaucratic model</i>	<ul style="list-style-type: none"> <li>* independence from politics</li> <li>* speed and efficiency</li> <li>* minimisation of expense</li> <li>* economical division of labour</li> </ul>
LEVEL 5	Denun-ciation and degrad-ation	<i>Status passage model</i>	<ul style="list-style-type: none"> <li>* public shaming of defendant</li> <li>* court values reflecting community values</li> <li>* agents control over process</li> </ul>
LEVEL 6	Mainte-nance of class domi-nation	<i>Power model</i>	<ul style="list-style-type: none"> <li>* reinforcement of class values</li> <li>* alienation of defendant</li> <li>* deflection of attention from class conflict</li> </ul>

**Diagram 2.4: Kings' theoretical models and features thereof**

The first four views held by King (Raine & Willson 1993:54) correspond to those traditionally held by penologists. He illustrates the strive towards justice and the

objectives of punishment and rehabilitation followed by criminal justice systems. What he omits is the penal motives of deterrence and prevention. His fourth level, namely the management of crime and criminals, falls within the new paradigm towards punishment resulting from an overburdened and overcrowded criminal justice system. It is on the fifth and sixth levels that he transgresses from the ***traditional*** approach. Here he adopts a ***radical approach*** and views the social function of justice as that of denunciation and degradation and the maintenance of class domination. This view corresponds with those of the social theorists such as Carl Marx, Horkheimer, Fromm and Mills (Wallace & Wolf 1980:87-135). These critical theorists (so named because of their criticism of the establishment) see society consisting of a "ruling class" or a "power elite" who possessed the power to exploit and manipulate the masses. They view the cause of crime as stemming from a unicause, namely as an attempt to gain access to what they do not have. They describe punishment as a means to dominate those who do not have power. Bureaucracy is seen as a tool whereby the ruling class manipulate the world. This view corresponds with Bartollas's (1985:14) view on the radical perspective on corrections where advocates hold that treatment within correctional settings encourage the continued abuse of offenders within the criminal justice system. They view criminals as "a class that is alienated, powerless, and prone to economic manipulation" (Bartollas 1985:14). In other words, it is society, rather than the criminal, that is in need of radical change.

According to the literature on the legalisation of drug use and through consultation with drug offenders, it is reflected that many drug offenders (especially marijuana users) believe that drug use should be legalised. They view sanctions as a mechanism

whereby society enforces its rules and values upon them. They view drug use as a personal choice and believe that any legal action against them should be seen as an infringement of their human rights. Therefore, it is necessary to include a ***conflict perspective*** to a discussion of the handling of drug offenders. This perspective sees the structure and shape of a society as the direct cause of conflicts between its members. Additional grounds acknowledged are the existence of scarce resources or power differentials between authorities and subjects, or divergent norms and values (Barlow 1993:504-508). From this perspective the drug offender may be seen against the existing structure of society, its norms and values and even the lack of scarce resources. This situation may lead or contribute to a state of conflict within the individual which may lead him to start using drugs or to continue therewith.

The ***conflict perspective*** is also applicable when a legal system is not based upon a system of equality for all members of a society. This point is not relevant in the South African scenario as the ***Constitution of the Republic of South Africa, Act 108 of 1996*** places much emphasis on equality. (Section 9 of the Constitution).

According to Raines and Willson (1993:55) experts in the field of criminal justice in the United Kingdom, the first three models in King's table are **participant models**. They postulate that often these approaches are used together, to be mutually beneficial to the justice process. They give the example of the use of the ***due process model*** with the ***bureaucratic model***. Most approaches, however, are not exclusive and are used in combination.

## **2.7 CRIMINAL JUSTICE AS A PROCESS**

Some authors' view the criminal justice system as a **process** rather than a "system".

According to Peak (1995:5) if one examines the current operations and fragmentation within many criminal justice systems, it is more apt to refer to criminal justice as a **process**. Peak (1995:5) postulates that as a **process**, it involves all decisions and actions taken by anyone involved with the justice system (institution, offender, victim and society). This process is governed by laws. According to Schmallegger (1995:25) the due process of law in criminal proceedings, normally includes the following elements, namely a law which creates the particular offence (defines the act as such), an impartial tribunal which has jurisdictional authority over the case, accusation in proper form, notice and opportunity to defend oneself, trial according to established procedure and discharge from all restraints or obligations unless convicted. These elements are all addressed in the South African Constitution.

According to Peak (1995:14) criminal justice has two goals. The first is the desire to enforce the law and maintain social order, and the second aims to protect individuals from injustice. The second goal encapsulates **due process** and is the central theme of the **due process model**. This ensures that the facts of each individual case are considered and that innocent persons are not convicted of crimes that they did not commit.

There are exponents who believe that these two goals are in opposition with one another. Schmallegger (1997:26) and Peak (1995:14) believe that the achievement of

justice is sometimes to the detriment of due process.

## 2.8 THE MANAGEMENT OF THE CRIMINAL JUSTICE SYSTEM

Management of criminal justice systems worldwide is increasingly being placed under pressure. According to Raine and Willson (1993:23) rising workloads and tight resourcing have become a challenge to the management of the systems within the criminal justice system. This is due to various factors ranging from a lack of, or insufficiently training personnel, overcrowding of the system, the high demand for relevant offender training programmes and inefficient communication between the different components within the criminal justice system. The late 1990's have resulted in the adoption of a "more business-like approach" to the running of and management of criminal justice systems in first world countries (Raine & Willson 1993:23). This can be seen in the privatisation of prisons, especially in England, and more recently in South Africa.

Management has various definitions. Peak (1995:28) mentions management as the "process of influencing the activities of an individual or a group in efforts toward goal achievement in a given situation". He also sees it as working with and through individuals and groups to accomplish organisational (system) goals. Raine & Willson (1993:51-214) believe that it is time for criminal justice agencies to enter an era of serving justice, applying crime control, and social justice. They describe the change from a previous ***administrative paradigm*** to the emerging ***management paradigm*** where role players are actively involved with the setting of objectives, targets,

monitoring and increasingly emphasizing efficiency and parsimony. They postulate that managerialism also brings about a restoration in the balance of values. Management thus strives to balance the interests of the various parties involved whilst minimising delays and using available resources efficiently.

Raine and Willson (1993:216), however, are of the opinion that a new paradigm must be sought for the management of criminal justice. They believe more emphasis should be placed on problem solving rather than on process, and that local control should be dispersed rather than hierarchical. They further elaborate that "We must manage criminal justice in a way that also preserves what we value about the process, especially the independence of the judiciary. In the urgency to address present concerns, we must beware of compromising our future" (Raine & Willson 1993:230).

## **2.9 CRIMINAL JUSTICE AS A SYSTEM IN THE COMMUNITY**

Although the criminal justice system was created by society's need to protect itself from members who posed a threat to its structure and well-being, often the relationship between the two is stressed. The public view the system as ineffective when crime and violence in society increases. It is the researcher's view that a greater community involvement is essential to ensure the successful functioning of the justice system. According to the systems theory when the environment in which a subsystem exists is supportive, creative adaptation and growth will take place, but when the environment is not protective it deprives the system of stimuli and stress can result. Growth and adaptive functions are also prohibited (Becvar & Becvar 1982:82).

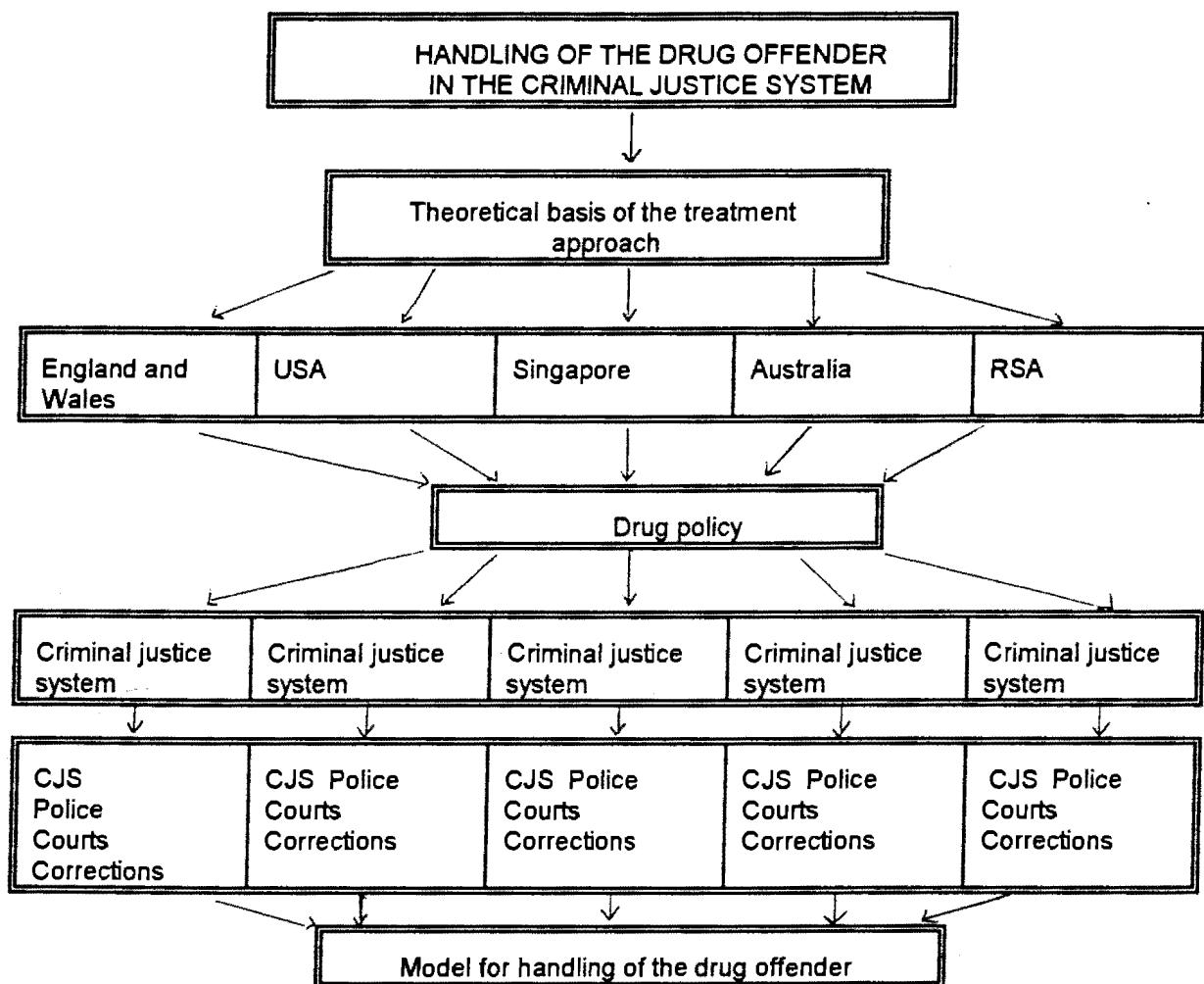
It is necessary for society to accept and support the justice system. "The greater the involvement of the community in the system, the greater the chances of success" (Neser 1993:421). This concept creates problems however, because although the State has a moral obligation to protect society and to support and compensate the victims of crime, no moral obligation exists on the part of the community to support the criminal justice system. This obligation is not addressed by the Constitution and therefore, it is a personal, voluntary choice which exists as to whether a member of society supports the criminal justice system or not.

Society is generally reluctant to become involved. Regoli and Hewitt (1996:651) professors in sociology and criminal justice respectively, explain that while communities call for a "get tough with offenders" approach because of the increase in crime, few want correctional facilities to be built near their homes.

## **2.10 THEORETICAL FRAMEWORK FOR THE TREATMENT OF THE DRUG OFFENDER : A SYSTEMIC APPROACH**

Based on the systemic approach to the criminal justice system the following framework or model will be utilised to illustrate the handling of the drug offender. According to Lin (1976:43) a model of a theory "...differs from the theory in that it lacks the complexity of a theoretical structure and that it may represent a single preposition containing merely a selected number of concepts or variables in the theoretical structure... and certain parts of the theory are missing". Thus this model represents aspects of the systems theory relevant to the topic under discussion.

The following diagram is a theoretical framework that the researcher will utilise to analyse the criminal justice systems of England and Wales, the United States of America, Singapore, Australia and South Africa.



**Diagram 2.5: Systemic approach to the handling of the drug offender**

The latter diagram must be seen against the background sketched in Section 2.1 to 2.7. Each country under discussion will be discussed from a systemic approach. The theoretical approaches to the handling of drug offenders in the specific country will be discussed from a historical perspective. Thus, early approaches and the underlying

rationale, will be examined as they took place in the past and as they are applied today. This study reflects the relativity of punishment and penal motives and shows how these aspects influence and regulate the current drug policy in the different countries. The researcher will also briefly discuss the structure and functioning of the various countries criminal justice systems in order to illustrate the movement of the drug offender within the criminal justice system. The researcher aims to identify valid and workable strategies and models for the handling of drug offenders from the countries selected for this study, in order to develop a suitable model for the handling of the drug offender in the South African context (See Chapter 8).

### **2.10.1 The theoretical basis of a treatment approach**

The theoretical basis of the treatment approach infers the motive behind the punishment of the drug offender. The traditional motives for punishment are retribution, deterrence, protection, rehabilitation and crime prevention (Chapter 10). One or more of these motives may lay the basis for the method of dealing with the offender. A country's punitive motive usually forms the basis of its drug policy. The relativity of penal motives is thus reflected in the changing drug policies. According to Martinson (1977:518) the rehabilitative ideal is sometimes not efficient. He postulates that the "rehabilitative strategy" strives for the protection of society by imposing a series of "treatments" on the sentenced offender. This treatment may become draconian and may even "offend the moral order of a democratic society". The researcher believes that with the reemergence of human rights in the late 1990's, these two perspectives will surely clash in their application both globally, and especially in South Africa.

## **2.10.2 Drug policy**

The drug policy followed by a particular country determines the manner in which the Criminal justice system processes the drug offender. Drug policy forms the basis of the modus operandi which the particular system applies to deal with the drug offender. By implication if the drug policy is based on the theoretical basis of the medical model, the drug policy will emphasize the treatment of the drug offender. Thus, the emphasis is on rehabilitation, rather than punishment. If the Justice model forms the underpinning of the philosophical approach, a stricter approach to offenders handling is adopted and punitive sanctions become harsher (Chapter 3).

According to Newburn (1995:1), the head of the Policies Studies Institute in London, the necessity exists for the extension of the scope of drug research. He postulates that drug policy should be included because it incorporates the work of the police and the treatment of offenders in the criminal justice system. At the **Illegal Drug Trade workshop** held at the University of the Witwatersrand In South Africa in June 1997, speakers unanimously agreed that drug policy from other countries should be examined in order to adopt a suitable drug policy for the South African scenario. The experts attending agreed that the trial and error process which other countries (first and third world) have undergone, can serve as a basis for the creation of a suitable policy (Rao 1997, Lautenbach 1997, Baynham 1997). The researcher adheres to the guideline set by Newburn (1995) and the latter exponents. An evaluation is done of the drug policy of each country chosen for this study to serves as a basis for the development of a suitable approach for the South African context.

### **2.10.3 The criminal justice system**

Crime control and justice are the main goals of any criminal justice system (Report of the Third United Nations Survey on Crime Trends 1992:20). It is the researcher's aim to develop a handling method for drug offenders which enables the control of the problem and facilitates justice for all.

When examining any criminal justice system, it is necessary to keep in mind that various external factors will influence the system. These factors will have a definite impact on the system and its method of operation (Hirschel & Wakefield 1995:7). The views of Raine and Willson (1993:53) substantiate this point. They state that the rules and procedures regulating crime in society and which address justice reflect and express the profound and often contradictory sentiments of society. They believe that it is imperative to study crime and criminal justice in the social and political context in which they occur. According to Rhyan & Sim (1995:95) the evolution of penal policy does not take place within a vacuum, but is influenced by wider political, social and economic concerns. Thus, in this study of the handling of the drug offender, it will be necessary to consider that aspects in the country's cultural heritage, social and economic factors and its political and governmental frameworks, have contributed to the nature and functioning of its criminal justice system. These aspects will also affect the drug policy adopted by the particular country. For purpose of this study of the handling of the drug offender, the criminal justice system will be utilised as it functions on three levels. The first is the pretrial phase which incorporates the police service. The second is the trial phase that deals with both the prosecutorial component and

sentencing, and the third is the post-trial phase that examines the correctional component. (See Section 2.6).

#### **2.10.4 Models for the handling of drug offenders**

The researcher will examine the various approaches and methods for the handling of drug offenders, used by the different countries. It is the researcher's goal to develop a model based on these models. The aim is to select the positive and effective aspects that arise from these models to develop a multidimensional and multidisciplinary model.

The researcher derived the rationale from the study of the drug policies of the various countries. In many studies of drug policy, findings reveal that current drug policies are not adequate (Rao 1997, Lautenbach 1997, Baynham 1997). According to Brookes (1996:49) an American Professor of Law, the American system has failed to deal with drugs effectively. He believes that of all the proponents, Britain possibly has the best system. Thus, the researcher believes that it is necessary to avoid duplication and that the need exists to develop a model based on the tried and tested methods that many exponents have deemed suitable.

### **2.11 CONCLUSION**

The theoretical approaches and principles as they are discussed above, form the basis for the discussion of the various countries approaches to the handling of the drug offender. The following chapters are based upon these principles as the discuss the views adopted in England and Wales, the United States of America, Australia,

Singapore and South Africa. However, the researcher will first examine the past (traditional) and present (contemporary) theoretical approaches to the handling of the drug offender.

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## **CHAPTER THREE**

### **APPROACHES TO THE HANDLING OF THE DRUG OFFENDER**

#### **3.1 INTRODUCTION**

According to Archambeault and Archambeault (1982:164) the "goals, scope of services, standards, functions and directions of any correctional agency or institution are shaped by its policy". The policy adopted by any system is normally the current dominant policy and is in line with both public and criminal justice policy. Public attitudes about crime, criminals, prisons and methods of dealing with these issues change over time. In the past decades, criminal justice agencies have been required to adjust to dramatic shifts in public policies concerning crime, criminals and the application of punishment through imprisonment. The public has changed its thinking about what causes people to commit crime, what type of sentences offenders should receive and the actual purpose of corrections. These changes are reflected in the different approaches towards the treatment of offenders in general and in specific the treatment of drug offenders. For purposes of this study the researcher will examine both **traditional** and the **contemporary** approaches to the handling of the drug offender.

#### **3.2 DIVERGENT TRADITIONAL APPROACHES TO THE TREATMENT OF DRUG OFFENDERS**

In his publication in 1970, entitled "*The structure of scientific revolution*", Thomas Kuhn makes the accurate assessment that society finds itself in a perpetual theoretical

paradigm revolution. By this he implies and describes the radical rethinking which takes place concerning the philosophical and theoretical assumptions about the causes of crime and society's response to this deviance (Archambeault & Archambeault 1982:150). Kuhn also notes that these changes occur at a greater pace than in previous centuries. He states that where the impact, definition and emergence of new ideas took hundreds or even thousands of years to complete in previous years, this century, however, is characterised by rapid changes in penal policy and in theoretical and ideological paradigms. This trend can be seen in the changing theoretical approaches towards the handling of drug offenders throughout the past decades.

In the past, and still at present many structures exist which deal with drug offenders and drug using offenders. This trend will become apparent in Chapters 4-8 that deal with the various countries drug policy's and the approaches they have adopted for the handling of their drug offenders. The choice of approach, when dealing with this category of offenders rests on the aim of the system applying the punishment. When substance abusers are incarcerated, establishing a differentiation between punishment and treatment is necessary. To quote Travis (Torres 1996:19), a social scientist who made an extensive study on American correctional systems, "This differentiation between punishment and treatment appears logical in principle. In reality, however, the distinction is not so simple. First, treatment, like punishment, often involves suffering or discomfort. The goals are different, however: one is therapeutic and the other is punitive". The researcher believes it thus necessary to decide whether treatment or punishment is the ultimate aim or, if indeed a combination of the two is not a solution to the problem. Baylis (Madden 1968:56), a professor of philosophy alludes to the

overlap between punishment and treatment, in his critical and analytical enquiry into the justification of punishment. Baylis postulates that in order to treat any offender therapeutically, a measure of deterrence and confinement, as well as some pain and suffering, both mental and physical, should be endured. However, he distinguishes between the notions of punishment and treatment. Punishment is retributive and means the deliberate infliction of suffering while punishment aims at rehabilitation and reform and only uses deterrence and pain as means to realise its goals. He believes that mental treatment should follow analogous principles based upon medical treatment.

A study by Haas and Alpert (Torres 1996:22) suggests that offenders who stop using psychoactive substances, have a lower rate of committing crime. Thus, an appropriate treatment model could reduce the crime and recidivism rate among substance users. The traditional and contemporary models and approaches as illustrated by Smalleger (1997:442) are important to the handling of the drug offender. They are the six traditional theoretical frameworks, the medical model, the rational choice model, the justice model, the modern rehabilitation philosophy and the new penological perspective. Often they are not suitable in their entirety but elements or aspects of it are of value for the effective treatment and rehabilitation of the drug offender. The researcher will first discuss the ***traditional theoretical frameworks*** that exist for the handling of offenders. These form the basis or foundation upon which the various models and treatment philosophies are based. Various views exist on these approaches. According to Archambeault and Archambeault (1982:164) only two important models have existed since the 1940's. They view the medical model applied

from 1930 to 1974 and the justice model from 1974 to 1983, as the most important paradigms within the traditional period. Schmalleger (1997: 442-456) includes and gives credit to many more models. He identifies six models that existed and were applied since 1890. The following table illustrates Schmalleger's six *traditional theoretical frameworks*. He makes a finer distinction between the models and philosophies and shows the subtle changes that took place.

Era	Period in time	Model, philosophy or prison
1890-1935	Industrial Prison Era	Sing-sing, San Quentin, Auburn and Illinois State Penitentiary
1935-1945	Punitive Era	"Out of sight, out of mind" philosophy
1945-1967	Era of Treatment	Medical model
1967-1980	Community-based Format	Decarceration and Halfway Houses
1980-1995	Warehousing/Overcrowding	"Nothing works" doctrine
1995- 1997	Just Deserts Era	Justice model

**Table 3.1: Schmalleger's six traditional theoretical frameworks**

The latter table is based upon the American system that has played an important role in defining and guiding the drug policies of other countries. In the *Industrial Era*, factors such as the failure of the reformatory style prison, and problems with security

and discipline led to the use of inmate labour. Industrial prisons were profitable and competed in the labour market. In 1935 a moratorium was placed on free market prison industries that forced the authorities to adopt alternative strategies. Custody and institutional security became the central themes and resulted in the ***era of punitive custody***. Proponents believed that prisoners owed a debt to society that could only be repaid by a “rigorous period of confinement” (Schmalleger 1997:444). Little emphasis was placed upon education, treatment and work programmes. This era came to an end after the Second World War, when a renewed interest in corrections and reformation took place. The latest behavioural techniques were used within the psychiatric or ***medical approach*** to punishment. In practice treatment during this era was more an ideal than a reality and the model came under criticism from functionaries. An increase in the prison population and overcrowding of penal facilities gave way to the creation of the ***community-based era*** to deal with the social problem of crime. Terms such as *deinstitutionalisation, diversion and decarceration*, were coined and halfway houses and work release programmes became popular. The high recidivism rate of the late 1970's led to a general feeling of “nothing works”. Offenders were merely ***warehoused*** in a desire to prevent recurrent crime. Consequently the prison population grew dramatically and resulted in overcrowding. According to the *American Bar Association*, drug offenders were a major part of the problem and society stepped up its punitive strategy towards this category of offenders. Authorities became aware that they could not cope with the problem any longer. Both public and official frustration with rehabilitation efforts led to the ***just deserts era***. *The justice model* was adopted. The underlying principle became the assumption that the individual acted ~~on~~ his or her own accord and was therefore liable and fully deserved the punishment

imposed.

The medical model and the justice model form the basis of two of the traditional theoretical frameworks the researcher will briefly examine as they are the most relevant to the treatment and rehabilitation ideal.

### **3.3 TRADITIONAL THEORETICAL FRAMEWORKS**

The following traditional theoretical frameworks will be discussed with special emphasis on their views on the handling of the drug offender:

#### **3.3.1 The medical model**

Schmallegger (1997:447) defines the medical model as a theoretical framework for the handling of prisoners, which held that offenders were "sick" and that they could be treated and "cured" by their exposure to behavioural and other appropriate forms of therapy. Between the years of 1945 and 1967, in which the medical model flourished, became known as the *treatment era* (Schmallegger 1997:445). The medical model made its appearance in the 1920's under the leadership of psychiatrists who believed that the success in offender rehabilitation lay in the treatment of these offenders as sick individuals within a hospital-like setting (Bartollas 1985:8). According to Regoli and Hewitt (1996:571) although the seeds of the medical model had already been sown in the late nineteenth century, it only became popular in the 1930's. With its adoption the aim of corrections became that of rehabilitation. Offenders' criminal acts were seen as

signal of distress and were viewed as signs of society's failure. Menninger (Regoli and Hewitt 1996:571), a leading psychiatrist at the time, contributed to the idea that prisons should be transformed into hospitals where offenders' could receive treatment.

According to Torres (1996:18) the medical model rose from a positivistic tradition that aimed to apply the appropriate correctional response by exposing the underlying causes of the deviant behaviour. Bartollas (1985:10) states that this very aim contributed to the model coming under criticism. While emphasis was placed on the diagnosis of the offender's problem, the psychiatrists making the diagnosis did not develop and apply rehabilitation programmes as tools by which to deal with the problems diagnosed. In other words, the psychiatrists were unable to translate their broad explanations of criminality into specific recommendations for a cure. This error within the model deflected the actual value of the model, namely; that it brought about a renewed interest in the fair and humane treatment of the offender.

As Bartollas (1985:10) postulates that the model revived the ideal of the treatment of the offender rather than the mere application of punishment. At its conception the medical model appeared modern and scientific in contrast to the philosophy of "an eye for an eye". It aimed to restore the community's deviants to useful and acceptable members of society through professional intervention. This focus on the individual's problem (the treatment of the offender) was also seen as an easier task than dealing with the social, economic and political causes of crime.

Allen's (Bartollas 1985:34) classical essays on the rehabilitative ideal highlighted the

following basic assumptions of the medical model:

- ☒ human behaviour is the product of antecedent causes
- ☒ it is the scientist's obligation to discover these causes
- ☒ knowledge of these causes makes it possible to control human behaviour
- ☒ measures utilised to treat the offender should bring about behavioural changes in the interests of his own health, happiness and satisfaction.

Thus, in the handling of the drug offender a greater knowledge of the relationship between drug offenders, drug abuse and the resulting criminal activity is necessary prior to attempting rehabilitation. Further, it is imperative that the offender co-operates and that any change he undergoes is in the interest of his health and wellbeing.

Archambeault and Archambeault (1982:150) give two reasons for the decline in the popularity of the medical model. They believe that research and a change in criminological theory resulted in the criticism and downfall of this previously popular model of treatment. Research of the validity of the medical model led to its loss of popularity in the 1970's when evaluative research was conducted by various exponents such as Martinson, Ward, Bailey and Lerman (Archambeault & Archambeault 1982:150). Their findings on the effectiveness of correctional treatment reflected that no significant differential improvement took place in those offenders receiving correctional treatment and showed that little improvement in recidivism rates was recorded either. A change in criminological theory contributed to much criticism of the medical model. Criminological theory was influenced by the work of Matza and emerging conflict theory and deterrence theories revealed a new direction in thought.

The new paradigms that became popular were that crime was a rational adaptation to social conditions and that deviance was a result of the perpetrators free will (Archambeault & Archambeault 1982:150). Therefore, the underpinning of the model, namely that of determinism, was challenged by the emergence of indeterminism and free choice.

Conrad (Bartollas 1985:x) criticises the works of the latter scientists and especially that of Martinson. He believes that Martinson and other scientists missed the value of the medical model in their attack thereof. Conrad states that an error was made, not in the use of the medical model but rather, in the application of this model to a condition that was viewed as a sickness. He believes that the value of the model exists in its approach to the handling of the offender. A culture of ***self improvement*** should exist within correctional settings in which the offender works to earn his keep. The term ***self improvement*** is central to this study of the handling of the drug offender. The researcher believes that no amount of rehabilitation, and not even the most successful treatment model, will succeed if the offender is not motivated to change or does not have the desire to stop using psychoactive substances. Thus, the emphasis in any treatment paradigm must be centred on ***self improvement***.

The theme of ***self improvement*** is also central in Neser's argument. Neser (1993:230) is of the opinion that the medical model is based on a simplistic premise that the attitude and behaviour of all offenders can be changed. The very environment in which this change is expected to take place, the prison environment, makes the application of the principles of treatment with a view to successful adjustment in the

community unsuccessful. Changing the environment to facilitate rehabilitation is thus necessary. As Bartollas (1985:10) postulates, the brutal and inhumane environment of a prison is not the place in which treatment can effectively be applied and absorbed. Bartollas (1985:26) states that this model also stipulates that punishment should be avoided at all costs as it further reinforces the offender's negative self concept. This further contributes to the theme of ***self improvement***.

Another flaw in the medical model is that it enables the offender to manipulate the system. Fox and Stinchcomb (1995:33) state that inmates fake behavioural changes in order to be considered for early release. This can result in high recidivism figures as these offenders cannot maintain the facade for long. Upon release they are likely to be unable to cope with their freedom and may resort to criminal activities.

According to Torres (1996:20) a further flaw in the medical model rests in its assumption that the drug offender is "sick". Torres postulates that the offender is more likely to be normal than sick. He sees the offender's behaviour as a sign of a maladaptation rather than an "illness". Thus, he views the approach to treatment as incorrect. The value of the underlying ideal however, cannot be discredited.

The medical or disease model views drug and alcohol abuse and crime as pathological conditions that need to be addressed by means of treatment. It places the burden on society to reform offenders and to return them to the society as law abiding citizens (Fox & Stinchcomb 1995:32). The latter authors state that even though the medical model has lost its popularity, a belief still exists that the treatment of offenders is

beneficial to both the offender and the community. The modern view accounts a higher level of responsibility upon the offender and recognises that rehabilitation must take place on a voluntary basis and that it cannot be forced on the offender. Thus, the role of personal motivation in successful rehabilitation is acknowledged.

The value in the model further lies in the philosophy and belief that through humane treatment and professional intervention members of society who were once failures could be transformed into law-abiding citizens. When dealing with the drug-using offender (who may be dependant on psychoactive substance) it is necessary to address the environment in which the individual is to be incarcerated and in which the treatment will take place. This environment must facilitate treatment and change in the offender.

The true extent of the relationship between the medical model and drug treatment cannot be seen historically as drug use during the late nineteenth century up until the 1950's was not viewed as a major problem. At the time that the medical model was vogue, drug dependency and drug offenders were not viewed as a social problem (Regoli & Hewitt 1996:11). It is only early in the twentieth century that the use of heroin, cocaine and marijuana, was defined as a criminal act in the United States and only in 1970 and onwards, was it seen as a social problem. Thus the researcher is of the opinion that the real value of the model lies untested. Perhaps it would be a more valid model and its paradigmatic value would be more apparent in our current social setup in which drugs and drug related crimes are viewed a major social problem.

According to Schmallegger (1997:448) the **treatment era** was more an ideal than a reality. While many treatment programmes existed at the time, the criminal justice systems were not of such a nature that they could facilitate the successful functioning thereof. As Schmallegger states role players such as guards and administrators were primarily concerned with custody and were not equipped to provide treatment. It would thus, be necessary to change the motivation of role players and to upgrade their training and qualifications if a treatment approach was to be adopted. Thus for the effective treatment of drug offenders to take place within correctional facilities it would be necessary to incarcerate the drug offender in a prison adapted to enable such treatment. Staff and persons dealing with this category of offenders must have the necessary training and background to treat both the drug dependency and criminal and deviant behaviour displayed by the offender.

While the medical model is based on the assumption that the offender has no free choice in his actions and that he may often not be responsible for his behaviour, the rational choice model is in contradiction to this approach.

### **3.3.2 The rational choice model**

The rational choice model follows the premise that crime is a result of a choice made by the offender and thus stems from a *free will*. This classical explanation of crime sees the outcome of such deviant behaviour as *just desert* taking place in punishment (Torres 1996:18). According to this model the drug offender deserves to be punished. Torres (1996:18) eloquently states that "individual responsibility is a fundamental

ingredient of this correctional philosophy". The problem with the utilisation of this theory in an approach to handling the drug offender is the essence of the drug offender. Various authors indicate that the drug offender is untrustworthy (Torres 1996:20). This study adopts the approach that the drug offender acted out of free choice although the drug may have contributed to the offence. The researcher is of the opinion that the applied treatment model must place emphasis on the offender's ability to accept responsibility for his behaviour and drug abuse. *This free will philosophy* also forms the basis of the justice model.

### **3.3.3 The justice model**

The justice model is a model of imprisonment in which the principle of just deserts forms the underlying social philosophy (Schmallegger 1997:453). Its aims are to legally and humanely control the offender under the conditions of the sentence by means of supervision or incarceration and to provide voluntary treatment to offenders. The emphasis is placed on the voluntary nature of any treatment undergone (Archambeault & Archambeault 1982:166).

Fogel (1979:188) is seen as the father of the justice model. He states that this correctional model is an adaptation of Cahn's "consumer perspective". This perspective examines the active remedial process of preventing crimes that create a sense of injustice. He views the purpose of the prison as a means to reorient an offender to become law-abiding by operationalising justice. He does not make specific recommendations concerning the treatment of drug offenders. This may be because

drugs and drug-related crimes did not pose such a serious threat to society as they do at present.

According to Cavadino and Dignan (1997:49) the justice model developed as a result of a critique of the positivistic "individualised treatment model" in the 1970's. Where the "individualised treatment model" identified the cause of crime stemming from a pathology within the individual, the justice model believed it was as a result of a structural cause. They blamed the organisation of society for the crime that took place. They saw society as systematically discriminatory, with wide discrimination vested in the supposed "experts" in the system, applied upon the disadvantaged offenders from poorer sections of society. A lack of due process and proportionality in treatment models, as well as unfairness and the infringement of human rights were issues highlighted and addressed by the justice model.

The justice model is strongly influenced by Beccaria's classic view to crime and punishment. Central themes that structure and guide this model are firstly ***due process*** in procedure and the limitation of official discretion within the criminal justice system, and secondly, the proportionality of punishment to the gravity of the offence (Cavadino & Dignan 1997:49).

The effect that this approach has on the handling and treatment of the drug offender is that it views him as responsible for his own behaviour, and although it does advocate his treatment with respect and dignity, he is held accountable for his actions and wrongdoings. This view holds that it is the drug offenders choice whether to undergo

treatment or not. This is corroborated by Archambeault and Archambeault (1982:165) who stipulate that this model views the offender as capable of rational thought. The offenders drug use is seen as a means to adapt to conditions in society. Neser (1993:237) postulates that prior to the adoption of the justice approach rehabilitation and rehabilitation attempts were regarded with suspicion, and treatment was seen as a possible means by which offenders could be unfairly treated and brutalised. The ***justice model***, on the other hand, allows offenders to make a choice whether to undergo treatment or not.

The objectives of punishment and treatment are viewed as separate issues in the justice model. Treatment is seen as beneficial to the offender and his wellbeing, yet of little value to the State, while punishment is for the good of the State, and not for the offender (Archambeault & Archambeault 1982:167). The latter authors measure treatment in terms of the good it does the offender by his or her own standards and punishment by the seriousness of the offence in terms of time and conditions of the sentence. They thus postulate that the offenders willingness to participate in rehabilitation and the success of the treatment should never affect the amount of punishment imposed. The researcher tends to disagree with this ideology and follows the belief that the rehabilitation of an offender is to the community's benefit. If change and acceptance of the social and moral norms, values and laws takes place, the offender should no longer be a threat to society. Thus, the treatment is beneficial to society. On the other side punishment, without a desired change in the offender is futile and pointless. The offender is released back into the community and again deviates from the socially accepted norms, values and laws. Thus he becomes a threat

to society once again.

Fox and Stinchcomb (1995:661) believe that the implications of current drug issues and the return to the justice model, can be seen as a result of society's response to criminal behaviour. Increased concern about drug-related crime and society's belief that current policy is inadequate, has contributed to the adoption of tougher sanctions and harsher punishments for drug offenders. Thus society makes use of the justice model in an attempt to solve its problems.

### **3.3.4 The modern rehabilitation philosophy**

While the rehabilitation ideal has been equated to the medical model, its difference lies in the fact that it has two further philosophical underpinnings which are not present in the medical model. The modern rehabilitation philosophy is based upon the *medical model* as well as the *adjustment* and *reintegration model*. According to Bartollas (1985:210) the central goal of the rehabilitation philosophy is to bring about change within the offender, to change attitudes and behavioural patterns and to decrease criminality. By utilising the philosophical underpinnings of the medical, adjustment and reintegration models this is aimed for.

According to Cullen and Gilbert (1996:325) the value of rehabilitation has been lost by society's preoccupation with both past and existing rehabilitation and treatment programmes which may have been flawed. They believe that this should not detract from the true value of treatment and they still believe in the notion that offenders should

be "saved and not simply punished". These proponents put forward reasons why they advocate for and support the rehabilitation philosophy. They believe that rehabilitation is the only justification of criminal sanctioning that obligates the State to care for the offender's needs or welfare. Cullen and Gilbert (1996:325) state that society should punish its offenders humanely. By meeting this objective the State in turn is protecting society. They also postulate that it provides an important rationale for opposing the assumption that increased repression will reduce crime. Cullen and Gilbert (1996:325) also believe that a rehabilitative stance should therefore adopt Menniger's view of ***the punishment of crime*** and not the ***crime of punishment*** as does happen. Society's "captives" do not have to be dehumanised by trying to bring about stricter control measures in penal facilities. Cullen and Gilbert (1996:329) further advocate that support of rehabilitation should remain a major goal of any correctional system. Rehabilitation provides reformers with a valuable vocabulary with which to justify changes in both policy and practice. Examples given are the use of diversion and community-based options to bring about these changes.

When rehabilitation came under attack in the 1970's proponents thereof did not back down and admit defeat. Instead they tried to find new ways to improve offender rehabilitation (Bartollas 1985:21).

### **3.4 CONTEMPORARY TREATMENT APPROACHES FOR DRUG OFFENDERS**

The following are more recent theoretical approaches adopted for offender handling:

### **3.4.1 The new penological perspective**

The new penological perspective differs from the traditional approaches already discussed in that it does not design penal measures for the particular needs of either individuals or groups but rather sorts individuals into groups according to the degree of control warranted by their risk profiles. According to Feeley and Simon (1996:371) it focuses on statistical prediction, concern with groups of offenders and searches for new strategies of management. They note that although these elements of discourse, may result in a level of repetitiveness because of their similarity, they facilitate each other. By implication this means that when individuals are placed into distinct and independent categories to attain a measure of normality, the idea of normal becomes irrelevant. The norm no longer functions as a criteria for success. Rather the aim of the criminal justice system focuses on the efficiency of its own outputs and places a premium on methods utilised to carry out risk screening, placement and monitoring of a particular group of offenders.

By application the use of this new discourse in the handling of the drug offender would thus place emphasis on the management of this group of individuals. Their drug use would qualify their separate detention after careful screening. Any placement would be based on and consider their drug use and dependancy within a system which would attempt to manage the problem.

The **new penology** moves away from the ***medical model*** as it replaces the moral or clinical description of offenders with an actuarial language of probabilistic calculations

and statistical distributions which it applies to the population. It views the offender from a perspective of strict liability and no-fault. The doctrine re-emphasises the management of offenders and the maintenance of public safety. The new penology thus emphasises the penal objectives of retribution and the protection of society. The **new penology** is characterised by a greater emphasis on systemisation and formal rationality. This may pose a suitable solution for the ever increasing burden placed on the criminal justice system.

### 3.4.1.1 The new objectives

According to Feeley and Simon (1996:368) the **new penology** does not aim to punish offenders or rehabilitate them but rather focuses on the management of unruly groups of individuals from a managerial perspective. It follows a normative perspective which facilitates the ever increasing level of crime within societies today. Rather than looking at the recidivism rate as a measure of its failure, it sees the reintegration of offenders as a sign of its success. Thus the criminal justice system has had to adapt its philosophy to accommodate the increase in crime and to manage it more effectively. According to Feeley and Simon (1996:369) this new discourse is a sign of society's lowered expectations of the penal system resulting in past failures to accomplish the ambitious promises made by previous philosophies and systems.

The **new penology** thus looks at initiating more cost effective ways to police and sanction a continually deviant society by classifying, sorting and managing offenders. It does not aim to eliminate crime but rather to make it tolerable through systematic co-

ordination. It places a renewed interest in the theory of incapacitation whereby it aims to reduce the effects of crime on society not by altering either the offender or the social context but rather, by rearranging the distribution of offenders in society. The **new penological perspective** does not believe that the prison environment is able to rehabilitate offenders and only views it as a means of detention. With regard to drug offenders, it sees drug testing as more important than drug treatment.

If the **new penological perspective** is utilised and alternatives to incarceration are sought it will have an impact on the sentencing of offenders and theoretical issues such as legislative policies, characteristics of courts and jurisdictions and political attitudes of judges will have to be addressed (Woolredge & Gordon 1997:122). The alternatives available to judges and magistrates and their attitude towards such alternatives would have to be addressed. Legislative policies would have to be implemented which enable and make suitable recommendations for alternative policies for drug offenders. With regard to the court structure it may mean that large formal courts may have more formal structures and that different courts with different presiding officers will contribute to disparate sentences being imposed.

### **3.5 CONCLUSION**

After a careful study of the various treatment approaches adopted for the handling of drug offenders through the ages, it becomes apparent that this field has led to much discourse and dissent. Fox and Stinchcomb (1995:496) postulate that greater efforts are needed for the treatment and rehabilitation of drug offenders in the criminal justice

system in order to be assisted back into "a productive lifestyle". McMurran (1996:209) a psychologist from the United Kingdom working with drug offenders, offers a solution to the problem. She postulates that the emphasis, when working with any category of offender, should be to reduce the likelihood of the individual committing further offences. When working with the drug offender it is necessary to design appropriate and effective intervention and treatment methods which will reduce the use of psychoactive substances (McMurran 1996 (b): 211). She believes that the adoption of a simplistic approach would be inefficient. Rather, McMurran advocates for the use of adequate risk assessment and risk management in the handling of the substance using offender. This view is in line with the new penological approach which deals with the management of the drug offender as a client in the legal system. These theoretical and contemporary approaches to offender handling can be seen in the following chapters which look at the approaches to offender handling in the United Kingdom, the United States of America, Singapore, Australia and South Africa. The first system under discussion is the English and Welsh systems.

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## **CHAPTER FOUR**

### **THE HANDLING OF THE DRUG OFFENDER IN THE BRITISH CRIMINAL JUSTICE SYSTEM**

#### **4.1 INTRODUCTION**

The United Kingdom of Great Britain covers an area of approximately 242,533 square kilometres. It consists of England, Wales, Scotland and Northern Ireland. For purposes of this study only the English and Welsh systems will be examined. The exclusion of Scotland and Northern Ireland is due to the different nature of their criminal justice systems. Their criminal justice and penal systems differ radically from those of England and Wales (Downes 1988:1). In this chapter the drug problem in England and Wales is examined. The historical development of British drug policy covers the period from 1893 and the researcher includes contemporary handling methods for drug offenders from their inception into the criminal justice system up to their final release.

#### **4.2 THE DRUG PROBLEM IN ENGLAND AND WALES**

In 1988, Stimon (Downes 1988:126) estimated that there were more than 60,000 regular drug users and even more casual users within England and Wales. In 1992, the *British Crime Survey* (Hirschel & Wakefield 1995:58-59) reflected that approximately 14 percent of the population had reported to have used cannabis, two percent cocaine and one percent crack or heroin. A further four percent reported to

have used amphetamines and LSD at a stage.

According to Castree (1996:6) the Greater Manchester Police's assistant chief constable and secretary of the **Association of Chief Police Officers' Crime Committee's Drug Subcommittee**, statistics for 1994 showed a 50 per cent increase in seizures involving Ecstasy, and that 1996 showed similar trends. He postulates that from the number of confiscations of crack and cocaine, it suggests a rapid growth in the supply and the problematic use thereof within society.

#### 4.3 HISTORICAL DEVELOPMENT OF BRITISH DRUG POLICY

A shift in the penal paradigm is clearly seen within England and Wales if one examines their continually changing drug policy. As early as 1893, a British 3,281-page, seven-volume classic report on the marijuana problem in India was published. The conclusion of the report was "Viewing the subject generally, it may be added that use of these drugs is the rule, and that the excessive use is comparatively exceptional. The moderate use produces practically no ill effects" (Schaffer 1997:1). Schaffer (1997:1) is of the opinion that since publication the authorities have still not proven the report's conclusions wrong.

In 1926 the Departmental Committee on Morphine and Heroin Addiction, issued a report that became popularly known as ***The Rolleston Report***. According to Schaffer (1997:1) this study by a distinguished group of British doctors appointed by the government, was a landmark study. The committee codified existing practices

regarding the maintenance of addicts on heroin and morphine by individual doctors. They recommended that doctors be allowed to continue without police or medical society interference. In coming to this conclusion, Schaffer believes that these physicians displayed a humane regard for the addicts in their care, perhaps due to their view of the nature of narcotic addiction. A quotation from the report reads "this condition must be regarded as a manifestation of disease and not as a mere form of vicious indulgence". These British drug experts expressly stated that they did not agree with the opinions of some eminent physicians, especially those in the United States, who believed that sudden withdrawal could always cure addicts.

It was this report issued by the ***Rollerston Committee*** that led to the adoption of the "medical" model as a means to control drug-related crime. They saw the treatment paradigm as the most suitable means of dealing with this group of offenders. In 1968, however, a modification to the report took place. General practitioners could no longer treat the registered drug dependant as had previously been the case. Instead, drug users' had to report to hospital-based treatment centres. In 1970 the treatment of dependence by means of injectable heroin was replaced by injectable methadone (Downes 1988:126).

In 1961 the Interdepartmental Committee on Drug Addiction published the ***First Brain Report***. When the Brain Committee first met at the invitation of the Minister of Health, its mission was to review the recommendations of the ***Rolleston Committee*** made in 1926. The recommendations had been to continue to allow doctors to treat addicts with maintenance doses of powerful drugs when they deemed it medically helpful for the

patient. The ***First Brain Report*** reiterated the advice of the ***Rollerston Committee*** and they recommended that no significant changes be made to the prescribing powers of doctors. According to Schaffer (1997:1) this report further elaborated on one important point alluded to in the ***Rollerston report***. This being the authenticity of the existence of stabilised addicts. Schaffer (1997:1) postulates that while many American experts doubted this, the report examined the histories of more than a hundred persons classified as addicts. It revealed that many of those who had been taking small and regular doses for years showed little evidence of tolerance and were often leading reasonably satisfactory lives. Six case histories of known stabilized addicts were included in an appendix. These mature, older patients were seen to be functioning normally on what were huge doses of drugs by current American standards. Schaffer (1997:1) adds that it is likely that these patients and their doctors, in the present day, would be handled as criminals in the United States.

The ***Interdepartmental Committee on Drug Addiction*** issued its second report that became known as the ***Second Brain Report*** in 1965. Leading American scholars and officials consistently misinterpreted Brain II (Schaffer 1997:3). The report did not recommend the dismantling of the British prescription system. Neither, did it call for the compulsory registration of addicts, as has been claimed. It did, however, state that those doctors wishing to prescribe restricted substances to drug dependants for the purpose of maintenance, be required to obtain a special license from the Home Office. It further recommended the establishment of treatment centres for addicts who were to be regarded as sick and not criminal. Doctors and other medical personnel were mandated to notify the Home Office when they encountered an addict in the course of

their professional work. At first, the category of restricted drugs included heroin and cocaine only. Dipipanone was later also added to the list. According to Schaffer (1997:8) in the end *Brain II* functioned as a means to control a few over prescribing doctors, and not as an attempt to adopt the American system that treats drug dependants as the enemy.

It was three years later in 1968, that the *Advisory Committee on Drug Dependence* was established. A group of the leading drug abuse experts prepared this study on the use of marijuana and hashish in the United Kingdom at the time. Under the leadership of the Baroness Wooten of Abinger, these impartial experts worked as a subcommittee. The findings of the group were similar to all of the other great commission reports. The *Wooten Report* (as it became known) specifically endorsed the conclusions of the *Indian Hemp Drugs Commission*. This commission found no evidence in western societies to show that cannabis is directly associated with physical dangers. They also found that cannabis use does not lead to heroin addiction. Further, they linked violent crime to alcohol more strongly than with the smoking of cannabis. The Wooten Report findings reflected that "There is no evidence that this activity ... is producing in otherwise normal people conditions of dependence or psychosis, requiring medical treatment" (Schaffer 1997:8).

In the latter part of the 1970's a sharp increase in drug use took place. Downes (1988:126-129) is of the opinion that this upsurge was a direct result of the abandonment of heroin maintenance programmes. At this point British treatment facilities were not able to cope with the drug problem. Strong reliance had to be placed

on private and voluntary assistance for drug dependants. This social problem led to the passing of legislation in an attempt to address the problem. In 1971 the ***Misuse of Drugs Act*** was passed. This law brought about the following distinctions (Trace 1997:2):

- ⇒ between drug possession and drug supply offences
- ⇒ between the various substances
- ⇒ between methods of distribution.

Since this act was passed in 1971, the only legislative change to take place was the passing of the ***Drug Trafficking Offences Act of 1988***. This law enabled the police and customs to act against known drug dealers and to confiscate substances in their possession (Trace 1997:2).

In the 1980's England and Wales adopted a "control" approach that was more in line with the paradigm followed in the United States (Downes 1988:127). The era was marked by the philosophical approach that moved from the rhetoric of reform to justice in England and Wales (Rhyan & Sim 1995:94). Policing measures were greatly increased. In Downes (1988:158) analysis of the situation, he comes to the conclusion that the "most damaging of all... is the lack of success in the war against drugs despite the huge investment of time, energy, and resources". He estimates that this effort only resulted in the seizure of one percent of the annual import of heroin during the time the authorities imposed it.

In 1988 concerns about aids became of paramount importance. In a study into aids

and drug misuse, the ***Advisory Council on the Misuse of Drugs***, found that the spread of HIV is a greater danger to individual and public health than drug misuse. The quasi-governmental advisory council consisted of leading drug abuse and health experts within the United Kingdom. They issued two reports, one part issued in 1988, another in 1989, in which they provided for a comprehensive health plan for the prevention of the use of drugs. The plan had realistic goals regarding drug abusers, and advocated above all else, health and life. Leading British experts saw the relevance for an expansion of residential facilities where drug misusers could gain better health, develop skills and self-confidence while in receipt of prescribed drugs. Thus, while the United States was planning more prison space for drug addicts, the United Kingdom planned more hostels for addicts and created programmes in which drug dependants could be taught to live more healthy, self-confident and productive lives in the community (Schaffer 1997:8).

In 1990 the upsurge in crime in England and Wales led to the government's White Paper on ***Crime, Justice and Protecting the Public***. The White Paper's philosophical underpinnings were based on the "just deserts" approach. The ideal was to deal harshly with serious crime in an attempt to restore order in society (Rhyan & Sim 1995:94).

In spite of all these efforts, crime levels rose and in October 1993 the Home Secretary's "27-point plan to crack down on crime" was established. This led to the provisions held in the ***Criminal Justice and Public Order Act of 1994***. The provisions for a back to basic approach had an impact on Section 157 of the Act that increased the maximum

penalties available for the offence (Wasik & Taylor 1995:26). Rhyan and Sim (1995:122) viewed this change in legislation as "draconian" and believed that it would lead to over criminalisation.

Rhyan and Sim's (1995:124) commentary on the situation within England and Wales is negative and they postulate that "the presence of ...drug takers... have been elided into one apocalyptic vision of chaos and breakdown, an unmanageable detritus out of control". They believe that the historical marginalisation of rehabilitation and reintegration has resulted in an unsuccessful attempt at managing and controlling offenders and not at their social and personal transformation.

This view is in sharp contrast to that of Brooks (1996:40), an associate professor at Thomas Cooley Law School in Michigan, in the United States of America. He believes that the United States can learn from the British mode of correctional management. Brooks postulates that instead of modelling the American system, Britain should rather learn from America's mistakes.

The core of the British system remains, however, and in recent years it has been reinvigorated. Approximately 200 doctors with special licenses are free to prescribe all drugs, including the restricted medicines, for maintenance of addicts. Any doctor, unlike policy in the United States, may also prescribe other drugs for maintenance, including, injectable morphine and methadone (Schaffer 1997:9).

Presently, British and Welsh drug policies are based upon a bifurcated approach to

the drug problem. This view is bilateral and makes provision for both the drug dependant and the offender who commits crimes for profit. In the case of the drug dependant, policy makes provision for education, counselling and ultimately the imposition of ***treatment strategies***. For the offender without a drug problem, enforcement and punishment are provided for. This system, which the researcher views as possibly the best approach to the problem, identifies and distinguishes between the drug user who is dependant and the individual who is "enabling the drug market to function and flourish". This difference is considered when sentencing takes place and is clearly seen in the functioning of the criminal justice system (Collison 1993:383).

In the light of the above changes that have taken place in the treatment and handling of drug offenders from a historical perspective, the present British criminal justice system deals with the drug offender in the following manner.

#### **4.4 THE HANDLING OF THE DRUG OFFENDER WITHIN THE CRIMINAL JUSTICE SYSTEM**

Rhyan and Sim (1995:93), professors in Penal Politics and Criminology respectively, believe that the penal systems of both England and Wales have been in "crisis" since the early 1970's. This reflects Mathiesen's view (Rhyan & Sim 1995:93) of society's lack of faith in the systems ability to reform offenders. This doubt was seen when English and Welsh groups under the influence of Scandinavian and Dutch theorists, started advocating for the abolition of prisons. This is an unlikely scenario in modern

societies where the rising crime rate and violence have placed a higher premium on the justice system to protect its members from this phenomenon. The incarceration of deviant members is the only option left, especially with the abolition of capital punishment in most countries.

#### **4.4.1 Phases within the justice system**

The drug offender is processed through the following phases of the criminal justice system in England and Wales.

##### **4.4.1.1 Arrest**

Upon the offender's arrest he may actually just be cautioned and released. According to Williams (1993:1) this is common practice in Britain, especially when dealing with juvenile offenders. Each police area has a cautioning panel that consists of police officers, probation officers and members of the social services. Williams (1993:1) states that in some areas such as Liverpool, where serious problems related to drug use and deals are being experienced, the authorities refer drug users to **drug projects** on arrest. These systems are successful because of the co-operation among all the social services functioning in the area.

##### **4.4.1.2 Pre-trial phase**

At this stage presentence reports are set up on the drug offender. In October 1993, the

**Criminal Justice Act 1993** changed the sentencing framework of the courts to facilitate the use of the presentence report. The **Criminal Justice Act 1991** was replaced by the amended **Criminal Justice Act 1993**. This act legally obligates the court to request a presentence report in cases where previously a report was not set up specially in the case of drug-related offences (Williams 1993:2).

The 1993 changes brought about to *Section 29 of The Criminal Justice Act 1991* reinforced the need for the establishment of a full history on the offender as well as the offender's response to previous sentences. The new act also allows for the following criteria to be taken into account (Nacro 1993):

- ⇒ Courts can consider the seriousness of the offence as well as other associated offences and thereafter decide on either a custodial or community- based sentence.
- ⇒ Courts can take previous convictions and the response to previous convictions into account (ie positive or negative response).
- ⇒ Sentencing is based upon proportionality and "just deserts".
- ⇒ A presentence report is necessary prior to imposing a custodial sentence.
- ⇒ Community sentences are thoroughly investigated as an option prior to imposing a custodial sentence.
- ⇒ The law views the presentence report as the most suitable method to assist the court to decide upon the most effective method of dealing with the particular offender.

The use of a presentence report in the case of drug offenders is of value in that it

enables the examination the offender's drug use/misuse, the onset of it and the extent of his use of psychoactive substances. Importantly, it considers alternative sentencing options and thus enables the individualisation of punishment. The presentence report acts as a tool or guiding mechanism for the sentencing process.

#### **4.4.1.3 Trial phase**

Prosecution within the British and Welsh system takes place within the **Magistrates' court** and the **Crown court**. Prosecution, the second sequence in this system, places the offender before the Crown Prosecution Service. At this stage each defendant is individually evaluated to assess whether the offender should be diverted from prosecution or not. The interests of the community are considered throughout this decision-making process. The process of diversion is laid down according to the **Crown Prosecution Service Rules**. If, after deliberation, it is decided that it would not be in the best interests of the community to divert the offender he is then brought to trial. In Britain all charges brought to court start at the Magistrates' Court. If, however, the charges are of a very serious nature or the defendant so wishes, the case can be committed to the Crown Court.

In the **Magistrates' Court** presentence reports plays a major role in the prosecution of the drug offender. The local Magistrates' courts are staffed by probation officers who sit in court with the specific function of noting the cases for which presentence reports are requested (Williams 1993:2). Thus, the Probation Service is kept up to date with all requests for such investigations. If the Court finds that the offender has a drug

problem, he can be placed on a probation order. This order is imposed with a special condition that the offender must attend a facility that deals with the treatment of substance abuse (Williams 1993:2). In South Glamorgan they refer these cases to the ***Substance Harm Reduction Unit***.

The Magistrates Court may refer the defendant to the Crown Court. The Crown Prosecution Service may decide that it is not in the publics best interest, or that they would not serve the publics interests if the prosecution of a drug offender took place. It is thus, their discretion whether to try a case or not. This allows for the juvenile offender or first time offender to be diverted to a drug treatment programme (Rhyan & Sim 1995:96).

Williams (1993:2) reports that each Probation Service functions in its own unique manner. The usual system in Britain uses a probation officer to see a variety of offenders. The probation officer who happens to see a case involving drug or alcohol-related crime would then liaise with a local specialist drug unit. Other probation services appoint one or two probation officers to deal with these cases. Other systems use the services of a Health Service Agency. Within the agency the probation worker holds a joint post in which he spends half his time working at Probation Service and the other half at the Health Service Agency. Williams (1993:2) states that the ***South Glamorgan Probation Service*** has a Substance Harm Reduction Unit that has an entire team of probation officers who work specifically with drug or alcohol offenders.

#### **4.4.1.4 Post-trial phase**

While pre-trial and trial measures in the British criminal justice system are advanced and effective in their application of diversionary measures and alternatives, the post-trial phase is not as revolutionary. Drug offenders are incarcerated in prisons and are housed with the rest of the prison population. The implications hereof are apparent and aspects such as the influence of drug users on the non drug-abusing prisoners takes place as it does in other correctional systems worldwide. Consequently, considering the adoption of the approach followed by Singapore may be valid for Britain, and separate detention facilities should be considered.

According to Tracer (1997:1), the director of Prisoners Resource Service in Great Britain, the British prison system is one of the biggest in Europe. He views it as the most complex system in Europe. Britain and Wales have 130 penal institutions that house approximately 40,000 to 50,000 inmates. Each year about 130,000 offenders are processed through the system placing an enormous burden on the correctional system. Because these institutions have been built over the last 100 years, the facilities are not modern and cannot cope with the overcrowding taking place.

The following role players within the justice system regulate these phases (discussed above) through which the drug offender passes, namely the police, the judiciary, various correctional officials and individuals who assist with aftercare and the integration process of the released offender.

#### **4.5 THE ROLE OF THE POLICE IN TACKLING DRUG CRIMES**

According to Castree (1996:4), the police in England play an important role in enforcing, interpreting and, when possible, even changing criminal legislation. In England the Association of Chief Police Officers (ACPO) contributes to the fight against drugs. This professional association made a major academic contribution at a conference it was the host to entitled, *The Way Forward in 1994*. This conference led to the drawing up of the White Paper entitled *Tackling Drugs Together*. The Central Drugs Co-ordination Unit (CDCU) helped to set up the paper that addresses the drug problem in England and examines similar policies at various stages of development in other parts of the United Kingdom. The conference brought forth a wide range of views and experiences related to the English drug strategy and the implementation thereof. Recommendations from the conference led to the development of a **strategic guidance document**. The document advocated that individual forces should adapt and utilise their own strategies to deal with drugs and drug-related crime. It advised the police to adapt their role for each different situation with which they were faced. It clearly illustrates the environment in which drug abuse takes place as a dynamic and multifaceted one. This requires the police to adapt their role within each divergent scenario while still employing the correct criminal procedure and properly enforcing the law. The document also extends the functional role of the police official. It states the police function should not only concentrate on law enforcement but that they should increasingly become involved in social issues through their involvement in dealing with crime and their work with drug-related issues. The 1994 report issued by the **Advisory Council on the Misuse of Drugs** (ACMD) clearly reflects that they regard the police

role as that of shared agendas (Castree 1996:7).

According to Castree (1996:2) the current national police objective is the targeting and prevention of drug-related criminality, which manifest as a particular local problem. This task is viewed within a partnership with both the public and other local agencies. The police thus aim to work with other agencies, not only for the social good of society, but also to keep up to date with any developments within the field. The council, therefore, welcomed the Government's decision to set out a multi-agency strategy to address the drug problem in 1995. The government endeavoured to use their multi-agency approach over a period of three years.

Operational changes took place within the police in September 1995. Each police force had to report to the Home Office on proposed changes in its operational arrangements. In March 1996 an explicit force strategy was instigated, which included a balanced approach to enforcement, prevention and multi-agency partnerships. Both the Police's regional crime squads and the National Criminal Intelligence Service (NCIS) were commanded to display continued co-operation involving regular liaison, sharing of intelligence and planning of joint operations. They had to co-operate with the Home Office to identify enhanced indicators in the implementation of drug law enforcement. In June 1996, Her Majesty's Inspectorate of Constabulary began to examine force strategies to ensure consistency with existing Governmental policy and its key objectives for the police. During 1996 and 1997 each task force set up its own drug strategy with local performance targets. The Home Office helped the police in monitoring drug-related crime through statistical sampling. A further aim was to

examine the role of the police in becoming part of the newly-formed ***Drug Action Teams*** (DAT). Projections for 1998, are that each force should publish the outcomes of performance targets and that they should review these targets and strategies, in liaison with the Home Office, which will review the effectiveness of the police action.

The White Paper stipulates that police forces should embrace the statement of the purpose, and aim to control not only the illicit supply of drugs but also the demand, especially among the youth. Castree (1996:7) states that further strategies include objectives such as:

- ⇒ the reduction of the supply of drugs through major trafficking or street dealing
- ⇒ to reduce the incidence of drug-related crime
- ⇒ addressing public fear of drug-related crime
- ⇒ reducing the demand for drugs
- ⇒ to assist in the reduction of harm and the spread of drug-related illnesses
- ⇒ to develop joint drug prevention and awareness initiatives for both the young and the general public.

The police service view harm minimisation or reduction (the total abstinence from dangerous drugs) as the only risk-free choice for consideration. They do, however, recognise certain benefits of harm minimisation. This is achieved by means of diversionary policies. These measures assist to divert drug users from their habit, without tolerating drug misuse. Traditionally the police dealt with drug-related crimes from a three-tiered approach. From 1986, the strategic model of operation containing the following investigation categories was applied to deal with:

- ☛ major international drug dealers and importers operating across force borders
- ☛ major dealers operating in a force area
- ☛ street level drug dealers.

Emphasis has been placed upon specialised skills training to be able to better cope with drug-related crimes. A review of training programmes has taken place to include general information to all officers and implementing specialist training in such fields as controlled purchases. Small forces seconded officers to large forces to gain more knowledge and experience, and, increasingly, multi-agency training or inputs from drug agencies on police courses are the norm. Besides the specialised education of the police, additional attention is also given to diversionary measures that may be imposed to deal with drug offenders. Police arrest referral schemes to divert drug using offenders' can be applied by any police force. This mechanism is in line with English drug strategy, and functions in close co-operation and liaison with statutory and voluntary drug agencies, including the enthusiastic positive involvement in the new Drug Action Teams and Drug Reference Groups (DRG). This policy includes the production of drug prevention publicity material, for own use and within the community. Considerable efforts have been put into this area of work to raise sponsorship for drug prevention initiatives. Qualified nurses are employed to visit and provide counselling and support to drug using persons in custody. Special attention is given to juvenile drug users in detention.

The new approach also places more emphasis on enforcement and the recruitment of informants and the correct training of officers dealing with them. The police

acknowledge the significant link between drugs and acquisitive crime such as burglary, shoplifting and auto crime. According to Castree (1996:52) education, prevention and rehabilitation form the basis of the police's ***demand reduction programme***. Further, Castree (1996:6) postulates that the drug problem is exacerbated by the fact that it grows and changes its shape constantly. It is, therefore, important to monitor the drug markets at all levels and that the police and other agencies establish effective partnerships to promote enforcement and prevention. Castree (1996:54) also illustrates that because of the global nature of the drug problem, the police in the United Kingdom will endeavour to play a significant role in the development of an ideal model for the gathering and dissemination of intelligence. By establishing closer links with the community, the police can attempt to gain a better understanding of the problem and extent of casual and problem drug consumption within society. By using existing community networks the problem may further be addressed in co-operation with role players in the community. This approach may be adopted by other countries, in their fight against drug-related crime.

#### **4.6 THE CORRECTIONAL COMPONENT: DRUGS & CRIME IN PRISONS**

In 1988, the *HIV/AIDS and Drug Misusing Offenders Project* was initiated in prisons as a means to educate both offenders and officials about the dangers of drug abuse (Padel, Twidale & Porter 1992:11). By 1992 the increase in the drug use among the British population became apparent and manifested in an increase in the number of drug offenders in the prison population and an increase in the number of prisoners using drugs in prison. According to Heyes, the governor of Swansea Prison and King,

the senior probation manager at the same institution, this phenomenon is apparent even in Swansea, a small local prison that serves 34 Magistrates Courts and five Crown Courts in New South Wales (Heyes & King 1996:15). In 1992, it was found that drug use had increased by 25 percent and control problems among inmates had increased to 50 percent. Violence towards prisoners and against staff increased and 30 to 48 percent of the inmates admitted that they abused drugs. The *Report of the Chief Inspector of Prisons of 1992* reflected that the happenings at Swansea were not isolated incidents but rather symptomatic of the problem faced by other prisons throughout Britain and Wales.

In 1994 a management decision was taken to form a working party to define a drug strategy for prisons. The policy formulated by the group emphasised *demand and supply reduction of drugs*. They aimed to prevent drugs and other unauthorised substances from being brought into prisons and to provide treatment for those offenders who wished to be rehabilitated. They also aimed to provide training to staff and to educate prisoners regarding *harm reduction measures*. A policy of *demand and supply reduction of drugs* was introduced to prisons in Swansea between April 1995 and March 1996.

According to the Communicable Diseases Unit (1993:1) drug use is growing and the number of offenders entering the prison setting with a drug problem is steadily climbing. They report that since 1986, the number of drug offenders' in prisons has risen by 20 percent. A study conducted by the Home Office in 1994, showed that the number of drug dependant prisoners in England and Wales had risen from nineteen per 1000 of

the population during 1988 to twenty-four per 1000 in 1992 (Rhyan & Sim 1995:109).

Between February 1995 and January 1996, an average of two in every five prisoners tested positive in mandatory drug tests conducted in British prisons (Turnbill 1996:1, Penal Affairs Consortium 1996:3). According to Tracer (1997:2) medical studies (he does not refer to specific studies) show that 12 percent of the males and 24 percent of the females in prison were diagnosed to be "clinically dependent" on psychoactive substances.

In 1993, prisoners in England and Wales committed more than 100, 000 disciplinary offences during their incarceration. This figure was 13 percent higher than in 1992. According to Ford (1994:3) the Home Correspondent for the Observer, drug related violence made up twelve percent of this figure. The Independant Times (1994:5) substantiates this finding and reports that 14,700 drug-related incidences were dealt with in prisons during 1993.

According to Cheney (1996:1), who holds a doctorate and a lectureship in law at the University of Kent, drugs have become a widespread commodity within prisons in England. She refers to a report issued by Her Majesties Chief Inspector of Prisons (HMCIP) on Riley women's prison in December 1995, which reported the problem to the authorities. The report made allegations of both serious sexual and physical assaults by gangs of women prisoners on fellow prisoners. These activities were usually attempts to coerce non-gang members into drug smuggling. Inmates are threatened if they do not comply with instructions given by gangs to bring drugs into prisons when they return from home leave. Cheney (1996:1) postulates that these are

not idle threats, but that they are backed up with violence against inmates whom refuse to co-operate. In 1994, an inmate was severely burned with scalding water. This intimidation and violence contributes to a reluctance by prisoners to apply for home leave and also has a negative effect on the prisoner's family. Families eventually have less and less contact with the inmate and they may even be pressurised into smuggling drugs back into prison. The report mentions cases where families and friends were followed home from their prison visits and subjected to threats if they refused to import drugs or cash on subsequent visits. Drugs in prisons do not only contribute to an unsafe environment for inmates (and their families and visitors) but can also affect the manner in which a sentence is served. An otherwise well-adjusted inmate may have to seek protection, or have to be placed in isolation to avoid the consequences of drug debts. Even by transferring the prisoner to another place of detention, solutions are not provided. Cheney (1996:4) reports that the prison grapevine ensures that a reputation for unpaid debts will eventually catch up with the inmate. Further problems may also occur upon their release.

Cheney (1996:1) sketches the bleak scenario of many inmates that are eventually released to face the outside world for the first time with a drug habit that needs to be maintained and financed, and an outstanding drug debt to honour. These factors Cheney (1996:4) postulates, are potential catalysts for criminal activity. Many inmates report that their drug use is a legacy of having been in prison and evidence certainly suggests that drug use for the first time after entering prison is not uncommon. Cheney (1996:5) quotes various research projects undertaken which prove this point. Research at Long Lartin found that 62 percent of the heroin users in prison had acquired the habit

in prison. This finding is consistent with a two-year prison service study based on inmate interviews that showed that 60 percent of addicted inmates in high security prisons developed their habit while in custody. Further, a 1994 report issued by the East Kent Area Health Authority, confirmed reports from ex-prisoners who claimed they had been first introduced to drugs while in a Kent prison.

The reasons for succumbing to drugs during incarceration are as many and varied as the stimulants that are available to the inmate population. An important factor identified is that of peer pressure. A powerful dealer often engineers peer pressure either within the prison or even in the free community. The drug subculture within society is a ruthless and systematic product of organised crime, which in some areas, such as Manchester and Liverpool, has been established to extend its market inside the prison walls as well.

#### **4.6.1 Treatment in the Prison setting**

Before 1960, the authorities did not realise the implications of drug dependency within the prison setting. Trace (1997:2) is of the opinion that people involved in drugs at the time were not seen as a social threat to society. The authorities only became aware of the problem when drug use escalated from 1970 to 1980. This led to the creation of early rehabilitation programmes such as the ***therapeutic community*** or the ***Concept House Model***. These American models adopted by the British, both emphasised residential care and support and therapy for drug dependants in the penal setting. In the late 1980's the AIDS problem led to the ***harm reduction approach***.

This ideology facilitates the education of users who continue their habit, in an attempt to protect both the user and the community. The user is prescribed substitute drugs and issued with clean injection equipment (Tracer 1997:2).

In 1996, The Guardian (1996:6) is reported as saying that role players in the legal system are aware of the futility of sending a drug offender to prison to receive treatment. Both rising prison figures and budget cuts hamper rehabilitation efforts. Any methods to treat drug offenders within the penal setting need careful consideration as the implications thereof may be extensive. In Britain in 1994, the "**drugs on demand**" policy led to the deaths of three Brixton inmates. They had been given prescribed methadone by prison doctors. After claiming to be heroin addicts, the doses given proved fatal as they were not habitual users. Doctors in this instance had failed to test for an opiate addiction (Nelson 1994:2). According to Forrest (Nelson 1994:2), a chemical pathologist, methadone can be extremely dangerous and even low dosages can be fatal to the user. This point further substantiates the researcher's view that a multidisciplinary approach should be used in the treatment of drug dependants.

The Communicable Diseases Unit (1993:3) advocates for the investigation of other methods for the management of drug abusers who enter the criminal justice system. They propose that drug offenders and drug-using offenders be dealt with outside penal settings. The solution they believe, lies in Governmental funding of **specialist drug rehabilitation centres**. This approach is in line with the policy of Singapore. These proposals are of value and the researcher advocates for a similar approach in the South African setting.

Cheney (1996:4) believes that the prison service should adopt an organised intelligence-based strategy to deal with the drug situation. She postulates that such a strategy would have to encompass pro-active intelligence gathering and that operations concerning prison inmates and visitors would have to be targeted. She further advocates a multidisciplinary approach as she believes that no agency can solve the problem in isolation.

In April 1996, the British system of offender handling initiated a six-month pilot scheme under which all inmates known or suspected of using, trafficking or supplying psychoactive substances in prison had all open visiting privileges withdrawn. They also introduced mandatory testing of inmates. Those testing positive for any substances would also have all visiting privileges withdrawn until they could prove that they were clean. This measure, however, is a serious breach of the inmates right to privacy and to a family life as determined by the **European Convention on Human Rights**. The authorities, however, believe that society's rights override this argument. They argue that the public demand that the authorities should prohibit substances from entering secure prison environments. The withdrawal of privileges is believed to be a further measure to encourage prisoners to refrain from using drugs in prison (Travis 1996:9).

The present prison service in Britain has its own medical department that functions separately from the rest of the National Health Service. Prisoners suffering from withdrawal are prescribed and supplied with alternative medication. According to Tracer (1997:3) counselling and advice to drug dependants, although offered, is

inadequate in the present system. He suggests the use of specialist full time drug counsellors. Tracer further proposes that these counsellors should provide inmates with access to outside agencies when necessary. He proposes that measures should be implemented to allow for a process by which suitable candidates may be transferred from custody to community-based treatment through early release schemes or court decisions.

The following are existing models utilised for the handling of drug offenders in Britain and Wales. The researcher discusses them as they are relevant tools for offender management and can be extracted for the use in an effective treatment modality.

#### **4.6.1.1 The HIV/AIDS and Drug Misusing Offenders Project**

The **HIV/AIDS and Drug Misusing Offenders** project was initiated in the United Kingdom by the Health Education Authority in 1990. The aim was to provide a better service to the drug-using population within prison settings. According to Padel, Twidale & Porter (1992:12) its objectives for the improved treatment of drug use and HIV/AIDS issues included:

- ⇒ assessment of staff training needs (drug use and HIV issues)
- ⇒ additional training and information
- ⇒ additional assessment of prisoner education needs by outside parties
- ⇒ provision of additional health education as determined by the outcome of the previous point
- ⇒ development of a link between each prison and appropriate community-based

organisations

- ⦿ development of appropriate support networks.

The approach also made provision for the creation of a ***training model***. A small group of staff would undergo training, which they in turn would utilise to undertake the training of other staff and selected prisoners (Padel et al 1992:13).

The researcher believes that the objectives of this project are of value to the treatment and handling of the drug offender and that all the objectives, as well as the training model should be incorporated in the handling of the drug offender.

#### **4.6.1.2 Therapeutic community approach**

The ***therapeutic community*** approach to drug treatment requires the drug user to undergo treatment for a period ranging from several months to a few years. It does not see rehabilitation as a "quick fix" but rather as a lifelong process involving drug abstinence and the rebuilding of the drug dependents' personality. The offender's drug abuse is seen as a symptom of a larger problem. Therapy is intense and the individual's resistance is completely broken down. The aim of this therapy is to rebuild the individual into a law abiding, non-substance using citizen. In the last phase of treatment, the offender is reintroduced to the community on a gradual basis. The individual is not released until he has found employment and housing. Every effort is made to reunite him with supportive friends and family (Fox & Stinchcomb 1995:497).

Torres (1996:18-23) an associate professor at the Department of Criminal Justice at Long Beach State University and a retired probation officer, has set ideas on appropriate treatment methods for drug offenders and drug-using offenders which fits into the ***therapeutic community*** approach. He views the mode of treatment of the drug offender in the very definition thereof. He argues that drug dependence should be viewed as a "maladaptive behaviour" and not as a disease. He thus advocates for the move away from the medical model to a management approach. Torres (1996:21) found that this "maladaptive behaviour responds favourably to a structured programme that sets precise limits and is based on social learning principles". This view corresponds well with the ***therapeutic community*** approach adopted by Department of Corrections in California. This model is characterised by the following criteria set for substance offenders (Torres 1996:18-23):

- the offender is a responsible individual
- behaviour is a maladaptation rather than an "illness"
- offenders can be dealt with in a community setting if they do not pose a serious threat to the community
- offenders coerced into treatment show higher long term recovery rates than those who volunteer for treatment
- drug offenders cannot be trusted (only the presence of multiple factors indicate change and positive response, and only after these manifest can supervision and testing be reduced)
- ultimatums can be set for offenders
- concentrating on adaptive behaviour rather than underlying emotional disorders (thus a change of approach)

Abuse of compassion, sensitivity and empathy (as an approach) may be viewed as a sign of weakness by the offender  
And setting firm limits and taking decisive action.

The outcome of this model is seen in follow-up studies conducted in prison-based ***therapeutic communities***. According to DeLeon (1984:34) evidence suggests that the ***therapeutic community*** is an appropriate approach to the treatment of drug offenders. Later studies conducted by Wexler and William in 1986 (Torres 1996:22) found that therapeutic communities reduce recidivism rates in both sexes. They found that 77 percent of the 1,626 men who underwent a nine to twelve-month treatment programme, successfully completed their parole. The success rate was higher among women. Females who underwent the same programme showed a 92 percent completion rate. Even Lipton (Torres 1996:22) the chief advocate of the "nothing works" approach believes that the ***therapeutic community*** has the potential to achieve positive results.

According to Britton (1997:1) the co-ordinator of the Prison Issues Desk, for anyone who has adopted the view that rehabilitation does not work, this may not be so for if correctly implemented, it can. He refers to the establishment of ***therapeutic communities*** within prisons in New York, Delaware, Texas, Florida, Oregon and San Diego. Britton illustrates the working of this approach in the Donovan Correctional Facility in San Diego, California. According to Erickson (Britton 1997:1) the Assistant Director at Donovan Correctional Facility, the programme is a success. Only 16 percent of the inmates who completed the programme were re-incarcerated within two

years of their parole dates. This can be favourably compared with a 65 percent return rate for inmates who did not undergo the treatment programme. The researcher is of the opinion that the above findings reflect the complexity of the issue at hand. Although treatment programmes may not be 100 percent effective, they are better than no treatment at all.

These ***therapeutic communities*** are introduced into the prison setting. Inmates are enrolled for the last year or more of their sentence. Offenders selected are placed in a zone where the "prison culture no longer dominates the social environment" (Britton 1997:2). Thus the offender is removed from the prison subculture and all its negative effects that are detrimental to the rehabilitation process. Once taken out of the prison environment and placed in a "safer" one, the aim is to break down the prisoner's "prison pride" so that therapists and correctional workers are able to find out who the person is and what happened to make him become what he is. This process eventually aims at limiting the offenders view of himself as a convict.

The therapeutic community consists of basic self-help groups that become "surrogate families" to the drug offenders. Members are held accountable for their behaviour (corresponds with Torres view on responsibility). Ex addicts are used as counsellors and they work in collaboration with prison officials. It is, however, important that staff should be experienced and that they must be able to build up relationships with inmates. This process must be combined with the community care of the individual once released. The aftercare component is important for the continued success of the model (Britton 1997:2).

This system has further benefits. According to Erickson (Britton 1997:2), the substance abuse programme director, this programme illustrates that providing this form of treatment is cost effective to both the authorities and society. Society will furthermore be faced with fewer offenders returning to crime.

The ***therapeutic community*** approach, however, cannot be effectively utilised without three other important aspects. These are ***careful screening, appropriate intervention*** and ***close supervision***. As Fox and Stinchcomb (1995:498) postulate, many drug rehabilitation programmes fail because of a lack of follow-up treatment and continued care. The latter point was identified by the drug group at Central prison as a major problem in their fight against drug abuse. They ascribed a lack of support as a major obstacle in their rehabilitation efforts. The researcher advocates for the use of a therapeutic community in which to treat the drug offender within the correctional setting.

#### **4.6.1.3 Leicestershire HIV/AIDS and Drugs Prison Project**

Another example of the effectiveness of the multidisciplinary approach to drug treatment in prisons can be seen in the **Leicestershire AIDS/ HIV and Drugs project**. The Leicestershire probation service and the Leicestershire Community Drug Service together with a secondment from the Department of Health have set up this joint venture (Padel et al 1992:93). They achieved success by the utilisation of the following techniques:

- ⦿ maintaining high personal profiles by means of frequent visits and

communication

- ⇒ adopting a multidisciplinary approach to the drug problem
- ⇒ obtaining the support of the head of the prison
- ⇒ continual staff assessment and training.

Another example of the multidisciplinary approach to the drug treatment issue can be seen in the following **Prison Brokerage** system.

#### **4.6.1.4 Prison Brokerage Scheme**

The **Prison Brokerage Scheme** was developed by the National Aids Trust in the United Kingdom. The aim was to gain the support of various community-based organisations and to facilitate their work within the prisons. The system functions by involving mediation between both those individual working in prisons and outside agencies.

The major advantage of such a system is that it co-opts the much needed support for the drug treatment workers (psychologists, therapists and counsellors) and assists in counteracting or overcoming the stressors encountered in prison work. These workers are also better able to use the resources available to them. The system also cuts out duplication of functions and efforts, and allows for the outside agencies to provide a general advice service to the prisons (Padel et al 1992:95).

#### **4.6.1.5 Saughton Prison Rehabilitation Programme**

In 1991, the Saughton Prison in Edinburgh developed **progressive treatment and rehabilitation programmes** for their drug-using inmates. The programme developed out of a concern for the high risk of AIDS among its drug-using population. The programme was initiated by Jolliffe, a medical doctor, who worked with drug offenders in the facility (Thompson 1993:18).

According to Thompson (1993:18), an AIDS Forum Advisor, the programme started by the recruitment of prison officers who were interested in the particular field of drug treatment. These officials received comprehensive training to enable them to better deal with drug users. The programme lasts for four weeks and for the first 14 days, thereof, the prisoners live in a hospital wing where they receive education and counselling sessions. Persons successfully completing the treatment are considered for posts as counsellors in self-help groups when they are released from prison. The experience with this programme is that often it is the first time that drug dependants are made aware of the biological and physiological implications of their drug abuse. They are also taught basic skills that equip them for their return to society (Thompson 1993:19).

The value of this programme lies in the expert training given to prison officials who show a genuine desire to work with drug dependants. This training improves care given to inmates and allows for easier access for the prisoners to care and assistance. The present overpopulation of prisons and lack of adequately trained correctional staff

can be overcome by the application of the latter programme.

#### **4.7 CONCLUSION**

The approach adopted by the British and Welsh criminal justice systems for the establishment of a drug policy and suitable handlings method for drug offenders, theoretically appears to be the most effective worldwide. No system is perfect, yet the integral principles form a good starting point for anyone who wishes to establish an effective and workable drug policy and drug model.

The researcher is of the opinion that Tracer's (1997:3) views should form the basis for any model or approach to the treatment of drug offenders. Tracer (1997:3) calls for the use of **treatment units**. He postulates that "Rehabilitation programmes comprising of therapy or group work have not been a feature of prison drug work in the past As the problems caused by drug use in the prisons are recognised to a greater extent by prison managers, many ideas for treatment programmes are currently being floated. Most of these involve the setting up of a unit within a prison in which drug users who want to give up are offered a programme of activities, counselling and support in return for committing themselves to abstinence from using drugs in prison". Within this idea, Tracer eloquently frames a solution to the drug problem. This corresponds with the researcher's view on the adoption of a managerial approach to the treatment of drug offenders from a multidisciplinary perspective.

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## CHAPTER FIVE

# THE HANDLING OF THE DRUG OFFENDER IN THE UNITED STATES OF AMERICA

### **5.1 INTRODUCTION**

The United States of America is located in the middle of the North American continent. Its 48 states stretch from the Atlantic Ocean in the east, including the Gulf of Mexico, to the Pacific, where the coast stretches for a distance of 2,100 km. Its 49th state is Alaska and Hawaii is its 50th. The United States borders on two other countries, namely Canada and Mexico. It is the fourth largest country in the world, and the third most populous (after China and India). The United States is the world's wealthiest nation (New Grolier Multimedia Encyclopaedia 1996) and its being wealthy makes it a target for drug traffickers.

### **5.2 THE DRUG PROBLEM IN THE UNITED STATES OF AMERICA**

The researcher believes that due to the illicit nature of drug abuse, drug-related crimes tend to fall under the dark figure crimes. This makes it difficult to discover the exact number of drug-related crimes committed. Lipton (1995:4) a senior research fellow with the National Development and Research Institute in New York, reports that in 1988, at least 45 percent of the arrestees charged with violent crimes or income-generating crimes (these are crimes such as robbery, burglary, and theft) tested positive for the use of one or more drugs. He adds that if they are chronic users,

their drug use pervades their lifestyle and preoccupies their day-to-day activities. While it is difficult to determine the extent of drug abuse among the population, it is easier to determine the number of individuals incarcerated and those arrested for drug-related crimes.

On 31 December 1995, one out of every 167 United States citizens were incarcerated. According to Torres (1996:18) at the end of 1995 almost 1,500, 000 people were incarcerated in the USA. Federal government findings show that 55 to 80 percent of these offenders tested positive for a psychoactive substance. According to Lotke (1996:1) statistics released by the Bureau of Justice Statistics in 1996 announced that 1.6 million Americans were incarcerated. If Lipton's (1995:4) findings are correct, this would mean that 45 percent of the 1.6 million offenders may have used one or more psychoactive substance. In California, the state had 146,000 prisoners behind bars during March 1997. Of these, 70 percent were substance abusers. Thirty percent were incarcerated for drug-related crimes (Britton 1997: 2).

In 1996, scientists and researchers who specialize in drug education research expressed concerned about the latest survey results released by the Department of Health and Human Services. These figures indicated a significant rise in the level of drug use among American adolescents. The recommendations and strategies advocated by governmental officials to curb this rise in teen drug use, were felt to be of even more concern and they did not offer solutions or alternatives to the problem (Shellenberger 1996:1).

According to the Des Moines Register (1996:1) in 1995 the number of persons incarcerated in the United States of America rose to 83, 294. This is the second largest increase ever reported in American penal history. If all offenders under some form of court supervision (incarceration, parole and probation) are added to this figure, it reaches a figure of 5 million. The reason for this phenomenon is believed to be a result of harsh federal drug prosecutions and new sentencing rules adopted to counteract drug-related crime.

The United States prison population has increased by approximately 60 percent in the past decade. Lipton (1995:5) views this growth as the result of an influx of substance-abusing offenders that are responsible for a relatively large amount of crime. According to Chaiken (Lipton 1995:6) among them the most predatory are the heroin-using "violent predators" who commit 15 times more robberies, 20 times more burglaries, and 10 times more thefts than offenders who do not use drugs".

From 1991 to 1994, the federal government spent \$3.5 billion on drug prevention and education programmes (Shellenberger 1996:1). Frazier (1995) an inmate in a penal facility in the United States of America advocates for an increased emphasis to be placed on treatment and rehabilitation, rather than on the control of substances. He views the efforts of the Drug Enforcement Agency (DEA) as ineffective and futile and postulates that the flow of drugs in the United States will never be stemmed. Any attempts at rehabilitation and education would thus be more effective and productive.

According to Schaffer (1996:32) the United States Federal Government estimates that

the entire country's consumption of illegal drugs could be supplied by approximately one percent of the worldwide drug crop. Furthermore, they admit that in a good year, United States Drug Enforcement Agents working in liaison with foreign governments, seize only one percent of the worldwide drug crop. The other 99 percent is distributed in the United States. The Government also sketches the scenario that in the unlikely event that drug production was stopped in South America, it would result in a major economic collapse within several countries.

Two divergent schools of thought exist in the issue of drugs. The one side advocate the criminalisation of drugs and on the other side, are those who recommend a non-criminal approach. These exponents who believe in the non-criminal approach, argue that American drug laws are fraught with unconstitutional infringements on personal liberties (Schaffer 1996:2). Historical proof also exists that views on whether drugs are harmful or not, have always been ambivalent and consensus has not yet been reached by experts as to whether substances are harmful or not. Earlier findings view drug abuse as a problem which can effectively be dealt with by physicians. Drugs are not viewed as having a negative effect on the users social interaction with the rest of society. The following point examines the historical views and changes in drug policy.

### **5.3 THE HISTORICAL DEVELOPMENT OF AMERICAN DRUG POLICY**

According to Reiss (1994:9) it is important for policy makers, practitioners and researchers to study the history of drug control (and by implication drug policy) to deal effectively with the global drug problem (prevention, intervention, adjudication and

treatment) in contemporary society. The United States has generally viewed the drug problem prohibitionistically, following the "control" model approach as a method to deal with the issue (Downes 1993:125). Downes, a professor of Social Administration at the London School of Economics, postulates that it is this prohibitionistic approach which created the policy vacuum which he believes, was only rectified in the 1980's.

American drug policy has a long history that can be traced back to the 1800's. Dr. Hamilton Wright, the Opium Commissioner during the 1800's is sometimes referred to as the Father of American Drug Laws. Under his guidance the first anti-drug law made its appearance in 1875. This law known as the *San Francisco Ordinance* outlawed the smoking of opium in opium dens. Schaffer (1996:2) is of the opinion that this law was passed not because of the threat of the opium, but because of a racial phobia. The authorities feared that Chinese men were luring white women to their ruin in these opium dens. Later, Federal laws prohibited anyone of Chinese origin from trafficking in opium. Restrictions were also placed on the importation of opium for purpose of smoking. However, Schaffer (1996:2) believes that these laws were merely a way of legally targeting the Chinese.

In 1919, the *Shreveport Clinic* in Louisiana started a morphine maintenance programme. According to Downes (1993:126) this programme was successful as a control measure until 1923, when it was closed down. Downes (1993:126) views this closure as a mistake and as a sign of America's erroneous prohibitionistic drug policy.

In a study conducted during the period from 1916-1929, the *Panama Canal Zone*

**Military Investigations** came to the conclusion that no evidence existed that Marijuana as grown and used, in the Canal Zone, was in any way a 'habit-forming' drug. The panel of civilian and military experts recommended that no steps be taken by the Canal Zone authorities to prevent the sale or use of marijuana.

The view on the harmful effect of this substance changed again in 1937 when marijuana was outlawed. Harry J. Anslinger, the Bureau of Narcotics Commissioner at the time, testified at the hearings on the **Marijuana Tax Act of 1937** and postulated that this substance was deemed to have a violent effect on the degenerate races (in this instance the Mexicans). The American Medical Association was opposed to the law and testified to this (Schaffer 1996:2). The law was passed in spite thereof.

The **Harrison Act and the Marijuana Tax Act of 1937** marked the beginning of a general drug prohibition in the United States. This law was a simple licensing law which required sellers to obtain a license in order to deal in opiates and cocaine. The law contained a provision allowing doctors to prescribe these substances in the legitimate practice of medicine. **The Harrison Act and the Marijuana Tax Act of 1937** received much criticism and was deemed unconstitutional. It was seen as an infringement on personal liberties (Schaffer 1996:2).

In 1944 **The LaGuardia Committee Report** was commissioned by Mayor Fiorello LaGuardia. Schaffer (1996:2) postulates that this study on marijuana, is viewed by experts in the field, as the best study undertaken on the social, medical, and legal context of drug policy. The final report issued by the New York Academy of Medicine

in the City of New York came to the conclusion that marijuana use does not lead to morphine or heroin or cocaine addiction and that publicity concerning the catastrophic effects of marijuana smoking in New York City at the time was unfounded.

The topic of Drug Addiction: Crime or Disease? came under discussion in 1961 at the ***Joint Committee of the American Bar Association and the American Medical Association on Narcotic Drugs***. According to Schaffer (1996:2) this report was the result of the only major combined study of drug policy made by two of the most important professional societies in the country. The finding of this committee was that drug addiction is a problem which should rather be dealt with by the medical fraternity and not by the police, and that it should not be necessary for anyone to violate the criminal law solely because he is addicted to drugs.

The latter finding is in strong contrast to recent findings on the link between drugs and deviances such as violence and crime. Lipton (1995:7) quotes such sources as Gropper (1985); Johnson et al (1985); Ball et al (1983); and Inciardi (1979) whom have conducted extensive research on the relationship between drug abuse and crime. Their findings have all provided convincing evidence that a relatively few substance abusers, who have a severe drug problem, are responsible for an extraordinary proportion of crime.

The report published in 1961 by the ***Joint Committee of the American Bar Association and the American Medical Association on Narcotic Drugs*** came to the conclusion that drug addiction was a disease, not a crime. The committee viewed

harsh criminal penalties as destructive, and propagated the reexamination of drug prohibition. It is interesting to note that as early as 1961, this committee called for the same steps to be taken as those advocated by Brookes (1996:40), an American professor of law, in 1996. The committee called for experiments to be conducted and the establishment of British-style maintenance clinics for narcotic addicts. Brookes advocates for the same measures to be implemented.

In 1962 the case of '*Robinson v California*' led to the invalidation of State legislation which made drug dependence a crime. This resulted in the introduction of diversionary mechanisms in various states, whereby drug addicts could be channelled away from criminal prosecution (Gray, Reynolds & Rumbold 1992:128). In 1972, the California diversion statute enabled the diversion of drug-using offenders but the drawback was that this only took place at the discretion of the prosecutor, thus limiting the benefit of this system.

In 1967 the *Presidents Commission on Law Enforcement and the Administration of Justice* investigated the state of the criminal justice system at the time. One specific task force published a report on "Narcotics and drug abuse" in which it emphasised enforcement, research and evaluation as solutions to the drug problem. The report brought about many positive changes. Many states adopted drug control legislation. This legislation also improved federal drug abuse control laws and allowed for better recording keeping provisions. Sentencing laws were changed to allow both correctional professionals and the courts more flexibility when sentencing drug offenders. Research was conducted to determine the effect of marijuana and the

regulation of drugs was investigated (MacKenzie 1994:283). In spite of the above measures being undertaken, the incidence of drug abuse escalated in the 1970's.

Five years after the President's Commission, a conference entitled "Drug Use in America: Problem in Perspective" was held by the **National Commission on Marijuana and Drug Abuse** in 1973. This commission, directed by Raymond P. Shafer, the former Republican governor of Pennsylvania, consisted of elected politicians and leading academics on the field of addictions. The ambivalent views that existed on drugs at the time is apparent from the report issued. While the commission supported much existing policy, it produced two reflective reports. Possession of marijuana for personal use would no longer be considered an offence, but marijuana possessed in public would remain contraband, and subject to summary seizure and forfeiture. Casual distribution of small amounts of marijuana for no remuneration, or insignificant remuneration not involving profit, would no longer be an offence. It furthermore, called for further research, experimentation, and humane compromise (Schaffer 1997:2).

Four years later, in 1977, the "**Nation's Toughest Drug Law: Evaluating the New York Experience**", was published by the Joint Committee on New York Drug Law Evaluation of the Association of the Bar of the City of New York. According to Schaffer (1996:4) this commission was formed in order to review the **Rockefeller Drug Laws**. The committee's conclusion was that tougher sentences had provided little, if any, benefit and had instead, increased the incentive for drug sellers to commit violence during the commission of crimes. The committee believed that existing laws had merely

clogged up the criminal justice system. The report also found that tougher penalties had done nothing substantial to reduce drug use but had instead exacerbated some of the existing problems associated with drug abuse.

In 1980, the ***Drug Abuse Council*** reported that current drug policies were unlikely to eliminate or greatly affect drug abuse. This view led to the creation and joint funding by four major foundations of a broadly based, independent ***National Drug Abuse Council***. It was the function of the council to review and assess laws, programmes, and projects related to the use and misuse of psychoactive drugs on a nation wide scale. According to Schaffer (1996:4) the most important contribution made by the Council was the establishment of a more responsible approach to drug use and misuse. The researcher believes that the councils contribution was greater than that and that the steps they took were integral for the formulation of a sound drug policy.

The following valuable recommendations were made which should still be of importance to policy makers today. Psychoactive substances have been available throughout recorded history and an attempt to eliminate them completely is unrealistic. While the use of a psychoactive substance is pervasive, misuse is less frequent, and the failure to make the distinction between use and misuse creates the impression that all use is misuse and that it always leads to addiction. A clear relationship exists between drug misuse and pervasive social problems such as poverty, racial discrimination and unemployment. Drug abuse can be expected as long as these adverse social conditions prevail. An effective strategy to eliminate drug abuse through the utilisation of criminal sanctions would be perceived by many Americans as an

invasion of privacy and an abrogation of individual liberties. Drug laws and policies place too little emphasis on personal misuse and too much on the properties (effect) of drugs, creating the impression that the drugs are somehow inherently to blame. Too many Americans have unrealistic expectations about what drug policies and programmes can accomplish. A tendency exists to blame drug problems on others' (nations), and the drug problem is not recognised as a product of the American experience. The rationale behind treatment should chiefly be because people need help, rather than as a measure of crime control or behaviour control. This view is however, not shared by the prohibitionists and researchers' who have evidence on the drug-crime link.

A major study of the effects of drug laws and their enforcement on personal decisions to use or not use illicit drugs should be conducted. Legislative efforts to decriminalize the possession of small amounts of marijuana for personal use should continue. The researcher views the final point made by the committee as relevant and of utilitarian value today, some seventeen years later. The committee postulates that drug policy should be flexible and have a high level of ingenuity, and that it should not be based on an unrealistic, rigid homogeneity in national drug policy. The diversity of the drug problem, should be reflected in consistent policies, which principally seek to discourage misuse, and keep drug-using behaviour within reasonable limits by using means which do not themselves not produce more harm than they prevent. It is the researcher's belief that these findings are relevant universally.

In 1987 the ***Drug Use Forecasting (DUF) System*** was initiated under the sponsorship

of the National Institute of Justice. The system was utilised to determine the extent of recent drug use in arrestees, and to determine the trend of drug abuse in this segment of the population (MacKenzie (b) 1994:284). This system did not contribute much to American penal policy. The researcher believes that this system should have been more widely exploited and should form an integral part of any criminal justice system. Compulsory drug testing would contribute to research on drug use in society and would facilitate treatment of drug offenders.

The *Twentieth Annual Report of the Research Advisory Panel for the State of California* issued in 1989, recommended that the legislature act to redirect California away from its policy of destructive drug control and prohibition which it had already followed over a period of fifty years. The panel concluded that this policy gave rise to the use of a greater variety of drugs, legal and illegal and resulted in societal overreaction that burdened the system with ineffectual, inhumane, and expensive treatment, education and enforcement efforts. They recommended a move toward the formulation of legislation aiming at regulation and decriminalization and the winding down of the "war on drugs" (Schaffer 1996:8). The *Research Advisory Panel's* final recommendation was to advocate that policies that had been followed by past generations should be discontinued.

The general fear of AIDS which spread throughout society also had an impact on drug policy. In July 1991 the *National Commission on AIDS*, examined current drug policy on the relationship between the spread of HIV and drug use. The commission criticized the federal government's failure to recognize that these are twin epidemics. They found

that the strategy of interdiction and the increased use of prison sentences merely exacerbated the problem and increased the spread of AIDS by drug users. The commission singled out the *Office of National Drug Control Policy* for ignoring AIDS and neglecting public health issues and treatment measures (Schaffer 1997:4). Five recommendations were forwarded:

- Expand drug treatment so that all who apply for treatment can be accepted into treatment programmes.
- Removal of legal barriers to the purchase and possession of injection equipment.
- Federal government take the lead in developing and maintaining programmes to prevent HIV transmission related to licit and illicit drugs.
- Expanded research and epidemiologic studies be conducted on the relationship between licit and illicit drug use and HIV transmission and the additional funding of such projects.
- The joint attention of all levels of government and the private sector address the social problems created by poverty, homelessness, and the lack of medical care which contributes to the licit and illicit drug use in American society.

The *National Commission on AIDS* could be described as the echo of the British Advisory Council on the misuse of drugs. In its report on *AIDS and drug misuse*, it made virtually the same policy recommendations, concluding that federal government must recognize that HIV and substance use is one of the issues of paramount concern within the 'war on drugs.' The commission viewed any programme not dealing with the duality of the HIV/drug epidemic as destined for failure. They urged the federal government to move away from a law enforcement approach in controlling drugs and

to adopt a public health approach. Schaffer (1997:4) postulates that to date this has not taken place.

A breakthrough was made in American drug policy in 1992 (Walker 1994:7). According to Walker, the Bush administration undertook to liaise and work together with other countries who produced and transported drugs. The Administration realised that the United States could not effectively control the international flow of drugs on its own.

A further development in 1992, was the analysis of marijuana policy by the National Research Council of the National Academy of Sciences (NAS). The **NAS Committee on Substance Abuse and Habitual Behaviour** was made up of the leading American experts on medicine, addiction treatment, law, business, and public policy. After review of all of the available evidence on every aspect of the marijuana question, the committee recommended that the country experiment with a system that would allow the various states to set up their own methods of controlling marijuana. A similar system is presently utilised for alcohol. This approach grants the removal of federal criminal penalties, allowing each state to decide upon the legalisation and regulation concerning hours of sale and age limit. The report placed emphasis on public education and informal social controls, which often have a greater impact on drug abuse than the criminal law. Regulation is viewed as "a measure to facilitate patterns of controlled use by diminishing the forbidden fruit aspect of drug use and perhaps increase the likelihood that an adolescent would be introduced to the drug by families and friends, who practice moderate use, rather than from their heaviest-using, most drug-involved peers" (Schaffer 1996:5).

In an attempt to address this problem a report of the ***Special Committee on Drugs and the Law of the Association of the Bar of the City of New York*** published in June 1994 concluded that, the only reasonable way to correct the current problems would be to repeal the Federal laws on drugs in their entirety and allow the states to develop their own programmes. These recommendations were endorsed by (among others) the American Medical Association, the American Bar Association, the American Association for Public Health, the National Education Association and the National Council of Churches (Schaffer 1997:8).

In the Fall of 1993, the ***Drug Policy Task Force***, sponsored by the New York County Lawyers' Association, was established to develop workable alternatives to current drug policy on both state and federal levels in the United States of America. After extensive study, public hearings, discussion and analysis of various issues within the broad scope of the drug policy debate, the task force developed a comprehensive, multidisciplinary approach to an effective and responsible drug policy (The Lindesmith Centre 1996:2).

The ***Drug Policy Task Force*** found that the drug policy followed by the federal government, and in state and local jurisdictions throughout the United States, in the last three decades, had failed to meet its stated objectives. The task force described current drug policy which relied on an "enforcement or "penal" model, emphasizing interdiction, arrest, prosecution and incarceration of both distributors and users of controlled substances as its primary "weapons" in what has often been characterized as a "war on drugs" (The Lindesmith Centre: 1996). It further found that previous drug

policy had:

- ☒ minimally reduced the consumption of controlled substances
- ☒ failed to reduce violent crime
- ☒ failed to markedly reduce drug importation, distribution and street-level drug sales
- ☒ not reduced the widespread availability of drugs to potential users
- ☒ failed to deter individuals from becoming involved in the drug trade
- ☒ failed to impact upon the enormous profits and financial opportunity available to individual "entrepreneurs" and organized underworld organizations in the illicit drug trade
- ☒ had spent great amounts of increasingly limited public resources in pursuit of a cost-intensive "penal" or "law-enforcement" based policy
- ☒ not provided proper treatment or assistance to substance abusers and their families
- ☒ failed to provide meaningful alternative economic opportunities to those attracted to the drug trade for lack of other available avenues for financial advancement.

Moreover, the task force also found contemporary drug policy to be counterproductive and harmful to society. Present drug policy appeared to contribute to increased levels of violence within communities. It permitted and caused the drug trade to remain "a lucrative source of economic opportunity for street dealers, drug kingpins and all those willing to engage in the often violent, illicit, black market trade" (The Lindesmith Centre 1996:4).

***The Drug Policy Task Force*** found that present policy merely served to stigmatize and marginalize drug users, which inhibited and undermined users efforts to remain or

become productive members of society. Furthermore, current policy had only impeded users from gaining adequate access to treatment for their substance abuse. The appropriate goal of any drug policy should rather be to decrease the prevalence and spread of harmful drug use and substance abuse, and to minimize the harms associated with such problems where they are found to exist. Additionally, any policy which creates more harmful results than the societal problems it proposes to solve, must be re-evaluated in terms of the advisability of further pursuit of such policy. Further, to justify continuation of any public policy, the costs incurred must always be weighed against the benefits derived. It is within this context, and with these criteria in mind, that present approaches to drug policy must be objectively assessed and, where appropriate, alternative models for future policy evaluated and considered. The task force concluded that contemporary drug policy has failed by virtually every objective standard that it had to change its approach in the development and implementation of future drug control efforts (The Lindesmith Centre 1996:8).

The **Drug Policy Task Force** called for incremental steps to be taken to alleviate the more easily resolved economic and social costs associated with current drug policy. They suggest the decriminalization of marijuana; separating the "hard" drug markets (such as heroin and cocaine) from the markets for "soft" drugs (such as marijuana and hashish); the downward modification of existing draconian sentences for other non-violent drug offenses; the elimination of mandatory minimum sentences in drug cases and increased judicial discretion in the sentencing of drug offenders, with further reliance upon drug treatment and other diversionary programmes as alternatives to incarceration for non-violent drug offenders. The task force also recommends

continued study and the consideration of alternative, non-criminal, regulatory drug control measures, which should be developed in accordance with a "public health" rather than a "penal" model on which to base the drug policy. A comprehensive and well-balanced approach should be adopted to future drug policy, involving various disciplines, the legal, medical, academic and governmental (legislative, judicial and executive) sectors (The Lindesmith Centre 1996:11).

In conclusion, it is the researcher's belief that the findings and recommendations of all the above groups should be taken into consideration when decisions regarding drug policy are made now and in the future. The problematic nature of any drug policy, as it is seen from the diverse history of drug policy, can only be counteracted by learning from the errors of previous approaches or by the further implementation of the positive aspects thereof.

Of special importance are the findings of the independent **National Drug Abuse Council** of 1980, which stipulated that drug policy should be flexible and have a high level of ingenuity and that it should not be based on an unrealistic, rigid homogeneity in national drug policy. The diversity of the drug problem, should be reflected in consistent policies, which principally seek to discourage misuse, and keep drug-using behaviour within reasonable limits by using means which do not themselves produce more harm than they prevent. The latter finding should form the nucleus of the paradigm which will ultimately mean the establishment of a drug policy which will benefit the drug dependent and the wider society.

## **5.4 THE HANDLING OF THE DRUG OFFENDER IN THE UNITED STATES OF AMERICA'S CRIMINAL JUSTICE SYSTEM**

According to Lipton (1995:2), many drug abusers come into contact with the criminal justice system when they are sent to jail or to other correctional facilities. He postulates that the American criminal justice system is flooded with substance abusers. The *Crime Act of 1994* made provision for the expansion of drug abuse treatment for this group of offenders who had broken the law. The act provided substantial resources for Federal and State jurisdictions. The main aim of the act was crime reduction through the treatment of the offender.

A need has been highlighted for the co-ordination of the various role players within the criminal justice system, as well as the various levels, namely that on regional, state and federal level, to deal effectively with drug- related crime. This need is seen within the findings of research into effective drug policy (Reiss 1994:9) and studies on improving the affectivity of criminal justice systems (Jacoby & Gramckow 1994:156).

### **5.4.1 The role of the police in tackling crime**

The researcher believes that the importance of an integrated criminal justice system becomes apparent when one examines the processing procedure of the drug offender. The costly investigation, detection and arrest of a drug offender by the police is of no value, if the offender is released on a plea bargain merely because the courts or prisons are too overcrowded to accommodate him (MacKenzie 1994:286).

According to Weisburd, Green, Gajewski and Bellucci (1994:61) of the Jersey City Police, the growing drug problem has resulted in the enlargement of narcotics units, the establishment of special strike forces, and the development of strategies in an attempt to deal with the problem nationally. According to MacKenzie (1994:285) the increase in the number of law enforcement officials fighting drug related crime has not contributed to the war against drugs. She views earlier law enforcement attempts to target important drug offenders as futile. When one drug "baron" was arrested he was merely replaced by someone else.

MacKenzie (1994:285) views community acceptance of the police as the first step in a successful process to combat drugs. She postulates that police affectivity should be measured in terms of the communities attitude toward them, the community's fear of crime, police-community interaction and most importantly, persons' quality of life. Weisburd, et. al (1994:61) believe that the development of a "systematic, location-based information system" could enhance the work of the police. This system would enable the identification of street level drug markets and allow for experimental evaluation of innovative drug force strategies.

#### **5.4.2 The role of the courts**

Various authors mention that the court also has an important role to play. MacKenzie (1994:3) emphasises the important role of the prosecutor in the fight against drugs and drug-related crimes. She postulates that by ensuring that fairness prevails and by effectively adjudicating drug cases, prosecutors can play an important role in the fight

against crime.

Jacoby and Gramckow (1994:151) describe new legislation, federal support for new programmes, and new technologies which enable prosecutors to fairly and efficiently adjudicate criminal cases. They also explain strategies and tactics which may be employed to affect drug-related crimes. It is important to consider such tactics in the establishment of a drug policy and model for the handling of the drug offender.

#### **5.4.3 The Correctional System**

The American correctional system follows the philosophical approach of restorative justice in the 1990's. According to Besinger (1992:3) the aim is to restore the offender in order that he fulfil a productive role in the community. However, the researcher believes the very nature of American penal institutions impedes this process.

Lipton (1995:5) however, postulates that in spite of the undesirable conditions within prisons, the time in which drug-using offenders' are in custody presents a unique opportunity to provide them with treatment. He believes that it is imperative for drug offenders to be incarcerated in order to facilitate the treatment process. Lipton (1995:3) substantiates his view by referring to data from the ***Drug Use Forecasting programme (DUF)*** run by the National Institute of Justice, which commenced in 1987. This programme tests arrestees for illicit drug use. Results show that the number of arrested substance abusers has never fallen below 60 percent. The number has even been as high as 85 percent. The number of drug-using offenders in prisons is even higher.

According to Schaffer (1996:23) most of the prisons and jails in the United States of America are already overcrowded and have exceeded their capacity. He goes further to postulate that if all drug dealers known to the authorities were arrested, at least five new prison beds would be needed for every existing one. This was assuming that no new drug dealers filled the gap left by those arrested.

The State of Delaware's correctional system was facing a major crisis in the late 1970's (Gebelein 1992:1). Factors such as the lack of prison construction, the increase in mandatory sentencing structures and years of neglect and negativity affected the correctional system. The population increase within the larger society also contributed to the problem of overcrowding. In an attempt to overcome these obstacles, Governor Du Pont 1V initiated comprehensive changes to the system and amended the sentencing process. The newly appointed Sentencing Reform Commission was given the responsibility of investigating problems and making recommendations in order to develop a logical sentencing policy for the State. This commission was chaired by the Governor's legal council, the Attorney General, Public Defender, Legislators, the Commissioner of Corrections, and others role players from the police and public. By studying the systems and laws of other states the problem areas were identified and they formed the basis of investigation. By this time Delaware had become one of the largest populations in the America correctional system (Gebelein 1992:1).

#### **5.4.4 Drug treatment programmes**

As early as 1914, prison-based treatment programmes were available for drug

offenders in the United States of America. At the Manhattan City Prison, a Dr Lichtenstein treated approximately 1000 drug addicted prisoners annually. He strongly advocated for the long-term physical and mental treatment of this group of offenders (Inciardi & Martin 1993:2). However, as time past, fewer and fewer prison-based treatment programmes existed and by 1920 most drug offenders were being placed in federal penitentiaries.

According to Inciardi and Martin (1993:2) political figures initiated the creation of specialised "farms" where drug offenders could receive treatment. The **Porter Narcotic Farm Act in 1929** made this possible and the six month compulsory treatment regime represented the first comprehensive prison-based treatment programme in American history. Until the 1960's and 1970's these programmes were limited and not many existed. However, they had taken on a new flavour and innovative rehabilitation methods were being applied. Methods of treatment including group therapy, methadone detoxification, methadone maintenance and therapeutic settings were utilised.

The 1960's and 70's were characterised by the creation and use of therapeutic communities or TC's which functioned within Correctional facilities. These TC's functioned on an off and on-basis until they were eventually all closed in the early 1980's. They were replaced by the **control approach** whereby the authorities attempted to control the drug supply. Further deterrent measures implemented, included the use of determinate sentences for drug offenders (Inciardi & Martin 1993:2). In a study conducted by Hser, Longshore and Anglin (1994:4) they found that a further

problem in the treatment of drug offenders may lie in an inadequate number of available treatment programmes. They postulate that "we have no real knowledge of how many offenders who need and desire treatment are turned away because there are not enough programmes available" (Hser, Longshore and Anglin 1994:4).

A further problem addressed by Shellenberger (1996:1) is that none of the present drug education programmes directly address the heart of why more, not less, Americans and especially adolescents, are turning to substance use. He postulates that the answer lies in the failure of current drug education programmes, which should be evaluated to identify their delimitations. Shellenberger (1996:2) quotes research on educational practices that recommend that effective drug education would focus on the capabilities, not inabilities, of (young) people, foster awareness and responsible decision-making and allow drug dependents to participate as full members of society. He does not agree with this, and states that today's population (youth) have had more drug education than any other generations in previous times.

President Clinton's 1997 drug policy strategy called for even further increased allocations for prevention and education. Shellenberger (1996:2) postulates that a need exists to change the current drug education curriculum and states that the nations aim should be to "improve" drug education programmes for the health and safety of generations of young people. These programmes are followed despite the fact that not one scientifically sound study has been conducted which can prove their efficiency. The debate on adolescent drug use must be opened to include discussion of the need for and means to improving drug prevention education.

Lipton (1995:5) postulates that most drug-using offenders avoid treatment while they live in the community. In a study conducted in 1989, Lipton (1995:4) found that more than 70 percent of active street addicts in New York City had never received treatment, nor did they intend to enter treatment for their dependency. This data corresponds with research conducted among Delaware's offender population by Peyton in 1994 (Lipton 1995:6). According to Adler, Mueller and Laufer (1994:430) professors of criminal justice and legal studies, as it is with prisoners with aids and mental problems, drug offenders bring their drug problems with them when they are incarcerated. They refer to a survey of jails conducted in 1987 which revealed that only seven percent of all incarcerated offenders were enrolled in drug treatment programmes. Findings reflected that only 10 percent of those needing treatment for drug problems received treatment. It is the view of these researchers that rehabilitation efforts aimed at substance abusing offenders are ineffective. Hepburn (1994:173) follows a more positive approach and believes that the first step in the treatment of drug offenders should be treatment classification. Through correct classification, information regarding the offenders needs is readily available. This information can be used to accurately determine the most "appropriate treatment modality for each class of offender" (Hepburn 1994:173). He, however admits that more research much be conducted to determine which offenders derive benefit from what treatment modality.

## **5.5 CONCLUSION**

Although the United States of America has had an extensive drug policy for many years it appears to be no closer to "winning the war against drugs". Its history is a valuable

source for research and the many approaches and programmes available for the treatment and handling of offenders, and particularly drug offenders is a valuable guideline for the implementation of sound policy.

The following system under discussion is that of Singapore. It differs radically from the American system in its prohibitionistic approach to the problem. Also, less research has gone into its penal policy and evaluation thereof, whereas in the American system the drug topic is a daily debate.

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## **CHAPTER SIX**

### **THE HANDLING OF THE DRUG OFFENDER IN SINGAPORE**

#### **6.1 INTRODUCTION**

The Republic of Singapore is an independent nation within Southeast Asia. It was named *Singa Pur* (city of the lion) by Sumatran settlers in the 13th century. According to the Grolier Encyclopaedia (1996) little is known about the history of early Singapore. It is thought that in the 11th century a town called Temasek existed on the island. In 1819, a Sir Stamford Raffles arrived on the island and, realising its strategic location recommended that the British purchase the island. In 1824 it was established as a major British trading post. Indian and Chinese traders eventually occupied the territory, and they were later followed by indentured Indian labourers, and Malays.

In the 18th Century, the British banished convicts from their states to penal settlements. Australia and to a lesser degree Penang, Malacca and Singapore were used as "prisons" for "transportees" from Great Britain. During their rule, the British built jails in Singapore to house these convicts, these were the First Convict Goal (a permanent building erected in 1841); the Civil Jail built at Pearl Hill in 1847 and the HMS Criminal Jail erected in 1882 (Ministry of Home Affairs 1996:2).

On 9 August 1965, Singapore gained its independence within the Commonwealth of Nations. It became known as one of Asia's four "Little Tigers" (the others are Hong Kong, Taiwan, and South Korea) due to its rapidly growing economy (Grolier

Encyclopaedia 1996 ).

## 6.2 THE DRUG PROBLEM IN SINGAPORE

Prior to 1970, opium was the main substance of abuse in Singapore. The authorities did not view this drug use as a threat to society as users belonged to an older, more mature age group. This group of drug dependants were believed to have less of an influence on others than a younger group of users would. It was this view that led to the establishment of the ***Opium Treatment Centre at St. John's Island*** in 1955. The Prisons Department immediately affiliated itself with the problem and became involved in the drug rehabilitation programmes offered (Ministry of Home Affairs 1996:2).

In the early '1970's, however, Singapore experienced a major increase in the number of drug abusers and the group using substances became younger. Heroin abuse became a serious problem. According to the Ministry of Home Affairs (1996:2), this growing menace, resulted in the government repealing the ***Dangerous Drug Act of 1951*** and also the ***Drugs Prevention or Misuse Act of 1969***. The more stringent ***Misuse of Drugs Act of 1973*** replaced these acts. In spite of all preventive measures implemented by the authorities, the drug problem in Singapore became larger.

By 1976 the heroin epidemic had grown and it was estimated that 13,000 individuals were using the substance regularly. A country wide operation, code-named "Ferret" was launched in April 1977 in an attempt to combat the problem. The result was that 6,647 drug dependants were committed to drug rehabilitation centres by the end of the

year. At the time the Telok Paku Drug Rehabilitation Centre (previously at St. John's Island); the Jalan Awan Centre and the Selarang Park Drug Rehabilitation Centre were operational. A drug rehabilitation centre for female dependants was also available (Ministry of Home Affairs 1996:2). These measures are indicative of Singapore's policy of intolerance to drug abuse.

### **6.3 HISTORICAL DEVELOPMENT OF SINGAPORE'S DRUG POLICY**

Singapore's contact with drugs can be traced back many years and its drug history starts with its founding in 1819 by the British. Opium found its way to the island when Stamford Raffles of the British East Indian Company, authorised the establishment of an opium farm. The British East Indian Company supplied the opium plants that were planted by the farm workers. The early Chinese settlers introduced the habit of smoking opium in Singapore and it was the farm established by Raffles that enabled them to maintain their drug use (Hill 1978:163).

The habit of opium smoking increased unchecked until 1904 when the authorities criminalised the importation, manufacture and possession of morphine (Singh 1989:36). This led to the comprehensive ***Opium Ordinance of 1906*** that prohibited the latter acts. The authorities later amended this law and allowed certain individuals the right to possess the substance. They were granted exclusive privileges and in these instances' revenue was collected on opium sales. The law implied that those in possession of a licence could produce, prepare and import opium but that they could only sell it locally. This opium was known as "Chandu". According to Singh (1989:36)

Chandu was a form of specially prepared opium considered suitable for consumption. Chandu "shops" established in Singapore retailed this substance. In 1904, the authorities criminalised the manufacture, importation, and possession of morphine in Singapore because of the increased use of the substance by the citizens. This however, did not apply to Chandu.

In 1910 ***the Chandu Revenue Ordinance*** gave the Government exclusive rights to prepare and sell Chandu. Singh (1989:36) states that in 1927 the ***Deleterious Drugs Ordinance*** was passed which made the possession of more than five tahils (189 grams) of Chandu an offence. He states that it was only after World War 11, that the detrimental effect of Chandu became clear to the Government. Yet, it was only in 1951 that the ***Dangerous Drugs Act 7 of 1951*** was proclaimed which prohibited the sale and possession of Chandu. The sale and possession of this substance became a criminal offence. This produced two successive laws.

To incorporate tougher provisions for offences, from using to dealing and trafficking, the ***Drugs (Prevention of Misuse) Act 7 of 1969*** and later the ***Misuse of Drugs Act 5 of 1973*** were initiated (Singh 1989:37). Eventually, these laws were expanded to become the ***First Schedule Misuse of Drugs Act of 1985***.

As early as 1973, Singapore introduced the death penalty for trafficking offences. Singapore was one of the first countries to do so in the world. It is this characteristic that sets Singapore apart from the other countries under discussion in this thesis. While the United States of America, Britain and Wales, Australia and South Africa all

face major problems both economically and socially as a result of an increasing drug problem in society, they have adopted a more tolerant policy with regard to trafficking.

The ***Misuse of Drugs Regulation 36 of 1973*** enforces and requires that all medical practitioners, dentists, pharmacists and anyone else dealing with controlled drugs, should keep proper records in respect of such substances. Furthermore, ***Regulation 10*** requires any Medical Practitioner seeing a patient whom he suspects or knows to be dependant on drugs, to report the matter to the authorities. The doctor may not administer, supply or prescribe controlled drugs to such patients. Contravention of these provisions can result in punishment in the form of a fine of up to \$10,000 or a prison sentence of not more than four years.

Eventually in 1985 the 1973 law was expanded to become the ***First Schedule Misuse of Drugs Act of 1985***. This act allowed for the classification of the various drugs into Class A, B and C substances. This classification however, had a negative effect on the criminal justice system. According to Singh (1989:37) this provision impeded the court's discretionary powers with regard to sentencing.

The 1980's saw a new phenomenon in Singapore. Glue sniffing increased and resulted in the deaths of twenty-nine persons. In 1987 the ***Intoxicating Substances Act 24 of 1987*** was passed which prohibited the misuse of certain substances that may cause intoxication when inhaled (Singh 1989:38).

Attempts have been made to bring about changes to drug policy in Singapore. In 1981

**the case of Ong Ah Chuan** brought about a constitutional challenge to change the legal amounts for possession of illegal substances. An appeal was made to the Privy Council to change the amounts of heroin from fifteen grams or more, and thirty grams or more for morphine. Legislation was upheld on the grounds of social policy (Singh 1989:37).

Singapore's drug policy has an unusual element not found in the drug policy of other countries. Usually, in a criminal case the accused is presumed innocent until proved guilty. This is not so in Singaporean law. Singh (1989:39) states that the ***Misuse of Drugs Act*** employs presumptions (many adverse to common law) that give rise to presumptive facts held against the accused until proved otherwise. An example is that related to the possession or presumed possession of drugs for purposes of trafficking as seen in **Section 17** of the ***Misuse of Drugs Act***. The presumptive fact is held against the offender until he proves the contrary. The same applies to utensils or apparatus found which are used for the consumption of a controlled substance. According to **Section 19(1)** of the ***Misuse of Drugs Act*** it is the accused individual's responsibility to prove his innocence. Similarly, if someone is found in or escaping from a premises proven or presumed to be used for the consumption of a controlled substance, the person is presumed to be guilty of using a controlled substance until the opposite can be proven. Singapore's drug policy is a clear indication of its intolerance to drug use and drug-related offences. However, beside the strict punitive measures imposed against offenders, as seen in the latter acts, much emphasis is placed on rehabilitation as an attempt to fight drug use and dependency. Theoretically Singaporean drug policy looks well balanced as it integrates retributive, deterrent and

rehabilitative aspects of the penal motives.

#### **6.4 TREATMENT AND REHABILITATION**

According to Singh (1989:40) the drug dependant's treatment and rehabilitation forms an important and vital part of Singapore's controlling legislation. According to the Ministry of Home Affairs (1996:2) drug treatment and rehabilitation programmes have always created problems in Singapore's criminal justice system. From 1950 to 1970 when the drug problem was mainly found among the elderly opium smokers, treatment did not pose a serious problem to the community. The single rehabilitation facility situated on St. John's Island could accommodate all cases efficiently. The medical model formed the nucleus of the Singaporean approach to the handling of drug dependants. In 1970 the drug problem started escalating in the younger population and existing treatment and treatment facilities became outdated and ineffective. Measures were put into effect to deal with the growing problem and in 1973 legislation was passed in the form of the ***Misuse of Drugs Act of 1973*** which "marked the watershed in the treatment of drug addiction" (Singh 1989:40).

The 1973 legislation led to the establishment of the Central Narcotics Bureau (CNB). The Director of the CNB is responsible for the administration of the ***Misuse of Drugs Act***, as well as ordering admittances to an approved institution. Several Drug Rehabilitation Centres' (DRC) are available for these referrals.

According to the Ministry of Home Affairs (1996:2) the late 70's and 80's, saw further

structural expansion and refinements to drug treatment programmes in order to enhance the effectiveness of the rehabilitation strategy. This included the inception of **Day Release Camps** for drug dependants. In April 1988, all treatment and rehabilitation programmes underwent further modifications to cope more effectively with the increased incidence of recidivism among drug dependants. This modification introduced two new schemes called the **Exit Counselling Programme** for first admissions and a modified Day Release Scheme called the **Intensive Counselling Programme** for repeat offenders.

The latter brought about the change from the medical model to a treatment perspective. Drug dependency was no longer viewed as a medical problem, but rather as a social and behavioural problem. This resulted in the introduction of additional control techniques into drug treatment programmes.

In 1997 plans for the construction of a purpose-built drug rehabilitation centre were being made. This facility should accommodate all categories of drug dependants in order to utilise every available resource optimally (Ministry of Home Affairs 1996:2).

#### **6.4.1 Drug rehabilitation centres in Singapore**

Legislation, as seen in **Section 37 of the Misuse of Drugs Act of 1973**, emphasises that the Drug Rehabilitation Centre's (DRC's) are not prisons. Detention at such facilities range from six months to two years. The act provides for the control, discipline and occupation of inmates at the centres. Set programmes are followed at the various

DRC's. The programme that the drug dependant undergoes starts with detoxification for the first seven days. Singh (1989:40) postulates that during this time no supportive medication is given unless to save a users life. Patients may also not receive visitors during this period. If any individuals are deemed unfit or are more than fifty-five years of age, they do not have to undergo this period of withdrawal.

Each Drug Rehabilitation Centre has a Review Committee headed by a medical practitioner or psychiatrist. The committee reviews each case to enable each individual to be released as early as possible. If the case is not suitable for release, it may be recommended for further treatment for up to two years. The Review Committee also decides upon the patients eligibility for employment. If the patient is deemed eligible, the Director will grant leave for purpose of employment. The individual placed for employment may not be absent from work and each time he returns to the facility he must undergo a urine test.

In April 1988, the programme was amended slightly by the Central Narcotics Bureau and the Singapore Anti-Narcotics Association (SANA). In the amended programme the patient still undergoes detoxification for seven days but then he is only kept for a further two weeks of intensive treatment and counselling. Hereafter, the patient is placed on a two-year supervision order. During this period the individual must attend further rehabilitation and counselling at a Drug Rehabilitation Centre. At first he must attend regularly, but later can attend at declining intervals (Singh 1989:41).

The drug dependant under supervision must adhere to certain requirements as

stipulated by the ***Misuse of Drugs (Approved Institution & Treatment & Rehabilitation) regulation 8, 1978:***

- ▲ The drug dependant must report to the supervision officer when so directed
- ▲ The supervision officer must be allowed to visit the individual under supervision at his/her residence
- ▲ The drug dependant may not change place of abode without prior written permission of the supervision officer
- ▲ The individual may not leave Singapore without the supervision officers approval
- ▲ The drug dependant must notify the supervision officer of any change of employment
- ▲ The drug offender must provide specimens for urine tests when so required
- ▲ The drug offender may not associate with undesirable elements
- ▲ The drug offender must present himself for counselling as directed by the supervision officer
- ▲ He must not be in possession of a controlled substance
- ▲ The offender may not smoke, administer or consume any controlled drug.

The above measures are imposed to help the drug dependant to abstain from and avoid old habits and to prevent him from succumbing to temptation. Failure to comply with the terms can lead to the imposition of a heavy fine or imprisonment. If the offender is not a suitable candidate for the options discussed up to this point (in the case of the recidivist) or if he has committed a serious crime, he is processed through the criminal justice system.

## **6.5 THE HANDLING OF THE DRUG OFFENDER IN THE CRIMINAL JUSTICE SYSTEM**

The justice system primarily places emphasis upon the treatment and rehabilitation of drug offenders and drug dependants. First time drug offenders are placed on a two-year supervision order by the Director of the Central Narcotics Bureau. The police also play an important role in the processing of the drug offender.

### **6.5.1 The police's role in the handling of drug offenders**

In Singapore, the police act under the supervision of the Ministry of Home Affairs. Offences in contravention of customs and drug laws can be investigated by both customs officials and narcotics officers (Report on the Third United Nations Survey of Crime Trends 1992:149). After arrest, if an offender is deemed to be drug dependant, he is not channelled through the courts in the normal manner. According to Singh (1989:42) any offender, who is medically examined and found to be dependent on drugs, is immediately held and admitted for treatment. First time offenders are not charged in court. Diversionary measures are implemented to remove these offenders from the criminal justice system. They are normally transferred to a Drug Rehabilitation Centre. Upon their arrest, repeat drug offenders are sent to **Sembawang Drug Rehabilitation Centre**.

### **6.5.2 The court process**

In Singapore criminal prosecutions are instituted by the state. With the exception of private prosecutions, the Attorney-General's department represents the State (Report on the Third United Nations Survey of Crime Trends 1992:149). Offenders who are drug dependant are normally diverted from the justice system. It is normally those convicted of trafficking who are processed by the courts.

### **6.5.3 Singapore Prisons Department**

Historically, Singapore has a reputation for its effective prison management. According to the Ministry of Home Affairs (1996:12) its effective control and management of the early convicts gained Singapore an excellent reputation for convict administration. Early observers from the Dutch East India Company, Siam and Japan, came to learn about the system and praised its efficiency.

The Singaporean penal policy has always emphasised reformatory training and useful employment above punishment. The Ministry of Home Affairs (1996:31) postulates that even in the mid-nineteenth century "convict administration, in Singapore was more advanced and enlightened than prison practice in Britain or elsewhere in the world".

The structure of the Singaporean Prisons Department is as follows. The Director of Prisons is assisted by the Deputy Director, an Assistant Director (Administration), an Assistant Director (Operations) and an Assistant Director (Personnel & Training). The

organisational chart within the department is arranged according to staff and line functions. Each institution and unit is responsible for a different spectrum of work. The current line function consists of penal institutions and drug institutions. Various support units also exist. The Singapore Prisons Department has grown in size and complexity over the years. From the four original prisons built by the British, it has grown to seventeen institutions. Eight of these are penal institutions and seven are Drug Rehabilitation Centres (DRC's).

The DRC's function simultaneously as both rehabilitation centres and as prisons. In 1996, there were about 16 000 prisoners in prisons in Singapore, of which 7 500 were incarcerated for drug-related crimes (Ministry of Home Affairs 1996:2). The Singapore Prisons Department does not subscribe to the idea that drug dependency is a medical problem. Toh (1996:3) postulates that as in the case of any other type of criminal, drug dependants are viewed as individuals with social and behavioural problems. The Prison Department's policy states that "the addict is responsible for the consequences of his own actions and it is up to him to make a determined effort to kick his drug taking habit. If he is not amenable, no amount of treatment and rehabilitation can wean his drug addiction. As such, resources are channelled mainly towards those who are amenable to change and who have shown the desire and will to stay drug-free " (Toh 1996:3).

The Singapore Prisons department has adopted the view that it is the responsibility and function of the Drug Rehabilitation Centres to provide for the treatment and rehabilitation of drug offenders. Another important rationale behind this is that the

treatment of drug offenders within Drug Rehabilitation Centres and not within prisons, helps to prevent the spread of the drug abuse to the rest of the prison community (Singh 1989:42). This point sets an example to the other countries under discussion, where drug offenders are incarcerated with the rest of the prison population.

## **6.6 DRUG REHABILITATION CENTRES**

The Drug Rehabilitation Centres functioning within the prison system are Abingdon, Khaki Bukit, Khalsa Crescent, Selarang Park, Jalan Awan, Llyod Leas Camp, Changi Women's and Sembawang. Upon their arrest, all repeat drug offenders are sent to the Sembawang Drug Rehabilitation Centre. A period of detoxification (cold turkey) is undergone for one week. During this period, the drug dependant experiences withdrawal as his body adjusts to the dependence on drugs. After detoxification, the inmate is allowed a further week in which to recuperate (Toh 1996:3).

Depending on the number of previous admissions to Drug Rehabilitation Centres, the drug offender will be transferred to one of the other institutions. Here, they are put through a tough regime of "drill" and physical exercises to build up their fitness level before being introduced to the other aspects within the rehabilitation programmes (Toh 1996:4). These aspects are similar to the penal regime involving work therapy, education and counselling. Drug dependants are detained in the Drug Rehabilitation Centres for a minimum period of between six and eighteen months. This depends on the number of previous admissions. Generally, inmates with previous DRC admissions will be kept longer. The individual's case is placed under review every six months. The

cases are reviewed by the DRC Review Committee. A Medical Director from a government hospital heads these committees and reputable persons selected from the public and private sectors are also involved. Four **DRC Review Committees** and one **Anti-inhalant Abuse Review Committee** exist to handle these cases (Toh 1996:5).

According to Toh (1996:3), upon completion of the minimum period of detention within the Drug Rehabilitation Centre inmates are placed in one of two Specific Drug Treatment Programmes. They can be placed in either the **Community-based Rehabilitation programme** (CBR), or the **Enhanced Institutional Rehabilitation programme**(EIR). In the **Community-based Rehabilitation programme**, an inmate may either be selected for the **Halfway House (HWH) Scheme** or the **Residential Scheme**.

The **Halfway House Scheme** requires that the inmate stay in a halfway house for six months in order to undergo the rehabilitation programme successfully. Inmates in the **Halfway House Scheme** may work during the day but must return to the Halfway house each evening after work to observe the curfew hours. According to Toh (1996:4) this scheme is especially beneficial to those inmates who express a genuine desire to change but who have no family support, or no home to return to, or whose family environments are not conducive to their recovery.

The other available option is the **Residential Scheme**. It makes use of electronic monitoring. The inmate is tagged with an electronic monitoring device. This device is

connected to a home monitoring unit located at his place of residence. The monitor is relayed to the monitoring centre by means of a silent telephone connection. This allows the offender to leave home for work during the day and to return home each evening after work to observe the curfew hours. The duration of the **Residential Scheme** is similar to the **Halfway House Scheme**, which is for a period of six months. Selection of participants, for the two schemes, is based on a set of stringent criteria. Only those inmates who are responsive to their rehabilitation and shown a desire to change will be selected for the **Residential or Halfway House (HWH) Scheme**. Thus, it is only the most amenable and promising inmates who are selected to undergo the programmes. This facilitates the high success rate of the two schemes.

Those inmates who do not qualify for Community-based Rehabilitation are placed under the **Enhanced Institutional Rehabilitation (EIR) Scheme**, which requires their detention in the DRC's for periods ranging between twelve and 24 months, in order to commensurate with the number of DRC admissions.

In August 1993 a breakthrough was made in the treatment of drug dependency in prisons in Singapore. The Prisons Department launched a pilot programme involving the use of Naltrexone. Naltrexone, a narcotic antagonist agent consumed orally in pill-form, acts on the receptors of the brain to prevent the euphoric effect brought about by the consumption of narcotics. Thus, according to Toh (1996:4), Naltrexone prohibits the euphoric effect of a narcotic drug. A further benefit of Naltrexone is that it is not addictive and therefore, does not serve as a substitute drug. The substance was tested on inmates who volunteered to participate. Results of the pilot project were positive

and Naltrexone has now been incorporated into all mainstream drug rehabilitation programmes, in particular, the **Residential and Halfway House Schemes** under the Community-based Rehabilitation Programme.

## **6.7 THE ROLE OF THE CENTRAL NARCOTICS BUREAU**

Drug offenders are placed under the supervision of the Central Narcotics Bureau upon completing treatment within either the **Residential Scheme**, the **Halfway House Scheme** or the **Enhanced Institutional Rehabilitation Scheme**. They are placed under compulsory supervision of the Central Narcotics Bureau for a period of one to two years depending on their progress and response. During this period of time, the supervisees are required to report at designated centres for regular urine tests. This task is allocated to various police stations, and this procedure ensures that these drug offenders remain drug-free.

## **6.8 VOLUNTARY DRUG TREATMENT PROGRAMMES**

In the **Volunteer Treatment Programmes**, those first-time drug experimenters and abusers who want to join the Volunteer Programme can go to the Accident & Emergency Unit of Changi Hospital during office hours to register for the programme. They must have the following prerequisites:

- ⇒ Be a citizen of Singapore
- ⇒ Not have been admitted to a DRC previously
- ⇒ Not have any criminal or drug antecedents

- ⇒ Not be wanted by any law enforcement agency
- ⇒ Not have been in the programme before.

Those who volunteer for the programme will be allowed to undergo one week of detoxification in a special centre at Changi Hospital and afterwards must undergo six months of rehabilitation in a halfway house of their choice. Recovering participants would later continue to receive aftercare counselling and support from the halfway house. While undergoing detoxification the individual must pay nominal hospital charges of \$30 comprising \$20 ward charges and \$10 medical charges. The Prisons Department subsidises their 6-month stay at halfway houses.

## **6.9 CONCLUSION**

The Singaporean penal policy has always emphasised reformative training and the useful employment of offenders above punishment. Much emphasis is placed on the treatment and diversion of first time drug offenders and it follows a managerial approach to the handling of the drug offender. Theoretically it is of value as a blueprint on which to structure a model for the handling of drug offenders.

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## **CHAPTER SEVEN**

### **THE HANDLING OF THE DRUG OFFENDER WITHIN THE AUSTRALIAN CRIMINAL JUSTICE SYSTEM**

#### **7.1 INTRODUCTION**

Chappell, a renown Australian criminologist, postulates that the historical development of Australia has had a marked impact on its current criminal justice system. Because Australia was originally a convict settlement, Chappell believes the need to control a "largely disobedient population" led to the creation of a strong reliance on centralised authority (Reichel 1994:278).

The British fully colonised Australia by the middle of the nineteenth century. Six separate colonies, each with its own constitution and parliament were formed. Australian law was based on English law. On becoming a federation in 1901, the six colonies became states and a system was devised by which they shared legislative power with the Commonwealth (Mukherjee, Neuhaus & Walker 1990:2).

At present there is no single criminal justice system in Australia. Mukherjee et al (1990:2) state that the six states and two territories have similar, yet unique systems. While the States and the Northern Territory have their own criminal laws, police forces, courts, prisons and juvenile institutions, the Australian Capital Territory has a police service that deals with all the latter tasks. Drug issues are, however, often dealt with in mutual co-operation. Cross border crime such as drug trafficking is dealt with

through mutual assistance or extradition and co-operative policing (Findlay, Odgers & Yeo 1994:73). A striking feature in the Australian criminal justice system is the retreat of the traditional agencies of policing, prosecution and punishment and their replacement by measures such as diversion, mediation and compensation as alternatives to punishment (Findlay, Odgers & Yeo 1994:73). This is especially apparent in the case of drug-related crimes. As in the case of the countries already discussed, Australia is not exempt from drug use and trading among its population and these issues do pose a problem to the Australian system and the interests of its community.

## **7.2 THE DRUG PROBLEM IN AUSTRALIA**

According to Mukherjee et al (1990:28), a large number of individuals are processed for drug offences in Australia yearly. In 1986-1987, a number of 62 000 drug offences were reported to the authorities. These authors postulate that only five percent of these individuals were arrested and found guilty. According to Jamrosik (1995:193) in 1991, 3 497 defendants appeared in South Australian courts on drug-related charges. A total of 36 734 offenders were processed during this period. A report published by the Attorney-general's Department (1993:7) reflects that in 1992 and 1993 respectively, 3 936 and 4 487 drug offences were reported or became known to the police. This document stipulates that the majority of drug offences involved cannabis. The report furthermore reflects that an increase of 15.3 percent of drug related cases were heard before Magistrates Courts during 1993. The following figures quoted in "The Australian" (Meade 1997:4), indicated the extent of the drug problem in

Australia during 1997. Meade postulates that according to the Australian Parliamentary Group for Drug Law Reform, more than 100, 000 Australians used heroin and that 39 percent of all juveniles over the age of 14 had used illicit substances. Persons on methadone maintenance increased by 10 to 15 percent each year. By 1997, 18 000 addicts were receiving methadone treatment, and a large number were placed on waiting lists to receive treatment. It is estimated that the drug industry cost Australia \$500 million in 1992. Meade (1997:5) states that this figure has increased by forty percent since then. Meade verifies that the link between drugs and crime has not yet been quantified, a view held by many other social scientists from other counties. She adds that approximately 8 000 young Australians are in jail each night because of drugs.

Walker, the Australian representative to the United Nations Commission on Narcotic Drugs that held its general debate in Vienna, from 15 - 23 March 1995, postulates that there are no simple solutions to the multifaceted drug problem. He stipulated that retaining an open mind to innovative approaches that may not conform to current beliefs and models is important. He said that through attention to harm-reduction policies, Australia had also achieved one of the world's lowest rates of HIV-positive infection among its intravenous drug using population and hoped that guiding principles on demand reduction would be set (Australian Drug Law Reform Foundation 1995:5).

In 1997, Cowery, the Director of Public Prosecutors (equivalent to an Attorney General) called for a renewed look at the Australian drug problem. He called for the establishment of a national summit or commission to deal with the growing drug

problem (Meade 1997:5). The latter call illustrates that Australia is in a similar situation to the United States of America (Chapter 5), and Britain (Chapter 4). The authorities all express a need to address the growing drug problem worldwide.

In Australia drug use is viewed as a paternalistic offence. Other paternalistic offences include gambling, prostitution and the distribution of obscene literature. The grounds for the regulation of these acts and the punishment thereof, are justified by the protection of society, and especially the youth. Findlay, Odgers and Yeo (1994:18) state that sanctions are aimed at promoting the general welfare and well-being of the community and discouraging potentially harmful acts. However, drug related offences such as drug trafficking, importation, cultivation and the manufacture thereof, are viewed in aggravation. These offences are dealt with strictly in order to eradicate the supply of illegal substances.

### **7.3 HISTORICAL DEVELOPMENT OF DRUG POLICY**

For purposes of this study the researcher will pay specific attention to the handling of the drug offender in South Australia. As each state in Australia has its own method of offender handling, discussing each system will be impractical. The researcher has selected the South Australian System because it appears to be an effective system for the handling of the drug offender.

Australian drug control has not seen much change as drug use has only appeared as a social problem since 1969, when authorities noticed the disappearance of cannabis

specimens from the Botanical Gardens. Prior to this drug laws had hardly been amended. In 1934, the only existing criminal drug laws were the *Opium Acts*. These acts were enforced to protect the European community from the Chinese and the threat they presented by their use of opium for smoking purposes (Gray, Reynolds & Rumbold 1992:127). Ironically, at the same time opium, heroin and morphine, which were widely available as over the counter drugs, were left unregulated. Legislation did not differentiate between the use of drugs and drug trafficking and the concepts of "soft" drugs (cannabis) and "hard" drugs (amphetamines and heroin).

In 1976 the South Australian system began to distinguish between the concepts of using and dealing, and "soft" and "hard" drugs. It was only in 1984 that legislation throughout Australia highlighted the differences in trading in smaller and larger amounts of illicit drugs. This was done in order to increase the penalties for large scale trafficking. In 1986, these penalties came under revision and were further increased (Gray et al 1992:128).

In 1984 the *South Australian Drug Assessment and Aid Panel (DAAP)* was established to reduce the contact between the offender and the criminal justice system (Gray et al 1992:128). Its main function is to act as a pretrial diversion scheme (Circular:1992). At present the South Australian system is the only one in Australia that deals specifically with the pre-trial assessment of drug and alcohol cases. In the jurisdictions of New South Wales, the Australian Capital Territory, Victoria and Western Australia, diversionary measures for drug offenders all operate after conviction. Thus, these systems do not eliminate the contact between the offender and the justice

system. Norberry (1993:1) postulates that the Victorian system is presently undergoing changes that will bring it in line with the South Australian one. In the South Australian system the **Controlled Substances Act 1984 (SA)** makes provision for the establishment of a **Drug Assessment and Aid Panel** (Norberry 1993:1).

In 1985 the **Drug Misuse and Trafficking Act of 1985** was introduced. This act narrows the categories of prohibited substances down to *prohibited drugs and prohibited plants*. *Prohibited drugs* are viewed as substances other than prohibited plants. *Prohibited plants* are defined in Section 1 of the Act and include the cannabis plant. The Act also specifies quantities of substances and includes the following categories:

- Trafficable quantities, possession for the purpose of supply
- Small quantities, equivalent to one tenth of the trafficable amount
- Indictable quantities, amount twice the trafficable amount
- Commercial quantities, allows for increased penalty provision (Section 3)
- Discrete dosage unit, refers to drugs such as LSD (Lysergic Acid Diethylamide) produced in tabs of blotting paper.

The **Drug Misuse and Trafficking (Amendment ) Act of 1988** made changes to the quantities of drugs and a further quantity was added to the above, namely that of large commercial quantities.

## **7.4 THE HANDLING OF THE DRUG OFFENDER WITHIN THE SOUTH AUSTRALIAN CRIMINAL JUSTICE SYSTEM**

The following components make up the South Australian criminal justice system and facilitate the processing of the drug offender through the system:

### **7.4.1 The Police**

According to Mukherjee et al (1990:32) the police play an important role in the criminal justice system. Findlay, Odgers and Yeo (1994:36) agree with this view and state that the police carry the sole responsibility for the process of criminal law enforcement in the early stages. Beyond the usual investigative procedures, the police process cases through the justice system and play a central role in pre-trial decision making. Except in the Australian Capital Territory, the police conduct the prosecution case and maintain the right to determine the charges to be filed. "Where the matter can be tried summarily or on an indictment (that is before judge and jury) the police decision carries significant weight" (Mukherjee et al 1990:32).

As the "official gatekeepers" of the criminal justice system the function of the police is to collect and interpret data that may allow other processes to be avoided if necessary. Thus, certain stages within the justice process can be avoided or invoked to the benefit of both the accused and the state. Diversionary or cautionary procedures may thus be beneficial to the smooth processing of the offender (Findlay, Odgers & Yeo 1994:97). The police also have the power to impose bail or to oppose court bail, or to resist a

Supreme Court application for review. This legislative creation applies to all Australian jurisdictions and allows a police official the power to grant an accused bail on condition that he appear in court (Findlay, Odgers & Yeo 1994:98). In the case of the offender who faces drug trafficking charges, the legislative presumptions are against bail and the accused may face a reversed onus when applying for bail.

#### 7.4.2 The Courts

Court hearings can be held in either Magistrates Courts or in higher courts before a judge and jury (Mukherjee 1990:32). The South Australian court system diverts most drug-related offences to the **South Australian Drug Assessment and Aid Panel** and only those cases that do not adhere to the conditions set by the diversionary process are referred back to the courts. On entering the prosecution process the drug offender is dealt with under the **Controlled Substances Act 1984 (S)**. The act has 13 central penalty outcomes, diversion to the Panel being only one thereof. This act stipulates the following punishment for drug offenders on determination of guilt (Gray et al 1992:127). The drug-using offender can receive an "on the spot fine" or expiation fee ranging from \$50 for possession of small amounts of cannabis, to one million dollars and a prison sentence (of life imprisonment) for a more serious offence such as trafficking.

The Courts may also refer clients, who have been arrested without knowledge of their drug problem, to the **South Australian Drug Assessment and Aid Panel (SADAAP)**. This referral must take place prior to court determination (Gray et al 1992:129). The

following panel aids the courts in their decision-making with regard to drug-related crime:

#### **7.4.2.1 The South Australian Drug Assessment and Aid Panel**

This Panel was established because of major changes made to Australia's drug legislation in 1984 (Gray, Reynolds & Rumbold 1992:127). Recommendation no 34 of the **Controlled Substances Act 1984 (S)** states that "South Australia should establish drug assessment and aid panels...to which all persons charged with simple possession offences involving drugs must be referred before prosecution may proceed. Its main philosophy lies in the distinction between drug use and drug trading. It sees drug users as the "victims" of the traders (therefore more stringent legislation is applied to traders than to users) who must not necessarily be "punished" through the criminal law process, but should be given the opportunity to make changes to their lives" (Gray et al 1992:128). It is for this purpose that the South Australian system diverts the drug-using offender from the criminal justice system prior to sentencing and gives him a choice to undergo treatment and rehabilitation rather than punishment.

The Panel's first sitting occurred in May 1985, and it functioned in the following manner.

**The South Australian Drug Assessment and Aid Panel ( SADAAP)** facilitates a complete diversion scheme where all persons charged with offences of simple possession (such as possession for sole purpose of personal use of the illicit substance, excluding cannabis, and implements for the use of the substance) must be referred to the Panel. In the case of a drug-related offence (where the accused is a

user), the police must gain the Panel's permission before the matter can be dealt with. According to Norberry (1993:1) the offender cannot be prosecuted without prior consent from the Panel. It is the function of the Panel to assess the offender. During this stage of the process it is clarified if the accused is a user or a trader. An assessment is undertaken to examine the offender's circumstances and patterns of drug use and psycho-social background. The accused must be willing to undergo assessment voluntarily. The Panel consists of a lawyer who explains to the client that the alternative options available must not be viewed as a way to avoid the criminal justice system, but as a means to gain treatment to modify drug-taking behaviour and to change his life positively. Should the drug user accept the terms, he is ordered to enter a rehabilitation programme and to undergo counselling. If an agreement to these terms is reached, the offender will not be prosecuted. However, if the offender disagrees with the above terms and refuses to co-operate, or does not plead guilty to the charges, he is referred back to the courts to be dealt with in the usual manner. When the offender shows no willingness to change, the Panel will also decline the client.

According to Gray et al (1992:129) approximately 55 to 60 percent of those individuals evaluated by the Panel are placed on an undertaking. The offender is stipulated to remain under the control of the Panel for a period of six months. During this period the client maintains the right to have the case referred back to court (Circular:1992). The **Controlled Substances Act** facilitates a wide area of treatment ranging from specific treatment for the illicit drug use that brought the individual to the attention of the Panel, to matters associated with or as a result thereof (as set about in Section 37 of the Act).

Variables such as unemployment and domestic violence are also addressed. Gray et al (1992:129) postulate that the client must comply with all relevant and reasonable directions and must attend Panel sessions at least once every six weeks. If all conditions are favourably met by the offender, after six months the Panel requests the police and the court to withdraw the matter. The offender does not retain a record for the specific offence. The process acts as a diversionary mechanism and thus attempts to avoid the labelling and stigmatisation of the offender.

#### **7.4.2.2 Structure of the panel**

In 1992 the **South Australian Drug Assessment and Aid Panel** consisted of three support staff and nineteen Panel Members. In 1993 there were ten Panel Members who rostered sessionally and nine "on-call" Panel Members (Circular:1992). During 1991 and 1992, the **South Australian Drug Assessment and Aid Panel** conducted 164 Panel sittings in which 332 referrals were processed (Circular:1992). Of the 332 offenders 187 entered a formal undertaking with the Panel. The written undertaking was successfully completed by 123 clients while 27 breached their undertaking. In this period the **South Australian Drug Assessment and Aid Panel** authorised 33 prosecutions. As it is noted in the Circular (1992) some offenders did enter an undertaking but did not successfully complete it until the next year, which is not recorded in the circular.

## **7.5 EVALUATION OF THE SOUTH AUSTRALIAN DRUG ASSESSMENT AND AID PANEL**

The greatest value of this system is that it removes the offender from the criminal justice system and thus counteracts the negative elements that are connected to it. It limits contact with criminal elements, labelling, loss of employment, removal from the family system and the cost of prosecution and detention to the tax payer, all factors that are detrimental to the management and rehabilitation of an offender. The Panel costs the South Australian tax payer \$155,000 each year.

The main problem associated with the system as illustrated by Gray et al (1992:130) is that the clandestine nature of the activities and lifestyle of the user make it difficult to follow up and determine the success of the programme. These scientists state that the role of drug use may not be identified when the offender is arrested, thus contributing to the processing of the drug offender through the legal system without diversion or treatment. As Gray et al (1992:133) state, often offences heard are drug-related (such as crimes committed to gain access to drugs) but the court may not be aware of this. In this case the offender can be incarcerated without the benefit of treatment. This would be counteracted by mandatory drug testing conducted on all offenders.

Another problem which the system poses is that the Panel may only deal with offenders over 18 years of age. The matter has come under discussion and the possibility of incorporating juveniles of 16 and over in the **South Australian Drug Assessment and**

**Aid Panel** is being considered (Circular:1992). According to Gray et al (1992:133) a Children's Aid Panel also exists to deal with those offenders who cannot be served by the **South Australian Drug Assessment and Aid Panel**, but it has delimitations. It only serves a perfunctory role and does not deal with specialised drug assessments. It may be more effective thus, if separate facilities were made available to juvenile offenders to undergo the same assessment and treatment as that received by adult client.

Between the period of May 1985 and September 1991, 1400 drug offenders were channelled through the Panel for illegal possession of drugs. A study was conducted by Gray et al (1992:132) to examine the effectiveness of this system. The variable identified to test the effectiveness was the recidivism rate among the sample group. They report that information was available for 239 persons in the sample. Forty five percent of these offenders had previously received treatment for their drug dependence. According to Gray et al (1992:132) the "majority of the people in the sample had developed a repertoire of maladaptive behaviour prior to adulthood". Thus drug abuse and the consequences thereof become a way of life, making rehabilitation very difficult.

## **7.6 CONCLUSION**

Walker (Australian Drug Law Reform Foundation 1995:1) clearly illustrates the dynamics of the drug problem in Australia when he expresses his views. He believes that there are no simple solutions to the drug problem in modern society. Possibly the

answer lies in the adoption of an effective drug policy or treatment modality. The researcher believes that it is important to remain open to innovative approaches which might not conform to current beliefs and models in order to ensure that a dynamic and all encompassing approach is adopted to the drug problem. It ensures that the unique nature of each situation and the individuality of each user is considered when considering a handling option. The **South Australian Drug Assessment and Aid Panel** used within the South Australian criminal justice system in theory, is an excellent diversionary mechanism that should receive consideration within any treatment model.

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### **South Australian Controlled Substances Act of 1985**

## **CHAPTER EIGHT**

### **THE HANDLING OF THE DRUG OFFENDER IN THE SOUTH AFRICAN CRIMINAL JUSTICE SYSTEM**

#### **8.1 INTRODUCTION**

While South Africa has had problems with drugs in the past, the birth of a new democracy and the adoption of a new regime together with the lifting of sanctions has opened South Africa up to the world and has contributed to a greater exposure to illicit substances (Maiden 1998:1). Ryan (1997:1), associated with the Institute of Security Studies, postulated that South Africa's re-entry into the international community has exposed it as a "paradise emerging market and transit point for illicit drugs". This view is shared by experts on an international (Cilliers & Van Zyl Smit, Cairo 1995) and national level, where the concern for the growing problem is escalating. According to Van Aarde (1997:1) from the South African Narcotics Bureau, the drug issue is not a new problem faced by South African society. He also expresses concern about the increasing problem. This is not good news for South Africa and future projections can only illustrate that the extent of drug dependency and the resulting drug related crime will increase yearly. The current South African drug problem and the specific need to establish a sound basis for the handling of the drug offender form the foundation of this chapter. Furthermore, the relevant South African legislation regarding this phenomenon is examined from a historical perspective, including both old and new legislation.

## **8.2 THE DRUG PROBLEM IN SOUTH AFRICA**

According to Rocha-Silva (1997: 1-20) an experienced social scientist in South Africa, the nature of drug abuse and related issues such as drug-related crime is a much debated issue at present and is a cause of concern for the authorities. These concerns are supported by worldwide evidence, as illustrated in the previous chapters. Increasing rates of admissions to drug treatment facilities are a clear indication of the problem. During 1985 approximately 3,12 percent and in 1993, 4,58 percent per 100 000 of the population of 15 years and older, were processed through treatment facilities in South Africa. Rocha-Silva (1997:8) further submits that the substances most commonly used by South African adults are dagga (marijuana), mandrax, a combination of both substances, cocaine, LSD, Welconal, sedatives, tranquillisers and heroin. Those who have had contact with the criminal justice system tend to have used dagga (marijuana), mandrax, a combination of these, heroin and amphetamines. It is interesting to note, however, that Rocha-Silva states that their charges were non-drug-related. She does not elaborate on the point and therefore it can merely be speculated that the drug-crime link may not have been discovered or understood.

In South Africa a network of preventive services and services within the communities exists to deal with the treatment and rehabilitation of drug dependants. The welfare system aims to facilitate the development of human capacity and self reliance in their efforts to establish a caring and enabling socioeconomic environment. Therefore, the mission of the South African Department of Welfare is to serve and build a self-reliant nation in partnership with all stakeholders through an integrated welfare system which

maximises existing potential, and is equitable, sustainable, accessible, people centred and developmental (Gerber, Kaba, Magwaza, Mynhardt & Raman 1997:7). Geographical areas within the South African welfare system are divided into the various provinces namely; the Eastern Cape, the Free State, Gauteng, KwaZulu Natal, Mpumalanga, North West, Northern Cape, Northern Province and the Western Cape. To elaborate and illustrate the extent of services within South Africa, services within the Eastern Cape, Free State and Gauteng are examined. The other six regions have similar facilities to those illustrated within the selected areas. The rationale for the selection of the following provinces lies in the fact that the **Eastern Cape** is regarded as the poorest province financially, the **Free State**, for its rural nature and **Gauteng**, for its leadership in the field of current developments. **Gauteng** is also the richest province. Thus these provinces best represent South Africa.

The **Eastern Cape** has a population of 2,5 million. Services within the Eastern Cape are divided into services offered by the five regional offices, two youth groups (Teenagers against Drug Abuse and Youth for Christ), support groups (Al-anon, Life Line, Tough Love, Christian Action for Dependents and Alateen) and in-patient treatment centres. Two registered in-patient treatment centres are situated at the *Tembelitsha Alcohol and Drug Centre* in Umtata and the *St Marks Centre* in East London. The South African National Council for the Treatment of Drug Addictions (SANCA) has two in-patient treatment facilities and three community-based treatment facilities. Fourteen provincial, private or psychiatric hospitals are also equipped to deal with the detoxification and treatment of drug dependency. Other stakeholders include

SANCA (Port Elizabeth and East London) and SANAB (South African Narcotics Bureau affiliated with the South African Police Services) who are responsible for training, school intervention, the development of drug policy and the training of parents, teachers and nurses to identify and deal with drug issues.

The **Free State** comprises of a population of 2,5 million people. It has ten regional offices and three different bodies dealing with research. They are the Department of Welfare and the Mangaung and Spoornet Projects. Two youth groups (Eunice SANCA and Teenagers against Drug Abuse) also offer their support and Alcoholics Anonymous has four support or aftercare groups functioning within the area. Christian Action for Dependents (CAD) has fifteen different offices in various towns. Other agencies within the Free State are Child Emergency services, Drug wise Pharmacists, International Order of Templars (IOTT), Life Line, Saamspan, Street Children and Tough Love. The Aurora Alcohol and Drug Centre that is also situated in this area is a registered in-patient treatment centre. Three community-based treatment services found here are the Grace Centre for Healthy Lifestyle, the Multimed Clinic and the SANCA Goldfields Thabong Clinic. The Aurora Alcohol and Drug Centre in Bloemfontein acts as a detoxification centre. The Free State also has four provincial, private or psychiatric hospitals equipped to deal with drug dependency. The training centres are situated in Kroonstad (Sakha Ingomosos Centre), Bloemfontein (Unit for Healthy Lifestyle) and Welkom (Life Line).

In **Gauteng**, which has a population of 7,2 million, four regional offices function, two in Johannesburg, one in Germiston and one in Pretoria. Eight registered bodies deal with

research on drug-related issues. Five youth groups function within the area and seven different support groups, namely; Alcoholics-Anonymous, Al-Anon, Narconon, Alateen, Alcohol Children of Alcoholics, Narcotics Anonymous, Gamblers Anonymous and the Alcohol Safety School deal with support and after-care groups. Three *Employee Assistance Programme groups* also function within Gauteng. Life Line has as many as ten different branches within the area. Other available facilities include Telefriend Ministries, Peer counselling, Primary Alcohol and Drug Abuse Prevention Programmes, Street Children, Tough Love, Drug Specialised Service, Drug Wise and the International Order of True Templars (IOTT). Ten registered in-patient treatment centres operate in the area and another, Magaliesoord, a state run treatment centre is situated in Cullinan. Twenty four community-based services operate in Gauteng, sixteen are branches of SANCA. Gauteng also has two detoxification centres. Seventeen provincial, private or psychiatric hospitals are also equipped to deal with drug dependents. As many as ten stakeholders are involved in training.

This illustration of existing resources shows the extent and diversity of services within South Africa. Rather than have agencies working in isolation, functionaries should work in co-operation with each other. This would enable networking to take place and the co-ordination of efforts in the fight against drug use and dependency. It may also create structures for the imposition of alternative sentences for drug offenders. South African drug policy does allow for this process. In 1998, South Africa is still striving to establish an internationally tested drug policy and to develop structures that are effective in dealing with its drug problem. From the previous chapters, on the situation within other countries, it is clear that other nations have not yet won the war against

drugs, nor have they found a completely effective way in which to handle and treat the drug offender in an integrated justice system. Because it is so difficult to fight the cause of the problem (drug trafficking and dealing) society has to settle for second best. That is the enormous task of attempting to treat the symptoms or effects. These alternative measures take the form of dealing with the treatment and rehabilitation of those individuals with a drug dependency problem or the criminal drug dependent. It is therefore necessary that South Africa implement measures and relevant programmes, as stipulated and allowed for in Section 6 of the ***Prevention and Treatment of Drug Dependency Act 20 of 1992*** towards the effective handling of this phenomenon and to fight the war against drugs (See Section 6).

The starting point for South Africa should thus be the creation and implementation of an effective drug policy that will not only meet international standards and expectations but also create a scientific environment in which the problem can be addressed and researched (See section 3 (c) of the ***Prevention and Treatment of Drug Dependency Act 20 of 1992***).

### **8.3 SOUTH AFRICAN DRUG POLICY**

Since the turn of the century South African legislation has attempted to curb the use of drugs and dealing therein (Volschenk 1992:1). Prior to this no moral stigma was attached to the use of psychoactive substances and when the European settlers first arrived in Southern Africa in the seventeenth century, dagga was grown and used by the indigenous inhabitants. The European settlers, subsequently also started to use

these substances (Burchell & Milton 1997:660). In an attempt to curb the trade in opium the first drug ordinance was proclaimed against dealing in substances, known as the ***Dagga Prohibition Ordinance 48 of 1903 of the Orange River Colony***. Two years later the ***Opium Importation Ordinance 36 of 1905*** was passed in the province of Transvaal (currently known as Gauteng) to address the import of Opium. It was only seventeen years later that further legislation was imposed regarding drugs. The ***“Doeane en Aksjinsrechten Wijzigingswet “ Act 35 of 1922*** addressed the import, export, transport, distribution, selling and use of certain dependence-producing substances (opium, morphine and dagga). From 1928 the ***Act on Medical , Dental and Pharmacy Act 13 of 1928*** formed the basis of policy against drug dealing. In 1965, the ***Control of Medicine and Related Substances Act 101 of 1965*** was proclaimed. This act was eventually replaced by the ***Abuse of Dependence-Producing Substances and Rehabilitation Centres Act 41 of 1971***. This act in turn gave way for the act that is still present today namely; the ***Drugs and Drug Trafficking Act 144 of 1992***. It remained almost unchanged except for the addition of provisions for the suppression of laundering of money and the confiscation of proceeds of drug trafficking (Burchell & Milton 1997:661).

Prior to 1993 drug offences in South Africa were dealt with by the ***Abuse of Dependence-Producing Substances and Rehabilitation Centres Act 41 of 1971*** but this act was repealed by the ***Drugs and Drug Trafficking Act 144 of 1992***. According to Snyman (1993:412) it includes statutory provisions relating to drugs and medicines which contain penal provisions.

These provisions provide for the prohibition of the following:

- ☞ dealing in
- ☞ possession of
- ☞ use of dependence-producing substances.

The ***Prevention and Treatment of Drug Dependency Act 20 of 1992*** makes provision for the trial of drug dependent offenders. It stipulates that if the offender is drug dependent his trial may be stopped and inquiries be made in terms of ***Section 22 and 255 of the Criminal Procedures Act 51 of 1977***. Besides ***Act 20 of 1992***, a person may also be referred to a treatment centre in terms of ***Section 296 of the Criminal Procedures Act 51 of 1977*** if the court concludes from evidence, or any other information placed at its disposal, that the person is someone as defined by ***Section 21(1) of the Prevention and Treatment of Drug Dependency Act 20 of 1992***.

#### **8.4 THE PREVENTION AND TREATMENT OF DRUG DEPENDENCY ACT 20 OF 1992**

The ***Prevention and Treatment of Drug Dependency Act 20 of 1992*** allows for the following provisions that will be discussed separately in order to structure the act within a penological perspective:

- ☞ The establishment of the **Drug Advisory Board**
- ☞ Programmes for the prevention and treatment of drug dependency
- ☞ Treatment centres and hostels

- ☞ Establishment of treatment centres and hostels
- ☞ Admission to a treatment centre
- ☞ Committal of persons to a treatment centre or registered treatment centre
- ☞ Detention in a treatment centre
- ☞ Leave of absence from a treatment centre
- ☞ Transfer of persons from prison to a treatment centre
- ☞ Transfer from a treatment centre to a prison
- ☞ Postponement of the order
- ☞ Temporary custody of persons pending enquiry or removal to a treatment centre
- ☞ Appointment and function of volunteers.

#### **8.4.1 The Drug Advisory Board**

The ***Prevention and Treatment of Drug Dependency Act 20 of 1992*** makes provision for the establishment of the **Drug Advisory Board**. The function of this board is to advise the Minister of Welfare on issues of drug and alcohol abuse. It may also plan, co-ordinate and promote any measures related to prevention and treatment. According to Section 1 of the Act, the **Drug Advisory Board** should consist of the following role players:

- ☞ an official from the Department of National Health and Population Development who is nominated by the latter department
- ☞ an official from the Department of Justice nominated by the Department of

## **Justice**

- ☞ a South African Police official nominated by the South African Police
- ☞ an expert from the field of treatment of drug dependency
- ☞ five other members whom the Minister of Welfare believes to have special knowledge or experience in the problem of drug abuse and who can make a contribution to the fight against the problem.

The powers and duties of the board, as stipulated in Section 3(a) are to advise the Minister of Welfare on matters pertaining to the abuse of drugs or related matters. Section 3(b) allows for the planning, co-ordination and promotion of certain measures for the prevention and combatting of the abuse of drugs and the treatment of drug dependent persons. The Board has wider powers and allows for research into issues relating to drugs or the abuse of substances and may also give guidance to other bodies conducting research in this field. If the Board deems it necessary it may also establish committees in order to investigate and report back on matters relating to the functions of the Board (Section 5).

### **8.4.2 Programmes for the prevention and treatment of drug dependency**

According to Section 6 the Minister of Welfare may establish or facilitate the establishment of programmes for the treatment and prevention of drug dependency. These programmes may also be aimed at the dissemination of information to the wider community on the abuse of drugs and especially to the education of the youth on the dangers of drug use and abuse. Programmes can also be directed at the observation,

treatment and supervision of persons in treatment centres, persons already released from such centres and can even be directed at persons who are placed under supervision by a court. Section 6(e) of the act allow for assistance to be given to families of those persons detained within a treatment centre.

#### **8.4.3 Treatment centres and hostels**

According to Section 7(1) the Minister of Welfare may establish treatment centres for the reception and treatment of persons dependent on drugs and who pose a threat to their own and/or others wellbeing.

##### **8.4.3.1 The establishment of treatment centres and hostels**

It is necessary for an institution that is established for the treatment (on a physical, psychological or spiritual level) of drug dependency to be registered by means of an application to the Director-General (Section 9(2)). Drug dependent persons may be referred to these centres as stipulated in Sections 21(1) and 40. Individuals are detained within these centres in order to receive or undergo treatment and training.

Besides the establishment of treatment centres, Section 10 of the Act also makes provision for the establishment, maintenance and management of hostels. The purpose of these hostels are to provide homes for persons released from treatment centres or those granted a leave of absence. Often this assists drug dependents who, in the past and prior to treatment, posed a threat to their own or others (especially

family members) wellbeing or those who cannot support themselves or dependents (wife and children for whom they are legally liable). The hostel may also act as a safe haven for drug dependents who are still undergoing treatment and who are in need of a secure environment in which to reside. In order to manage and establish a hostel it is necessary to make an application to the Director-General. If the registration is approved, a registration certificate is issued (Section 11(3) subsection (2)). According to Section 12, a social worker, medical officer or any other person authorised by the Director-General may carry out the inspection of registered treatment centres and hostels.

#### **8.4.3.2 Admission to a treatment centre**

Section 21 sets out the procedure for bringing persons eligible for admission to a treatment centre before a magistrate. A declaration can be lodged with or made before a public prosecutor by any person (including a social worker) alleging that the individual is a person who is dependent on drugs and as a consequence thereof, acts in the following manner. He may squanders his means or injure his health or endanger the peace in his community. He may also do harm to his own welfare or the welfare of his family or may fail to provide for his support or for that of a dependent. The clerk of the court will then, at the public prosecutors request, issue and deliver a summons to be served to the drug dependent by a police official. He must thus appear before the magistrate of the court in question at a specified date and time. The public prosecutor may also request the magistrate to issue a warrant of arrest. The latter may only take place if the public prosecutor has obtained a social workers report on the background

and circumstances of the person concerned. According to Section 22 a person can be committed to a treatment centre after enquiry by the court.

#### **8.4.3.3 Committal of persons to a treatment centre or registered treatment centre**

According to Section 22(2) the laws governing criminal trials in magistrates' courts shall apply *mutatis mutandis* (with due alteration of details in case) in respect of securing the attendance of witnesses and the recording of evidence. According to Section 22(4) the magistrate directing the enquiry may request a report obtained from a social worker in terms of Section 21(2). The magistrate may also request that the drug dependent be examined by a medical officer, psychiatrist or clinical psychologist and a report of the findings be submitted. If the magistrate, on consideration of the evidence and the reports submitted, deems the individual to be such as described in Section 21(1) and that the person would benefit by treatment and training provided within a treatment centre, he may refer him to such a centre. The magistrate will also do so if it would be in the drug dependents own interest or the interest of his dependents, or the interests of the community, and the magistrate may, subject to the provisions of section 23, order the person to be detained in a treatment centre. He may also order that the drug dependent be detained in custody or released on bail or warning, until such time as effect can be given to the order given by the court.

#### **8.4.3.4 Detention in a treatment centre**

The drug dependent ordered to be detained in a treatment centre under Section 22, will

be detained until released on licence or discharged or transferred to another institution. The superintendent or management of the centre is responsible for the notification of the Director-General when a patient is released and the particulars thereof. If, after a period of 12 months, the drug dependent is not ready to be released, this party must also report fully as to the reason why the patient cannot be released. Every six months this process must be repeated until such time as the patient is ready for release and is returned to the community. According to Section 26(3), however, the Director-General may order a patient's discharge in writing at any time he deems fit, if it appears to be in the patients best interest.

#### **8.4.3.5 Leave of absence from a treatment centre**

Section 36 allows for the management of a treatment centre to grant a patient a leave of absence if it is approved by the Director-General. This, however, takes place under strictly prescribed conditions and leave may be revoked at any time and the individual has to return to the centre.

#### **8.4.3.6 Transfer of persons from prison to a treatment centre**

According to Section 28, and notwithstanding anything to the contrary contained in the ***Correctional Services Act, 1959 (Act No. 8 of 1959)***, the Minister of Correctional Services may, in consultation with the Minister of Welfare, order in writing that a prisoner be transferred from prison to a treatment centre. This will be considered if it is deemed necessary that the prisoner undergo treatment or training in a treatment

centre, prior to his return to the community. It must be felt that the prisoner will benefit from the proposed treatment and training offered by the centre. Any prisoner transferred in this manner and for this purpose is deemed to be discharged from the provisions of the **Correctional Services Act, 1959 (Act No. 8 of 1959)**, and becomes subject, *mutatis mutandis*, to all provisions of the **Prevention and Treatment of Drug Dependency Act, No. 20 of 1992**. The drug dependent may also be retransferred from a treatment centre back to a prison.

#### **8.4.3.7 Transfer from a treatment centre to a prison**

Once again, after consultation with the Minister of Correctional Services, the Minister of Welfare may retransfer the drug dependent to the prison from which he originally was transferred, or any other prison designated by the Commissioner of Correctional Services (Section 29). When the patient is transferred he is deemed to be discharged from the provisions of the **Prevention and Treatment of Drug Dependency Act, No. 20 of 1992**, and becomes subject to the provisions and regulations of the **Correctional Services Act, 1959 (Act No. 8 of 1959)**. According to Section 29(3) the period between the date of transfer to the treatment centre and the date of transfer back to the prison, counts as a part of the drug dependents sentence. He is thus not penalised by his transfer with regard to time served of the sentence.

#### **8.4.3.8 Postponement of the order**

Section 23 allows for the postponement of the order by the magistrate at his discretion.

He may order the postponement for a period not exceeding three years and the individual may be released on condition that:

- ☛ he submit himself to supervision by a social worker
- ☛ he undergo any prescribed treatment
- ☛ he comply with the requirement prescribed by the magistrate.

The Director-General may, according to Section 23(2) also unconditionally discharge any person in respect of whom the making of an order has been postponed, after considering the report of a social worker. Where the order has been postponed for a period of less than three years the Director-General may extend the period of postponement. This can be done after consideration of a report by a social worker, at any time before the expiration of such a period. The period of postponement can be expended for a further period, yet may not exceed the difference between three years and the period for which the making of the order has been postponed. If the Director-General is satisfied with the person after the period has ended, and believes that all the conditions were successfully met, he may discharge the individual. If the drug dependent fails to comply with the set conditions, the magistrate may order his arrest. This may take place without a warrant and can be carried out by a police official or a social worker. The drug dependent may be detained in custody in any place designated by Section 24(1)(a) until he is brought before the magistrate.

#### **8.4.3.9 Temporary custody of persons pending enquiry or removal to a treatment centre**

According to Section 24(1)(a) a magistrate conducting an enquiry may postpone or adjourn the enquiry and may order that the drug dependent be detained within a treatment centre, hostel, prison or police cell, a lock up or any other facility that the magistrate regards as suitable. If the drug dependent is under the age of 18 years, he may be kept in a place of safety or be released on bail or warning. No person may, however, be detained in custody for a continuous period exceeding 28 days (Section 24 (1) (b)).

#### **8.4.3.10 Appointment and function of volunteers**

Volunteers also play an important role in the handling of the offender. According to Neser (1993:386) volunteers can be described as those persons who offer to assist a cause out of free will, without reward. Volunteers within the criminal justice system can function within the following fields:

- ☞ Policy making (board members on institutions board of directors, or the advisory board)
- ☞ Administrative work (secretarial, typing, reception, general administrative tasks)
- ☞ Intercession (fund raising, public relations, recruitment)
- ☞ Direct services (counsellors, interviewers, class presenters, action assistance).

Sections 14 to 18 deal with the appointment and registration of volunteers in the criminal justice system, as well as their identification and remuneration. The Director-General may appoint any individual, at his discretion, to act as a volunteer and to exercise such powers or to perform such duties in accordance with a programme as referred to in Section 6. According to Subsection (1) a volunteer may be appointed if he has:

- ⇒ a qualification which the Director-General views as appropriate
- ⇒ successfully completed the prescribed course
- ⇒ signed the agreement stipulated by Subsection (1).

Volunteers receive a certificate of appointment which details the powers and duties affixed to their position. If under any circumstances a volunteer fails to perform his duties as set out by the certificate, or makes false statements or gives false information in order to obtain the appointment, the certificate may be withdrawn. The use of volunteers may lighten the load placed on the criminal justice system and properly utilised, may assist the functionaries who struggle to cope with heavy case loads. Properly trained volunteers and the use of multidisciplinary experts who act as volunteers, can facilitate the use of extensive programmes for the rehabilitation of prisoners. Thus volunteers can act as one component in the multidimensional fight against drug related crime.

## **8.5 THE COMBATTING OF ILLICIT DRUG TRAFFICKING IN SOUTH AFRICA**

Almost all the countries belonging to the Southern African Development Community

(SADC), signed a protocol on the ***Combatting of Illicit Drug Trafficking*** on 24 August 1996 . This illustrates the extent of the drug problem in the continent of Africa. The only country which did not participate was Angola. This protocol facilitates the ratification of the following United Nations Conventions (Sinyani 1997:3):

- The ***1961 Single Convention on Narcotic Drugs*** as amended by the 1972 protocol
- The ***1971 Convention on Psychotropic Substances***
- The ***1988 UN Convention Against Illicit Trafficking of Narcotic Drugs and Psychotropic Substances.***

The **Southern African Development Community (SADC) Protocol** allows for mutual co-operation between the member countries in the fight against drug trafficking. According to Sinyani (1997:1) of the Zambian Drug Enforcement Commission, this protocol will facilitate the process. He postulates that the only way to create an effective drug policy that can facilitate and combat drug use and trafficking in Africa would be by liaison and co-operation between the various role players and law enforcement agencies. The protocol not only outlines possible directions for the Southern African Development Community, but also urges countries to revise, debate and consider new directions in the handling of drug offenders and the combatting of the drug problem.

## **8.6 A NEW DIRECTION FOR SOUTH AFRICA**

Ryan (1997:8) supports the latter views expressed by Sinjani (1997:1). He believes

that the function of the various role players and law enforcement agencies should be accommodated within South African drug policies. He calls for liaison and co-operation between the various role players and law enforcement agencies. He proposes certain strategies which can be followed by South Africa to address the drug problems faced by the country. The first step is the implementation of policy that will facilitate supply and demand reduction. It is important to identify and attempt to eradicate supply and distribution conduits. Ryan argues that once these structures are well established within a community it is almost impossible to stop the supply of illegal substances. He criticises current governmental response to the problem and defines it as fragmented and poorly funded. He also highlights the lack of co-ordination between reactive and proactive programmes.

The second point made by Ryan (1997:8) falls within the ambit of the researcher's proposed approach to the problem. He states that a multidisciplinary approach utilising multi- professional assistance should be used in the control of drug trafficking and the treatment of drug users. He propagates the collaboration of all role players from policy makers, specialists working with treatment, researchers to law enforcement officials.

Ryan (1997:8) believes that the Government should develop a national drug master plan. This plan would enable the Government to tackle the drug problem in the following manner:

- ¤ summarise national drug policies
- ¤ define priorities
- ¤ assign responsibilities

- include drug control measures in the general framework of the country's social and economic development programme.

The latter body should be staffed so that it can deal with interdiction, prevention, treatment, research and evaluation of drug policy. It should have the authority to co-ordinate drug control strategies in all departments such as local and provincial level governments, communities, non-governmental organisations, community-based organisations and all professional associations (Ryan 1997:9). The researcher's proposed model for the handling of drug offenders falls within the paradigm of this view (Chapter 10). This would enable a networking of all role players and would ensure the co-operation needed to facilitate the handling of the drug offender. It would ensure a sharing of knowledge about strategies to deal with drug offenders and methods and structures available within South Africa. The latter concepts that Ryan advocates for are all provided for in the **Prevention and Treatment of Drug Dependency Act 20 of 1992**.

In final analysis, Ryan believes that successful demand reduction can be attained by the implementation of effective prevention, treatment and rehabilitation programmes. It is the researcher's view that South Africa must also adopt a bifurcated approach to the drug problem. This view is similar to the one followed in the British system where on the one side education, counselling and ultimately **treatment strategies** are sought, and on the other enforcement and punishment. It is thus necessary to differentiate the drug user who is dependant from the individual who is "enabling the drug market to function and flourish". This difference should be considered when sentencing takes

place. Collison (1993:383) from the Department of Criminology at the University of Keele in the United Kingdom, goes as far as to entitle the defendant or addicted user as the **victim** and the individual involved in the illicit supply system as the **villain**. This approach thus necessitates the early identification of the drug defendant offender in the criminal justice system. While South African law does distinguish between possession and use and dealing in drugs, further measures should be implemented within the system to ensure that the individual dealing, who does have a drug problem still receives treatment. According to Snyman (1989:413-415) it is necessary to first understand and distinguish between “*use and possession*” before really understanding the concept and implication of a charge of dealing in illegal substances. *Use and possession* are treated as a single offence in ***The Drugs and Drug Trafficking Act 144 of 1992*** as it was in the case of the ***Abuse of Dependence-producing Substances and Rehabilitation Centres Act 41 of 1971***. Possession is defined as the keeping, storing or having in one’s custody or control or supervision an illegal substance. It further consists of two elements, namely that of physical or corporeal element (*corpus or detentio*) and the mental element (*animus*). The latter includes the intention of the possessor. *Use* looks at the voluntary intake (by what ever means) of the illegal substance. *Mens rea* (intent) is required for the crime of *possession* or *use* of dependency-forming drugs. *Dealing* in illegal and dependence producing substances is a more serious offence than the *use* or *possession* of drugs, and has heavier penalties attached thereto. The dealer is seen to commit the prohibited act for personal gain while the drug dependent who *uses* or *possesses* the substance does not have this profit motive. *Dealing* in a substance thus includes performing any act in connection with the collection, importation, supply, transportation, shipment,

administration, exportation, cultivation, manufacture or prescription thereof. Thus South African Law and definitions of terminology do make provision for the distinction between the **villain** and **victim** as identified by Collison (1993:383). The problem arises however, when the villain goes undetected. This occurs when the offender commits a crime which appears non drug-related. The offender who commits a crime in order to support a drug habit may pass through the criminal justice system without the authorities knowledge of his drug problem. It is this category of offender who poses a problem in the system and according to the researcher's view, may be responsible for the high recidivism figure in South Africa. In a study conducted by Prinsloo (1995:106) the head of the Institute of Criminology at Unisa, South Africa, he expresses his concern about crimes which on grounds of the prominence they display, become a problem to society. Drug-related crimes are one of these forms of crime. In an evaluation of the comparison drawn between previous convictions and the current crime committed, 46,7% of the sample group had previously been found guilty and sentenced for possession, and 39,5% for the cultivation of and dealing in dagga. With regard to previous convictions for burglary with intent other than theft (n=139) 13,6% received second convictions for cultivation, dealing or possession of illegal substances. In 415 cases of previous convictions for robbery with a weapon (other than a firearm) 16,4 % received second convictions for cultivation, dealing or possession of illegal substances. These findings indicate the link between drug related crimes and recidivism.

Collison (1993:384) states that when problem drug users are drawn into the criminal justice system they lose their status as **victims** and become seen as **villains**. Thus

instead of receiving treatment, they are punished and deterrent measures are implemented.

A point made by Rocha-Silva (1997) and Ryan (1997) is the need for research. In 1995 the *Centre for Alcohol/Drug-related Research* of the *Human Sciences Research Council* in South Africa implemented a national drug-related surveillance project which focused on multifaceted information on drug taking patterns and trends and the extent of drug-related problems in South Africa. While this was a commendable project it is important for all role players to become involved and to react upon the findings in a reactive and proactive manner. It is necessary for the authorities to work in collaboration with scientists in order to practically implement the solutions or recommendations posed by the outcomes of such research. According to Williams (1996:34) any policy dimension should incorporate the ideology that punishment alone does not work. It does not change an offenders behaviour and should be accompanied by advanced counselling as a solution to the problem. It is thus important to establish an effective drug policy that will ensure the effective processing of the drug offender through the criminal justice system.

## **8.7 THE HANDLING OF THE DRUG OFFENDER IN SOUTH AFRICA**

In South Africa the drug offender is not processed separately from other non drug-related cases, or in a specialised manner such as the case in the British system (Chapter 4). The researcher believes that many drug dependent offenders are processed without the authorities knowledge of their drug dependence. Many drug-

related crimes are dealt with as "normal" crimes and the drug-crime link is unknown. The researcher believes that this case load, of drug-related and non drug-related crimes, places a large burden on the criminal justice system as this category of drug-related crime should be dealt with separately and should involve other role players as takes place in the Australian criminal justice system (Chapter 7). It also places an added burden on the system because the drug dependent offender is not treated for his dependency and upon his release has a high probability of returning to crime. The researcher is of the opinion that drug offenders crimes should not be excused because they have a drug problem. They should still receive and accept the punishment that they deserve, and which would be given to any other offender found guilty of a similar offence. Yet this category of offender should be treated differently when a sentence is imposed. The sentence should be linked to or based upon a treatment philosophy. A personal interview with Magistrate G Andrews of the Supreme Court (June 1997) merely verified this view. He explained that his hands were cut off in many such cases because of a lack of adequate sentencing options available for the drug dependent offender. This substantiates the need for a model for the handling of drug offenders, which can allow for greater sentencing discretion and offer a wider option of alternatives.

### **8.7.1 Sentencing**

To understand the processing of the drug offender it is necessary to understand the treatment categories in South Africa. According to Gerber, Kaba, Magwaza, Mynhardt and Raman (1997:8) drug dependants in South Africa may be divided into the following

treatment categories:

1) Pre-statutory treatment

- a) Voluntary treatment that is conducted in the community
- b) Voluntary institutional treatment (Section 40)

2) Statutory treatment.

When voluntary treatment is conducted in the community, this form of intervention takes place when the drug dependant comes to the attention of a professional such as a doctor, social worker, minister of religion or psychologist. It is deemed unnecessary for the criminal justice system to become involved in these instances as intervention takes the form of primary prevention.

When voluntary institutional treatment takes place the dependant receives help in a provincial or psychiatric hospital, or in registered rehabilitation centre such as Riverfield Lodge and any other suitable establishment (Consult Section 8.2 for available facilities in the various regions in South Africa). Up to this point the drug user has either not committed an offence or his criminal activities have not been reported to or detected by the authorities. When, however, a drug offender comes to the attention of the criminal justice system, statutory treatment takes place in terms of legislation. **Section 21 (1) of the *Prevention and Treatment of Drug Dependancy Act 20 of 1992*, deals with the trial of the offender.** Prior to 30 April 1993 drug offences in South Africa were dealt with by the ***Abuse of Dependence-producing Substances and Rehabilitation Centres Act 41 of 1971***. Hereafter the ***Drugs and Drug Trafficking Act 144 of 1992***

came into force. Milton (1993:216) of the University of Natal, views the implementation of this act as an attempt by the authorities to refine the previous provisions of the ***Abuse of Dependence-Producing Substances and Rehabilitation Centres Act 41 of 1971*** and to adopt measures similar to those in the international community to combat the international trade in drug trafficking. The ***Drugs and Drug Trafficking Act 144 of 1992*** looks at three categories of substances, namely;

- ☒ dependence-producing substances
- ☒ dangerous dependence-producing substances
- ☒ undesirable dependence-producing substances (i.e dagga).

According to Snyman (1993:412) and Milton (1993:217) the ***Drugs and Drug Trafficking Act 144 of 1992*** also provides for other statutory provisions relating to drugs and medicines which contain penal provisions. These provisions provide for the prohibition of the following, namely;

- ⇒ dealing in (Section 5)
- ⇒ possession of (Section 4)
- ⇒ and use of dependence-producing substances (Section 4).

Section 3 examines the manufacture and supply of substances knowing or suspecting that they are to be used for the unlawful manufacture of drugs. Section 6 covers the possession of property known to be the proceeds of drug trafficking and Section 7, the conversion of such property into money.

The ***Drugs and Drug Trafficking Act 144 of 1992***, furthermore, gives effect to the

provisions of the *United Nations' Convention against Illicit Drug Traffic in Narcotics and Psychotropic Substances* of December 1988 (Milton 1993:217). It allows for a system of co-operation among nations for the fight for the eradication of the drug trade. What South African law does not sufficiently provide for is legislation dealing with drug-related crimes. Thus a need for alternative sentencing options applicable to the drug offender in South Africa presents itself.

Other issues raised by the criminalisation of drug related crimes and the imposition of sanctions is the constitutionality of these reactions by the state, especially in the case of personal drug use and possession for own use. According to Burchell and Milton (1997:82) legislation prohibiting drug taking may infringe the "equality before the law", "equal protection and benefit of the law" and the "protection of privacy" provisions of the ***South African Constitution***. According to Section 9 (1) of the ***South African Constitution*** it is not unlawful to destroy one's physical and mental well-being by the voluntary consumption of alcohol or the use of cigarettes. It is thus applicable that the sanctioning of the personal use of drugs and possession for own use would be unconstitutional (Burchell & Milton 1997:82).

The researcher believes that the issue of decriminalising illegal drug use or possession of substances for own consumption should be considered, especially in the light of the above issue of constitutional rights. An imbalance has been created between the totally prohibitionistic approach and the need for reduction of demand. By decriminalisation (and not legalisation) of illegal substances, more emphasis can be placed on educational prevention, rehabilitation and treatment measures (Ryan

1997:13). Existing policy makes provision therefore. The ***Decriminalisation Act 107 of 1991*** allows for the decriminalisation of certain offences after consideration by the Minister of Justice. The *Advisory Board*, as provided for in terms of Section 3 of the ***Decriminalisation Act 107 of 1991***, analyses the decriminalisation of an act and makes a recommendation to the Minister of Justice.

According to Joubert (1996:11) true decriminalisation or the abolition of a criminal sanction should often be imposed, especially when punishment only addresses or treats the symptoms of the problem. The researcher believes this point to be relevant to the case of drug-related crime where crimes are committed not so much from intent to commit a harmful act against another, or out of personal greed, but rather to support a drug dependency. By punishing this type of offender, the punishment would only be addressing a symptom of the perpetrators underlying problem. According to Joubert (1996:12) most decriminalisation measures act as an administrative function, and criminal sanctions are seen as a last resort. Advocates of decriminalisation believe it is only necessary to criminalise a moral wrongdoing if evidence exists that harm to society will take place as a direct result thereof.

### **8.7.2 The probation option**

The option of probation for the drug offender should be considered if imposed in conjunction with strict supervision and treatment. According to Collison (1993:385) probation is a suitable option when the offender's drug use falls within the broad definition of dependency and if it can be proved that dependency caused or contributed

to the offence. Such was the situation in the case of **S v Martens 1997 2 SACR 538**

(c). The accused was a 42 year old father of four, convicted of possession of six mandrax tablets, who was given a sentence of R 2000 or 18 months imprisonment. The accused had already been in prison awaiting trial for 5 months. On decision it was held that the offence could not be likened to smuggling, and that the sentence was harsh in the present circumstances. The sentence was set aside and replaced with R 500 or 4 months in prison.

Other circumstances, such as offences committed by first time offenders, also call for probation as illustrated by the case of **S v Motsamai**. In the case of **S v Motsamai 1997 2 SACR 521 (o)** Motsamai , a 49 year old man, pleaded guilty to possession of 49 kilograms of dagga. As a result of the offence being his first and the fact that he was the sole supporter of a family of nine young children, a previous sentence of imprisonment was deemed inappropriate and set aside. He was given an eighteen month prison sentence suspended for three years plus a R 3000 fine (Joubert 1998:424).

### **8.7.3 Correctional treatment**

Those offenders who are found guilty of drug-related crimes may be sentenced to a term of imprisonment. The **Criminal Procedures Act 51 of 1977** makes provision for the placement of an offender in a prison. Often imprisonment is the only option available to this category of offender because of a lack of suitable alternatives within the community (Andrews 1997).

The policy of the Department of Correctional Services is to approach the handling of offenders from a multidisciplinary approach and they welcome the assistance of outside expertise and the help of the community. This policy will facilitate the establishment of a multidisciplinary model for the handling of the drug offender. This is also necessary because the overcrowding of institutions has had major implications for the treatment and rehabilitation efforts of the Department of Correctional Services.

In both interviews and work sessions with social workers at Central Prison, Pretoria (1997), and from findings of the work session held at the University of South Africa in 1997, it is apparent that support staff (therapists, social workers and psychologists) cannot cope with the enormous work load. Approximately 400 cases are assigned to each social worker at Central Prison. At the juvenile section which houses approximately 800 juveniles they do not have in-house staff. Two social workers from Central prison visited this section once a week to deal with problem cases. By mid 1998, one social worker was assigned to this section on a full time basis. As no detailed information about social services in other prisons in South Africa is available, the researcher believes the situation to be similar. This shows the difficulty created by the processing and handling of the drug offender and his committal to prison in order that he receive treatment and rehabilitation for the cause of his criminal behaviour. The reality is that many drug offenders with serious drug problems are sentenced to imprisonment in South Africa. In a probation report (25/1093/96) set up in accordance with **Section 212(4) (a) of the Criminal Procedures Act 51 of 1977**, the probation officer opts for imprisonment for the offender in question for the following reasons which she notes:

- the option of correctional supervision is not possible, because the offender does not have a place to live
- the offender cannot be given a fine as he does not have the financial means to pay it
- the probation officer does not believe that a suspended sentence will have any rehabilitation value.

The irony in this specific case is that the probation officer recommends imprisonment in order to place the specific offender in a strict structure in which specific programmes can be implemented. She postulates that the prison sentence will also enable this offender to become involved in the drug programmes offered. Her recommendation was accepted by the court and the offender was sentenced to four years imprisonment for credit card theft. After 13 months in prison he had neither undergone any form of self improvement programme or drug rehabilitation, until joining the UNISA drug group.

#### **8.7.4 Prison programmes**

Section 6 of the ***Prevention and Treatment of Drug Dependency Act 20 of 1992*** makes provision for the development and use of programmes. Because of a shortage of staff, however, it is difficult to implement existing drug rehabilitation programmes in the prison setting. See annexure 4 for an example of a drug treatment programme implemented at Central Prison, Pretoria.

Social workers use their discretion regarding treatment programmes and they may use

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## **CHAPTER NINE**

### **PRACTICAL IMPLICATIONS FOR THE HANDLING OF THE DRUG OFFENDER**

#### **9.1 INTRODUCTION**

Many practical difficulties present themselves in the treatment or handling of the drug offender. The offender may find himself in an environment that he does not wish to be in and the worker dealing with the offender, unless experienced, may find him/herself in an alien and confusing environment. As Williams (1996:1), an experienced probation officer and community care worker in the United Kingdom, states that many criminal justice systems worldwide have given up on the rehabilitation of inmates, over the past 20 years, as a result of the belief that "nothing works".

Another aspect that exacerbates the treatment of this category of offender is that not only one problem must be addressed and dealt with, but two. Both the offender's drug abuse and criminality or reasons therefor should be corrected. It is thus, necessary to examine the relationship between drugs and crime. Literature on crime causation places much emphasis on the association between drugs and crime. This link has created the misconception that if the offender's drug abuse is addressed and dealt with, he will be cured and deterred from committing further crimes. This misconception should not be present within any treatment model or therapeutic approach. As McMurran (1996:211), a prison psychologist and director of psychological services at a secure psychiatric hospital for mentally disordered offenders, postulates "In cases

where the offenders drink or use drugs, an assumption is often made that substance abuse is invariably the cause of criminal behaviour and these offenders are consequently directed into intervention programmes aimed at reducing their drinking and drug use. While stopping or moderating substance use may be of some general benefit in improving health, wealth and happiness, it is not necessarily true that a reduction in the likelihood of offending will follow".

It is thus necessary to determine the link between the offender's substance abuse and the crime committed. Once this relationship is properly understood, the correct intervention programme can be applied to modify the offender's behaviour. At all times, however, the practical implications in the treatment of drug offenders must be considered.

## **9.2 THE RELATIONSHIP BETWEEN THE SUBSTANCE'S USED BY THE OFFENDER AND THE CRIME COMMITTED**

While substance abuse may be a contributory factor in many crimes, it is not necessarily a simplistic explanation (McMurran 1996:219). It is important to determine if a direct causal relationship exists between the offender's substance abuse and the crime prior to placing him in treatment aimed at the reduction of deviant behaviour. McMurran (1996:219) believes that this error in treatment has led to the misconception that drug treatment interventions are ineffective and as she states "that nothing works". She advocates for the use of ***structured cognitive-behavioural interventions***. These include behavioural self-control training, skills training, relapse

prevention and lifestyle modification. It is thus important not only to treat the drug dependency but to treat the offender as a whole person with personal and social problems.

According to Walters (1994:1), a psychologist and expert on substance abuse in the United States, before concluding a causal nexus between drugs and crime, it must be demonstrated that these variables are correlated or connected in some way. He comes to the following conclusions:

- ☞ drug use causes crime through the direct effect of certain chemical substances on an individual's judgement, self control, or ability to inhibit violent impulses
- ☞ criminal involvement may cause or facilitate drug use
- ☞ drugs and crime have a reciprocal relationship and the effects of drugs on crime are bidirectional rather than unidirectional (one affects the other)
- ☞ the high cost of supporting a drug habit may lead to crime to gain access to the substance(s)
- ☞ drug involvement causes crime because of the level of violence found in the drug business
- ☞ drugs are used to eliminate fear, apprehension and other deterrents to criminal action.

Walters (1994:2) also writes about a further variable where the drug-crime connection owes its existence to a third variable that is often not considered. This variable is less tangible and harder to identify. Among others self-indulgence, social dissatisfaction

and legal-political factors can contribute to the link. It is thus the researcher's opinion that it is necessary for the individual working with the drug offender to be able to identify all causal factors within the drug offender's psychological makeup. The need for a multidisciplinary team is further substantiated. Practitioners from various disciplines; medicine, social work, lawyers, psychologists and educationalists would have to work in a team to address and remedy the drug offender's behavioural problems. The fulfilment of this ideal cannot be formulated without the active and interactive participation of the central government and individual politicians.

It is also important to consider that the amount of drugs used will also contribute to the level of crime in which the user becomes involved. According to Inciardi, Martin, Butzin, Hooper and Harrison (1997:262) extensive follow up studies by Ball, Shaffer and Nurco (1983) conducted in Baltimore found that heroin users showed high rates of criminality during periods where they actively used drugs and lower crime rates during nonuse. They also refer to studies by Johnson (1985) which indicate a clear correlation between the amount of drugs used and the amount of crime committed. This fact further substantiates the researcher's view that the rehabilitation of the drug offender will increase the chances of his abstinence from further crime.

It should, however, always be kept in mind that more than one explanation may exist for the link between drugs and crime. This should not narrow the scope and approach to drug related crime and a drug-crime lifestyle should be viewed from the ***Life style theory*** perspective (Walters 1994:7). This perspective is commonly known as the three "c's" and it acknowledges conditions, choice and cognition as contributory

factors that influence a person's propensity to drugs and engagement in a lifestyle of crime. According to this view we need to add a further "c" in a successful treatment strategy, namely **change**. It is necessary to work closely with the offender in order to bring about a change.

### **9.3 WORKING WITH THE DRUG OFFENDER**

When working with any prisoner, and maybe more so when dealing with the drug offender, it is necessary to understand the drug offender's background, influences on the individual and possible prognosis and the offender's personality. According to Bayse (1995:19), from the American Correctional Association, it is necessary to understand the criminal personality when working with the offender to bring about rehabilitation and to manage change within the inmate. Without this knowledge the correctional worker will be ineffective and may possibly be manipulated by the prisoner. Remembering that each offender is an individual is, however, important and these differences must be taken into account. Building up a relationship of mutual trust to facilitate the process of change within the prisoner is imperative. Bayse (1995:19) also postulates that by treating the offender with dignity and respect the inmate learns to treat others with respect. The researcher personally experienced Bayse's view during a session with a group of inmates in the University of South Africa's (Unisa) Drug Group (14 May 1998). An inmate expressed the same view and postulated that if the Correctional staff treated them with respect, they in turn would show the member respect. The group agreed and regarded mutual respect as an integral part of self respect and their own rehabilitation.

Working with the drug offender may, generally, be more difficult and challenging than work conducted with any other category of offender within prisons. The secrecy surrounding drug use and the illicit and secret nature thereof, makes this person more hesitant to confide in the therapist. According to Collison (1993:390) this is exacerbated by the fact that very few drug users actually wish to abstain from drug use. The researcher has also experienced that they would rather seek socially acceptable ways of maintaining their drug use, than have to stop completely.

Those who do wish to stop their drug use or participating in the abuse of substances, or who are convinced to stop by the prison worker, for whatever precipitating reason, are faced with further obstacles to impede their rehabilitation. In this regard it is Collison's (1993:391) view that the criminal justice process and structures within can effectively impede the inmates treatment and rehabilitation. Obstacles can contribute to feelings of negativity and the offender's motivation to change can be lost. Another negative aspect is that any drug treatment programme must facilitate a restructuring of the offender's life and allow the person to stay drug free on a long term bases. This is difficult in any drug rehabilitation programme but even more so in an artificial penal setting. While a prison sentence forces the offender into isolation from the rest of society and retracts his freedom, it cannot force him to rehabilitate or refrain from drug use. If all the latter aspects are taken into account, it is necessary for the therapist or correctional worker to consider the following characteristics (obstacles) which are encountered among prisoners (and especially the drug offender) which may impede the treatment and rehabilitation process.

### **9.3.1 The prisoner's perspective on life**

Of absolute importance in the treatment and rehabilitation of the drug offender is the offender's perspective on life. Each offender should be treated as an individual and this individuality must be accepted and respected. The inmate's upbringing and previous social environment will contribute to his unique perspective on life. These differences must be considered by the therapist or person dealing with him.

It is also important to take the offender's ethical and cultural background into account. The South African prison system is not only confronted by many ethical and cultural differences, but it is also influenced by different handling approaches of inmates. These different ethics and cultural beliefs and perspectives must be acknowledged and integrated into treatment programmes.

The functionaries working with the drug offender will have to acquaint themselves with the prisoner's personality and elements such as the "**prisoner's mask**" that offenders wear. Experience will allow therapist's to identify when offenders lie to them in order to manipulate the system, and how to respond. The development of mutual trust may eventually bring about the realisation in the offender that therapy and rehabilitation is in his own best interest and that lying will not accomplish any good. Specialised training on a continual basis will equip workers with the skills to deal with these offenders. Staff support and assistance are also important to provide inmates with an empathetic, effective and objective support system.

Personality characteristics such as low frustration tolerance and low self-esteem displayed by drug offenders may be dealt with by experienced and knowledgeable staff. A low self- esteem is noted as one of the main characteristics of the substance abuser (Walters 1994:50) and also a common characteristic in the general offender population.

#### **9.4 THE HANDLING OF THE OFFENDER WITHIN A SUBCULTURE**

Another factor that impedes the offender's treatment and rehabilitation is the prison subculture. A knowledge of the prison subculture and its effect on the inmate is necessary. These effects must be considered during therapy and treatment. When dealing with the drug offender, the drug subculture within prisons must be acknowledged. The drug subculture forms a system within the wider prison subculture and has a unique character with its own rules and "do's and don'ts".

The very nature of the prison system makes the drug issue more problematic and drug treatment more difficult. According to Turnbill (1996:3), from the Centre for Research on Drugs and Health Behaviour, drug users form a specific subculture within the prison population. This culture has its own norms and values. A reciprocal relationship exists between prisoners to maintain the supply of drugs in the system. The researcher is of the opinion that this system draws in the non-drug user as he makes an attempt to join the group. Thus in an attempt to "not stick out" he assumes the drug subcultures identity and thus starts to use substances.

According to Shewan (Turnbill 1996:2) prison modifies drug use. It is more difficult to

obtain substances so use does decrease to a certain extent in chronic users. Drug use in prison, however, becomes more risky and the users will become even less careful and may use dirty injection equipment or consume low grade substances.

A major concern, however, is non-users exposure to drug use in prison. According to the British Penal Affairs Consortium (1996:2), a large number of prisoners have a serious drug problem in prisons that becomes further exacerbated during incarceration. The researcher believes this situation may be a common problem in various international correctional systems.

To identify and clarify this phenomenon, the researcher will first discuss the subculture within the wider prison environment and then more specifically the drug subculture within the correctional setting.

#### **9.4.1 The prison subculture**

According to Popenoe (1980:119) each society has divergent cultures that exist therein. He sees social cultures as common denominators of diverse cultural elements found within a society. These cultures can be further broken down. Often groups of people exist within bigger groups. These smaller groupings of people may possess certain characteristics that are similar to the dominant group, yet they have unique characteristics that tell them apart. These unique characteristics create the specific subculture. Thus, the subculture is a group within a group. The institutional setting and its artificial environment facilitate the development of subcultures. Therefore, the

statement that the drug subculture exists within the prison subculture is not only relevant but also a practical reality within the correctional environment.

#### **9.4.2 The drug subculture**

The drug subculture is also known as a counterculture. Popenoe (1980:120) proposes that when a subculture challenges the values, beliefs, ideals, institutions and other aspects of the dominant culture it can be defined as a counterculture. During personal interviews conducted at Central Prison, in Pretoria, South Africa (4 July 1997), with both correctional workers and inmates, the existence of drug subcultures within prisons was highlighted. Correctional workers expressed concern about the number of inmates using drugs. They estimated that approximately 80 percent of all prisoners were using psychoactive substances. Interviews with inmates corroborated the views of correctional workers. The inmates were of the opinion that a higher percentage were involved with drug use. This statement was not verified by the researcher.

Various reasons were given by inmates for their continued drug use within the prison setting. They reported that the use of drugs enabled them to cope with institutional life and the resulting so called "pains of imprisonment", especially emphasising the boredom during their daily activities or lack thereof. It helped them to cope with the restriction and removal of their freedom. During an interview one inmate reported that if a stash of drugs were confiscated by prison officials and prisoners did not have access to drugs for a period of time, it resulted in prison violence. He believes that the drugs depress interpersonal violence among inmates. The other members of the

group agreed with this statement. After extensive informal observation, the researcher identified the nature of the drug subculture within Central Prison. It is characterised by a group of substance using offenders who will use any psychoactive substance that is brought into the prison (including alcohol). Therefore, the substance of abuse is determined by what is available. It is common knowledge that the prison subculture exists within the broader prison environment. The functioning of this environment rests strongly on the prison codes and traditions that exist. To adhere to these unwritten codes user's can identify each other but it is an unspoken code that they do not discuss the matter. Users know who to approach to ascertain where they can buy drugs. It is, however, against the rules to try to "bum" drugs or alcohol from another prisoner. Users also trust no one, not even their friends. However, they believe that a mutual respect exists among the drug subculture. The prisoners report that they occasionally smoke dagga in groups of two's or three's but that they prefer to use substances when they are alone.

A further problem within prisons is the effect that substance abuse has on offenders who have never used substances. For example a young offender who had never used substances prior to his incarceration volunteered to join the research group. He reported that he had always feared and had a healthy respect for drugs prior to his detention. He had been involved in a car theft syndicate and had refused to get involved in drug-related crime. He refused to trade stolen vehicles for drugs. However, after being incarcerated for six years he has become a regular user of marijuana (dagga) and is on the brink of experimenting with harder drugs. His motivation is that it "feels so good" and "what have I got to lose". This example

illustrates the problem of contamination within the prison setting. The offender believes that he is "in the school of life" and admits that although it has had a negative effect on him, he is stronger and wiser for the experience. He believes he can cope with the effects of drugs on him and his personality. This example may reflect the contact that the non-user has with drugs as it takes place in other correctional settings.

## **9.5 PROBLEMS ENCOUNTERED BY THE DRUG OFFENDER WITHIN THE CRIMINAL JUSTICE SYSTEM**

The drug offender encounters the same problems faced by any other offender being processed through the justice system. He, however, has additional problems that arise from his dependence on psychoactive substances. It is necessary to consider these problems and to address them in order to facilitate programmes within the spheres of change management. These problems take place on the following levels:

### **9.5.1 Arrest**

The offender may be under the influence of a psychoactive substance when he is arrested. The effects of the psychoactive substance (if under the influence) at the time of arrest may aggravate the situation further and be detrimental to his case. Unless a drug test is conducted at the time of his arrest, his drug use or abuse may never be discovered.

The drug dependant may also have to undergo withdrawal without medical supervision

or intervention. Because of the illicit nature of the drug use, the offender is also reluctant to disclose his drug problem to the authorities. The researcher believes that these factors all substantiate the need for mandatory drug testing of all offenders who are arrested. This will ensure that drug offenders receive the necessary medical treatment. Therefore, based upon a pure argument, it can be argued that the state is not only under a moral obligation towards the identification and testing of drug offenders but also has a legal duty to do so.

### **9.5.2 Pretrial phase**

During this phase the drug dependant offender may not have access to medical care or treatment for his drug dependency. This stage may be important in the drug offender's rehabilitation for his enforced incarceration may allow workers the chance to start his treatment. His detention allows for his withdrawal and abstinence from psychoactive substances. If the drug offender already receives treatment at this stage, his level of co-operation and reaction to treatment can be considered in sentencing.

### **9.5.3 Trial phase**

The effect on trial (and the outcome thereof) if the offender's drug dependence is not known is the major issue in this phase. Many drug dependant offenders are processed through the justice system without their dependency on substances being known or considered. The effect of the abused substance on the accused during trial (physical appearance and behaviour) may be detrimental to his case and the court's prognosis

for a higher level of successful rehabilitation. If mandatory testing is implemented, it will better equip the justice system to process drug offenders. Their immediate identification can ensure that these offenders get additional counselling and help during this phase. The **South Australian Drug Assessment and Aid Panel (DAAP)** is a good example of the utilisation of the principles to solve the problem at this level (Chapter 7).

According to Collison (1993:391) even when the drug dependant offender wishes to undergo treatment and rehabilitation, the actual criminal justice process can effectively delay and deter treatment. The overcrowded justice system and delays and holdups in procedures impede the offender's processing. This is exacerbated by a lack of suitable facilities and structures for assisting and treating drug offenders. The system used by Singapore for the handling of drug offenders is exemplary. Drug Rehabilitation centres form the core of this systems diversionary scheme for drug offenders. Within the centre the punitive aim and change management are intertwined.

Another problem is that when the drug offender does acknowledge his problem and expresses a willingness to accept help and conform, he may be regarded with suspicion. The court may merely see this as an attempt or strategy to escape punishment or to have a sentence reduced (Collison 1993:391). Thus a sentencing option and related drug treatment programme or model should be based on strict conditions that will allow the drug user to restructure his life and also allow for long term abstinence. Thus when deciding upon a suitable sentence, the presiding officer can consider treatment and rehabilitation together with punitive measures. Any sentence

imposed will thus be seen as a successful integration of punishment and treatment and not as a "let off".

Judge Hiemstra's advocacy of imprisonment as seen in **S v Bock 1963 (3)SA 163(GW)** that views prison as a last resort and form of punishment for offenders, unfortunately is the destiny of most drug offenders. The complex route into custody is followed by drug-using offenders who do not qualify for community-based sentences because of the seriousness of the crime or their extensive offending careers. They are processed into the penal setting in which they become engulfed in the vast population.

#### **9.5.4 Correctional phase**

The drug offender who ends up in a prison usually continues his drug habit. Because of the availability of drugs in the system, he can maintain his habit more or less undeterred. Money poses to be the only problem to access to prohibited substances. According to inmates, dagga is most easily obtained and is brought onto prison premises by among others, correctional staff. Prisoners may be approached to sell the substances in prison by the staff. Because of the monetary rewards involved, the inmate receives a percentage of the sale, and at the low risk of being caught, it is beneficial to become involved. This creates a wide network within the prison and makes access to drugs easy. Harder substances are either smuggled in or obtained legally from doctors who dispense the substances. The inmate receiving his medication does not take it, but stocks up, and sells it to fellow inmates.

Motivating the prison inmate to stop using substances during his incarceration is difficult. Drugging makes life bearable and relieves the boredom of prison life. Coping with the frustrations of imprisonment is easier when the senses are dulled. It is also hard for the drug dependant to cope with withdrawal if his drug dependence has gone undetected by the authorities. Overcrowding in prisons and a reluctance to come forward for help also limits the drug dependants access to medical assistance.

This category of offender has a need for more intensive access to social workers, psychologists and medical care. At present the Department of Correctional Services does not specifically cater for this group's needs separately. Drug dependency is addressed in a single therapy session while the *Alcoholics Anonymous* (AA) does offer more regular sessions with both adult offenders and juvenile offenders.

The time of contact upon entry into prison and contact with social workers, also negatively affects the inmate with a drug problem. It may take a week or longer, before a prisoner first sees a social worker. Therapists and psychologists are also not readily available. The offender must make an appointment to see a correctional worker, and may only get an appointment a week or two later. This contact is also voluntary and the inmate must initiate the move to receive help.

The lack of support staff in prisons further stunts rehabilitation efforts within prison. Staff are also not always equipped to deal with drug-related problems. Drug programmes within Correctional settings are simplistic and do not adequately address inmates' drug dependency and related problems. Also, a huge workload makes it

difficult for social workers to spend the amount of time needed on drug therapy.

It is necessary to isolate the drug offender from the rest of the prison population in order to remove them from access to psychoactive substances that are available among the prison population. They must receive education regarding drug abuse, the ill affects thereof and other related issues. Abstinence may also make them see issues from another perspective. Abstinence must be rewarded by allowing additional privileges linked to good behaviour (abstinence). Additional support from social workers, therapists and psychologists should be available in the form of a multidisciplinary team approach.

#### **9.5.5 Preparation for release**

Prison crowding makes preparation for release difficult under general circumstances. In the case of the drug offender it is almost impossible. Prior to release the drug offender needs additional support and preparation. A lack of staff to assist with preparation ensures that only the basics are covered in release preparation.

In the case of the drug offender, release preparation should be founded on the basic principle of abstinence above all. Preparation should start with a parole release plan. The Parole Board should issue the drug offender with a parole plan that considers his drug problem and makes provision for additional programmes and procedures to ensure for his successful release back into the community. This offender should be given additional support with his reintegration and he should be introduced to

community-based structures in his vicinity that can offer additional support with his integration and his attempts to stay drug free. The use of volunteers to act as a "buddy system" could successfully facilitate the release procedure. Ex-dependents would fulfil this role effectively.

#### **9.5.6 Release, reintegration and aftercare**

Generally, offenders report that they would prefer to have one person whom they trust to assist them throughout their incarceration. One inmate reported that "it is difficult to build up a relationship of trust and then to lose the person and have to rebuild the trust with someone else" (Personal interview 26 August 1997). It is for this purpose that the researcher advocates the use of the buddy system where ex-offenders assist with the release and integration process.

Another major obstacle for the drug offender is returning to the environment in which he resided prior to his arrest. He faces the suspicions of family and friends. They are often hesitant to believe that he has rehabilitated. The lack of trust and suspicion may make it hard for the ex-offender to adapt and may even contribute to his relapse. The offenders "new" personality may also make integration with family and friends hard. While using substances, the drug offender is often violent and hostile to those around him and the researcher's personal experience has shown that often these offenders steal from their own loved ones. This makes it hard for family and friends to redevelop a relationship of trust once the offender is released. It is thus necessary to renew family ties and work on interpersonal relationships prior to release. Family or group

sessions to resolve problems or reacquaint these individuals prior to release may facilitate the reintegration process.

Contact with the drug culture in the community and previous drug using friends may also cause the offender to backslide. It is necessary to warn the offender that this may take place. One offender in the researcher's Unisa group explained that this had contributed to his return to drugs and crime. He had been in prison three times. Each time he was released he returned to the same community and friends, who all expected his relapse. He said that he realised that he had to "come right" and stop using drugs when on his previous release he found that most of his friends had died as a result of their drug abuse.

## **9.6 TREATMENT WITHIN THE PRISON SETTING**

According to Moss in an article printed in the Prison News Service (1996) America has given up on attempts to correct deviant behaviour or to rehabilitate offenders. The concept of punishment has precedence over rehabilitation. This is clearly seen in the Illinois Department of Corrections mission statement to "protect the public through a system of incarceration and supervision". They state that programmes to enhance the successful entry of inmates back into society will be maintained yet the recidivism figures show that these were ineffective. South Africa shows a similar trend and the overcrowding of prisons and the ever increasing crime rates makes it difficult to accommodate the prison population.

The treatment given to drug offenders in prison is crucial in the global fight against drugs in society. According to Reno (Sniffen 1998:1) the Attorney General of the United States, it is senseless to imprison a drug offender without treating his drug problem. She states that the law must be amended to allow prisons more aid for drug treatment and follow up care and support. She quotes research that shows that 75 percent of those imprisoned in the United States have problems with alcohol or drugs, yet only 10 to 20 percent receive treatment.

The crux of the philosophy towards drug treatment within a prison setting lies in the following “***We would all like to say that prisons are drug free. They're not, so obviously someone can get drugs behind bars, but even if inmates were not smuggled drugs, that does not take away the craving...Learning about what drug dependency is all about in your own life is what stops the individual from going back to drugs when they get outside***” (Angelone in Sniffen 1998:2).

## **9.7 CONCLUSION**

The correct handling of the drug offender and the establishment of an effective rehabilitation philosophy should be seen as the nucleus of any drug policy. It is therefore imperative to consider and understand the practical problems that present themselves in the handling of the drug offender and to accommodate these in any approach adopted for the handling of drug offenders who enter the criminal justice system.

The problems encountered with the handling of drug offenders in modern criminal justice systems can suitably be summarised by quoting Toch (1994:127), a professor of Criminal Justice at the University of Albany. He only makes reference to prisons but the researcher believes that his view can be expanded to include the whole justice system. Toch states that a combinatory political formula for effective prison (criminal justice) policy requires legislators to be both tough on crime and kinder and gentler to people with problems. He views offenders as people with problems that are merely exacerbated by tough treatment. To quote he says eloquently "***Instead of tempering justice with mercy, we temper retributive overkill with safety nets of hasty remedial services that ameliorate the consequences of retributive policy***".

We see the latter quite clearly in modern society which is plagued by crime. The community's outrage and cries for protection and justice have placed a greater premium on our justice system to provide justice at all costs. Greater use of imprisonment as a first option and alternatives only when our prisons are too full to cope with the increasing load, is one example hereof. The scepticism of society regarding rehabilitation and reform and the "nothing works" approach of the last decade has also contributed to the retributive policy. All these factors further contribute to the need for an effective approach and policy for the handling of drug offenders. These practical implications must thus be carefully considered in the development of a model for the handling of the drug offender. The researcher has considered all these practical problems in the following chapter and they are integrated **within the multidisciplinary model for the handling of the drug offender.**

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## CHAPTER 10

### A MODEL FOR THE HANDLING OF THE DRUG OFFENDER

#### 10.1 INTRODUCTION

The following chapter examines the theoretical foundation, application and practical implementation of a multidisciplinary management approach to the handling of the drug offender. It is based upon aspects or variables extracted from the previous chapters which examine the manner in which other countries deal with their drug offenders and which are then placed within the framework of a model. According to Johnson (1981:15) a model is a representation in a diagrammatical form used to illustrate and compare causal relationships. In a model a construction of causal patterns is developed from the research statement or research findings. This model is thus a diagrammatical representation of proposed handling processes and structures for the effective processing of the drug offender. The value of the adoption of a **multidisciplinary management approach** lies in the structure of the model. The model must be **dynamic**, so that it is flexible. It should accommodate necessary change. This model is thus a diagrammatical representation of proposed handling processes and structures for the effective processing of the drug offender.

#### 10.2 THEORETICAL BASIS OF THE TREATMENT MODEL

A study of divergent traditional approaches to the handling of offenders' (Chapter 3) merely highlights the need for a treatment model for drug offenders which is based

upon the theoretical principles underlying the absolute (*retribution*) and relative theories or motives (*deterrence, prevention, protection and rehabilitation*) of punishment. In order to comply with the above mentioned point of departure, the treatment model should facilitate *retribution, deterrence, rehabilitation*, offer maximum *protection* to society, and should at all costs attempt to *prevent* further crime. For the purpose of treating the drug offender, therefore, all the penal objectives should be incorporated within any treatment model and rehabilitation efforts. However, *rehabilitation* should stand as the central theme within the paradigm of drug offender handling within the criminal justice system. Furthermore, it should not only be viewed as the central penal objective but also as the treatment *modus operandi* applied in order to control or reduce recidivism.

The basis of any treatment or rehabilitation efforts should be built upon the theoretical aims and justification of punishment. Based upon Rabie and Strauss's (1985:18-22) philosophical perspectives on punishment the following theoretical objectives are of pertinent relevance for the handling and treatment of the drug offender.

#### **10.2.1 Retribution and the handling of drug offenders**

The theory of *retribution* is also known as the *justice theory* because by imposing punishment on the offender an attempt is made to right the wrong and restore the imbalance created by the criminal act. As Snyman (1993:17) asserts, the commission of a criminal act disturbs the balance of legal order in society that is only restored once the offender is punished for the act. Rabie and Strauss (1994:20) substantiate this and

state that justice demands punishment to ensure the restoration of the balance in society. Thus **retribution** is not only seen as the purpose of criminal law but also law in general. By the States (universal) intervention and its acceptance of the role of arbitrator, it prevents society from taking up the fight to right the wrongs committed against its members. Thus, by punishing the offender, society strives to cancel out the crime and restore the balance.

An integral component of retribution is that the punishment imposed on the offender must be proportional to the damage caused by his behaviour. As Snyman (1993:19) conjectures, if the **retributive theory** is rejected and only the relative theories applied, it would result in the disproportionate imposition of punishment. If only the theories of **prevention** or **deterrence** formed the central objective of punishment it would result in offenders' being put into prison for excessive periods to protect society, or deter the offender from reoffending.

**Retribution** also has another angle. It not only functions as a balance mechanism to restore justice but also allows the offender to atone for his actions. This, however, implies that the offender must accept responsibility for his actions and experience remorse.

In the case of the drug offender the consideration of the **retributive motive** of punishment is very necessary. Society must show its members that drug-related criminal activities are not condoned and it must apply sanctions in order to protect itself from this ever increasing human digression and form of crime. From the drug

offender's perspective the punishment is a means through which atonement for the act can be done visually and psychologically. The sentence imposed is a visual sign of the punishment imposed upon the offender and the offender's acceptance thereof, the invisible but powerful tool whereby change can be facilitated. A drug offender who accepts the punishment imposed as a just desert has already taken the first step in the rehabilitation process. However, enforced repentance cannot be regarded as genuine atonement (Rabie & Strauss 1985:20) and it is hence essential that the drug offender have a sincere desire to undergo rehabilitation and to stop the use of psychoactive substances.

Because retribution is based on the *free will* theory, it is necessary to view the drug offender as a rational, self determining individual. Free will or indeterminism states that when an individual has two choose between two different courses of action, the decision contains three elements, namely;

- ☞ the realisation that two possible courses or scenarios exist
- ☞ weighting up the advantages and disadvantages of such an action
- ☞ a final decision based upon the latter aspects.

According to Campbell (Munitz 1962:376) the best known advocate of the *free will theory*, if an individual's behaviour is of his *free will*, and not influenced by external factors, he can be said to have acted voluntarily. He does however, concede that not all human actions are a direct result of causality. Various humanistic approaches in support of the *free will theory* exist and can be divided into three groups:

- psychological views
- the moral and religious views
- the view of physical indeterminism.

Bandura is one example of a psychological view of *free will*. Bandura's (Hergenhahn 1982:336) view of *reciprocal determinism*, or in other words why people act as they do, is based on the premise that the individual, the environment, and the person's behaviour itself, all interact to produce the subsequent chain of events. Thus, none of these components can be understood in isolation from the others as a determiner of human behaviour. The deduction of *reciprocal determinism* is thus that behaviour influences the person and the environment, and that the environment or the person, in turn influences behaviour. Furthermore, Bandura (Hergenhahn 1982:343) believes that an individual's freedom of choice is influenced by variables such as incompetence, unwarranted fears, excessive self-censure, and social inhibitors such as discrimination and prejudice. He thus believes that even in the same physical environment, some individuals' are freer than others. Bandura (Hergenhahn 1982:342) maintains that human behaviour is circumstantial, and inconstant and that situations, interpretation thereof, stages of development, personality traits and personality all play a contributory role in decisions made. He also addresses various exonerating mechanisms that he believes are responsible for allowing individuals to commit crimes. These are:

- ⇒ **Moral justification.** The individual justifies a morally reprehensible act by viewing it as a means to a higher purpose. "I committed the crime to feed my family."
- ⇒ **Advantageous comparison.** The individual compares his acts with other

more heinous acts.

- ⇒ **Displacement of responsibility.** This allows persons to depart from their moral principles if they believe that a recognised authority sanctioned it and will take responsibility therefore.
- ⇒ **Diffusion of responsibility.** A decision to act in a group makes a reprehensible act easier to live with.
- ⇒ **Distortion or removal of consequences.** The harm of an act is ignored and the person removes himself from the ill effect thereof.
- ⇒ **Dehumanisation.** When the victim is seen as subhuman, or dehumanised and not seen as having feelings, hopes, concerns, it is easier to perpetrate crimes against them.
- ⇒ **Attribution of blame.** The victim is blamed for the act committed.

The moral or religious view of responsibility is also known as the *teleological theory*. This view as illustrated by Snyman (1993:44) states that every human act is purposeful and that it is directed at an ultimate goal. This moral act is an attempt to attain an ideal or fulfilment of an obligation. The view of physical indeterminism is based upon the scientific theory of indeterminism that states that the behaviour or events can be predicted to a limited degree of accuracy.

Regardless of what approach is adopted to the level of *free will* in the offender, it must always be considered that the use or abuse of psychoactive substances is the offender's own choice and responsibility must be accepted for the consequences of such actions. Thus, the drug offender who is apprehended and sentenced for a drug

related crime should accept responsibility for the deed before any rehabilitation is undertaken. Any action or treatment efforts undertaken without the offender accepting responsibility would be futile.

For the central theme of **retribution** to be realised, namely that of the **maintenance of justice**, it is necessary that the drug offender not only be punished but that the punishment be coupled with rehabilitation. By rehabilitating the offender, further crimes are prevented and the community is protected. This fits in with the famous dictum of Grotius that states "*nemo prudens punit quia peccatum est, sed ne peccetur*" or that no prudent person may punish merely because there was a contravention, but in order to prevent (further) contraventions (Snyman 1993:17).

**The multidisciplinary management model for the handling of the drug offender** should therefore contain and propagate the element of **retribution**, yet at the same time also enable the prevention of future criminal activities.

#### **10.2.2 Prevention and the handling of drug offenders**

The **theory of prevention** is based on the ideology that crimes should be prevented in order to protect society. Snyman (1993:20) argues that this theory overlaps both deterrent and reformation theories, where the latter theories function as methods of preventing the commission of criminal acts. However, the **theory of prevention** is wider than the theories of deterrence and reformation as it incorporates sentences such as capital punishment and life imprisonment, that do not necessarily incorporate

deterrence or reformation. Rabie and Strauss (1994:24) postulate that the ***prevention theory*** advocates that offenders' should become, and non-offenders' should remain law abiding. The first-mentioned aspect refers to **individual prevention** and the latter to **general prevention**. **Individual prevention** refers to actions aimed at offenders' who have already been convicted of crimes and **general prevention** to the punishment of a specific offender in order to set an example and prevent others from repeating the act. For purposes of this study, individual prevention is concentrated on as the convicted drug offender is dealt with on a personal level. By implementing effective handling procedures and structures for the drug offender, a direct attempt can be made to address the causal factors of this category of offenders' behaviour and thus bring about **general prevention** on an indirect level.

All attempts at successful handling of drug offenders should be based on preventing further criminal activities. Baylis (1968:38) illustrates individual prevention well in the following statement when he writes that "*Once the prisoner is properly found guilty, whether he should be treated therapeutically or penally or both, and in what ways, is a matter of maximising the good these treatments will provide for him and for others who will be affected*".

This study will follow the approach of the application of therapeutic treatment within a penal environment to maximise the affectivity of such treatment for the good of both the offender and society. The **multidisciplinary management model for the handling of the drug offender** should therefore contain and propagate the element of **individual prevention**.

### **10.2.3 Incapacitation and the handling of drug offenders**

According to Rabie and Strauss (1994:26) *incapacitation* refers to the preventive measures implemented by society against an offender to prevent him from repeating his crimes, and to render him either temporarily or permanently incapable thereof. Temporary *incapacitation* can take the form of imprisonment which serves to remove the offender for a period of time and prevents or disables the individual from committing further crimes during this period. Permanent *incapacitation* may be the imposition of the death penalty or life imprisonment on an offender, or even the castration of certain sex offenders.

In the case of drug offenders' *incapacitation* is based on the assumption that the drug offender is a danger to society and will repeat the crime(s) unless restrained. The *incapacitation* of the drug offender enables the incarceration of the drug offender until such time that he can be prevented from repeating his crimes. When dealing with drug-related crimes, where the offender has a dependency problem, incapacitation on its own will be futile and will not prevent further criminal activities on the offender's release. Thus, if the incarceration of the drug dependent offender within a penal facility is deemed necessary by the court, it is necessary to apply rehabilitation at the same time. The rehabilitation and change management within the offender will thus promote the value of the short-term aim of *incapacitation* as well as the long-term goal of total abstinence from crime. A **multidisciplinary management model for the handling of the drug offender** should therefore contain and propagate the element of **incapacitation** and rehabilitation.

#### **10.2.4 Rehabilitation and the handling of drug offenders: a multidisciplinary approach**

The **rehabilitation theory** is also known as the **reformative theory** (Snyman 1993:22). This theory is of more recent origin than the other theories of retribution or deterrence. By placing the emphasis on the attempt to bring about a change in the offender, less attention is given to the harm caused by the perpetrators actions or the deterrent effect that punishment will have. This theory views the cause of criminal behaviour as being a result of a personality defect or because of environmental factors that influence the offender's behaviour. Thus attention is given to the offender as an individual.

The **theory of rehabilitation**, even though commendable, holds certain problems in its application. It may result in a preoccupation with the offender and his treatment, while sight is lost of the victim or society in large. Any treatment approach must never be in conflict with society's best interests. A positive aspect introduced by this motive of punishment, however, is that the shift in emphasis moves from mere prisons to correctional institutions. Thus, instead of institutions for the sole purpose of the detention of prisoners to curtail their freedom of movement, prisons become correctional institutions where rehabilitation of inmates becomes the goal of the management strategy. According to Rabie and Strauss (1985:27) the theory of rehabilitation suggests that after a court has convicted an offender, a multidisciplinary approach to determine a suitable punishment should be adopted. They recommend that a panel consisting of inter alia, jurists, sociologists, criminologists, psychiatrists and physicians should be involved in the decision making process. This view substantiates

the researcher's aim to adopt a **multidisciplinary approach** to the handling of the drug offender. The use of a Panel as in the case of the South Australian system would be effective (See Chapter Seven).

Any rehabilitation efforts should meet the requirements of the theory. A preoccupation with the offender must not be to the detriment of society, and its best interests must still be considered. As Rabie and Strauss (1985:27) postulate, when a decision regarding the best and most effective treatment with a view to the offenders reformation is decided upon, it should still be of such a nature that it will deter others from committing such a crime. The period of treatment should also be in proportion to the gravity of the offence. As Power, Curran and Hughes (1996: 430) report, an offenders rehabilitation begins on the first day of his sentence. It is thus not possible to treat the offender for a longer period than the imposed sentence, just because he is not deemed rehabilitated. The three latter points are important and should be carefully considered when developing a suitable treatment model for drug offenders.

Another central issue in rehabilitation is the offender's motivation. No reform will take place if the drug offender does not have a genuine desire to change. This theme was apparent in the researcher's personal experience with the Central Drug Group (1997). One member of the group, serving his third sentence for drug related crimes wrote the following which indicative of his desire to rehabilitate and it is the researcher's personal opinion that he has already taken the first step in his own rehabilitation process, even though he is getting little assistance therein. "*Once I heard someone say that in prison they don't change you, they just take the wind out of your sails. So true I feel almost*

*tired from these years inside. This time (when I'm released ) I want to embrace my freedom and enjoy it.*" He talks about his ten-year-old daughter and states that from now on she is his priority, he will put her first and any in decision he makes, he will put her best interests first. The **multidisciplinary management model for the handling of the drug offender** should therefor contain and propagate the element of **rehabilitation**.

#### **10.2.5 An integrative theoretical approach to the handling of drug offenders**

The researcher is of the opinion that it is necessary to adopt an integrative theoretical approach to the handling of the drug offender. It is imperative to combine the various theories in an effective, all encompassing approach which will allow the drug offender to atone for his crime, accept responsibility therefore, prevent any further threat to self (the drug user) or society, and accept the incarceration as a part of the deserved punishment. The application of a just theoretical approach and rationale to the treatment of the drug offender should be the first step in the development and establishment of an effective and workable drug treatment model. The **multidisciplinary management model for the handling of the drug offender** should therefor be based upon an **integrated theoretical approach**.

### **10.3 THE PRACTICAL IMPLEMENTATION OF THE MULTIDIMENSIONAL MANAGEMENT MODEL**

The following model is the researcher's representation of a method whereby drug offenders' can be dealt with in the criminal justice system. A study of systems in other countries (Chapters 4-8) reflects the need for alternative handling mechanisms for drug offenders' being processed through the various stages of the criminal justice system. Thus the core or source of the drug offender's criminal behaviour can be addressed while still allowing him to serve his sentences and undergo punishment. The model thus allows for rehabilitation without letting the offender escape responsibility for his actions. It aims to deal with drug offenders who commit crimes while under the influence of psychoactive substances.

It is, however, important to make a clear distinction at this point. For purposes of this study, those offenders who are dependant on psychoactive substances will be channelled from the normal path of the justice system by means of the model. They will enter the voluntary contractual relationship discussed in the diagrammatical representation of the model.

The model further aims to utilise the **Rehabilitation Act 20 of 1992** to apply diversionary measures for juvenile and first time offenders who have committed crimes and who do not pose a serious threat to society. The researcher proposes to utilise the **Rehabilitation Act** in the same manner as **Sections 77 and 79 of the Criminal Procedures Act**, whereby the court may refer someone who is deemed mentally unfit to stand trial for psychiatric observation. The **Rehabilitation Act** may be used to send the offender who is dependant on psychoactive substances for assessment to determine the extent of his addiction. This assessment can assist the presiding officer

in the decision making process.

The model accommodates the handling of the drug offender as he passes through the criminal justice system. It starts at the arrest of the offender and then examines the processing of the drug offender from pre-trial phase, trial phase, sentencing, correctional phase, pre-release and eventually release. The following table is a schematic presentation of a conglomeration of approaches and models of management for processing of the drug offender.

### Arrest of the drug offender

Mandatory drug testing: conducted at police station. Data to be processed: records kept on central computer system. Data must reflect: <ul style="list-style-type: none"> <li>• number of drug testings</li> <li>• number of positive cases</li> <li>• crimes committed</li> <li>• substances abused (will facilitate the link between drug related crime)</li> </ul> Data must indicate what happens to each arrestee: <ul style="list-style-type: none"> <li>• release</li> <li>• diversion</li> <li>• sentenced (as well as sentence imposed)</li> </ul>
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### Trial phase

Awaiting trial	Trial
Multidisciplinary Drug facility, which offers:  PHASE 1 <ul style="list-style-type: none"> <li>* preparation for court</li> <li>* an appraisal by drug team to determine extent of drug dependency</li> <li>* drug counsellors set up a report</li> <li>* presentence investigation</li> </ul>	Court has following information on accused drug offenders: <ul style="list-style-type: none"> <li>* reports from drug facility</li> <li>* treatment report: offender's attitude and willingness to undergo treatment</li> <li>* prognoses for treatment</li> <li>* extent of drug addiction</li> <li>* therapist's prognosis</li> <li>* presentence report (established by criminologists working in liaison with drug team)</li> </ul>

### Court decision

<b>First time or petty offender:</b> <ul style="list-style-type: none"> <li>* offender with a good prognosis</li> <li>* enters a contract with court (part of bail condition)</li> <li>* if the contract is broken offender is processed into correctional facility</li> </ul>	<b>Serious or repeat offenders</b> <ul style="list-style-type: none"> <li>* placed in drug unit or drug prison</li> </ul>
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<b>COMMUNITY-BASED OPTION:</b>  Can function within the Multidisciplinary Drug Facility, State Registered facility (Phoenix House) Private hospitals (see Medical Aid and Labour Relations Act) on full time or outpatient basis determined by court  <b>PHASE 11 (All role players)</b> Receive treatment, education, counselling Preparation for release: aftercare Mandatory testing: breaks contract →	<b>CORRECTIONAL FACILITY</b> <b>PHASE 11 (All role players)</b> Implementation of: <ul style="list-style-type: none"> <li>* treatment model</li> <li>* education</li> <li>* mandatory testing</li> </ul> If prisoners are identified at this point with a drug problem: Rehabilitation Act allows for the treatment of offenders sentenced for lesser crimes (not old capital crimes) ( offender can be transferred to Drug Facility
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### Release

Statutory Aftercare (See Rehabilitation Act) discharge on licence/ discharge on probation	Community service: within Drug facility
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**Table 10.1 The multidimensional management approach to the handling of the drug offender**

This model will now be discussed in detail and will illustrate its practical functioning within the South African criminal justice system.

#### **10.4 AIM OF THE MULTIDIMENSIONAL MANAGEMENT APPROACH**

The aim of the **multidimensional management approach to the handling of the drug offender** which is to:

- ☛ adopt a multidisciplinary approach in order to:
- ☛ effectively handle drug offenders
- ☛ control and minimize recidivism

will be met by the application of such an approach within the Department of Correctional Services. At present the Department of Correctional Services does not have sufficient staff or suitable facilities for the handling and treatment of this ever increasing category of offender. A further point which exacerbates the treatment of drug offenders is that they have special needs which possibly require more time and expertise to deal with efficiently. It is thus necessary to address this problem from a systemic approach. This will be done by the use of the following mechanisms or steps in the model within the various phases of the criminal justice system.

#### **10.5 PRE-TRIAL PHASE OF THE MULTIDIMENSIONAL MANAGEMENT MODEL**

The pre-trial phase starts when a suspect has been arrested by the police and identified as a psychoactive substance user. This can be facilitated by the use of the

scientific procedure of drug testing.

#### **10.5.1 Arrest and mandatory drug testing**

By mandatory drug testing the researcher implies the enforced testing of all arrestees upon their arrest to determine if any psychoactive substances have been used prior to or during the commission of the criminal act, or prior to the arrest of the accused.

The rational for mandatory drug testing are threefold:

- ☛ to identify the drug user from the general offender population
- ☛ to determine the causal relationship between drugs and the type(s) of crime(s) committed
- ☛ to identify drug users' for entrance into the drug model.

At present mandatory drug testing of all arrestees does not take place in South Africa but such a procedure is aimed for by 1999. The project is being co-ordinated by Tim Ryan, an American social scientist and researcher. A sample of police stations in the Johannesburg district (Gauteng) will be selected in initiation of the project.

Drug testing is accompanied by various problems which may affect the results thereof. As Schmallegger (1997:217) postulates, testing may result in false positives, where incorrect readings are given and an individual who has not used a substance shows positively therefore. Drug testing is and remains a sensitive issue and must be approached scientifically. Furthermore, the tests utilised to determine the presence of psychoactive substances are qualitative and not quantitative. According to a personal

interview with De Miranda (1997) these measures test the metabolite of the substance which makes it difficult to determine when the substance was consumed. For purposes of this model this does not pose a problem as the researcher only requires to know whether a substance was used and what the substance or substances are.

According to De Miranda (1997) the following practical aspects should be considered when testing the accused:

- ¤ the sample must be passed in presence of a tester
- ¤ the latter require the presence of both male and female testers.

The rational behind drug testing is apparent when one examines the handling of the drug offender. A history of substance use or dependence should be considered when imposing a sentence. The particulars of substance use/ abuse are also required to facilitate the treatment process which must be implemented when the offender enters the penal facility. According to Padel, Twidale and Porter (1992:11) many drug users' do not reveal the fact that they use/abuse substances to the medical officer when they enter the prison. They further add that many offenders' are not convicted for a drug offence (although a substance(s) may have played a role in the commission thereof). Mandatory drug testing is thus of value for the early detection of drug offenders' in the criminal justice system and it can facilitate their treatment and rehabilitation process. Testing is also relevant and of value during the correctional phase. According to the Report of the National Task Force on Correctional Substance Abuse Strategies (1991:34), frequent drug testing in prisons improves the success rates of inmates recovering from drug dependency. It provides a strong deterrent for drug dependant

offenders' and provides an incentive to refrain from drugging. Mandatory drug testing can be of further benefit by enabling user registration which can further facilitate the handling process of the category of offenders.

#### **10.5.2 The registration of drug users and the establishment of a central data base (pretrial-trial and post trial phases)**

The implications of the registration of drug offenders in a central data base will be of value on all levels (pre-trial, trial and post trial) in the handling of the drug offender. The registration of drug users identified by the mandatory drug testing and the establishment of a central data basis will be a positive step for the management of criminals through the criminal justice system. No system exists at present which allows for the quantification of drug-related crimes. By implementing a central data base the path which this category of offender follows in the criminal justice system can be traced and the effectiveness of the model can be better evaluated. The individual who tests positive for drugs during the mandatory drug testing becomes a candidate for the **management model**.

This offender is thus entered into a computer system as a drug user and then processed further into the system. If the individual is not found guilty, he or she remains on the drug user register. Upon a verdict of guilt he is entered into the computer system as a drug offender. This system should be strictly confidential and access should only be allowed to specific role players. To avoid criminalising those drug users who enter the system, the registration of individuals entering the system

should be as follows as illustrated in the following table:

<b>Registration of users</b>	<b>Criminal statistics</b>
those found not guilty	offenders found guilty and punished
those diverted from the criminal justice system	by State

**Table 10.2 Illustration of data base**

Although criminal statistics are referred to here to show the difference between the two forms of statistics, it is important to remember that they should be addressed within the trial phase. The greatest care must be taken to ensure the confidentiality of those appearing on the data base. The implications of the registration and establishment of a central data basis would be the creation of a greater awareness of drug-related crime and would give a clearer illustration of the complex phenomenon. The cost implication should also be considered. It could prevent recidivism by means of the early identification of the drug offender and the channelling of such offenders in the correct treatment and rehabilitation programmes. This would cut down the cost of the reprocessing and punishment of repeat offenders. The implications for society are also of value and by preventing drug-related crimes, the cost of both physical and financial harm is reduced.

Another contribution of a central data base would be its value for role players within the criminal justice system. Fivas (1997), a social worker dealing with juvenile and adult

offenders in the Department of Correctional Services, identified the problem of the district data basis, which exists in the department at present. Offenders are only maintained on computer systems during their incarceration in a district and for six months thereafter, after which they are removed. A prisoner who is moved from one prison (or one district) to another is therefore difficult to trace and after he has been released for six months all records on the computer system are erased. The value of a central data base tracing the drug offenders' movement through the system is thus apparent. A central data for drug offenders must thus reflect:

- number of drug testings
- number of positive cases
- crimes committed
- substances abused (will facilitate a link between drug-related crime).

Data must also indicate what happens to each arrestee, indicating whether the individual:

- ⇒ was released
- ⇒ underwent diversionary measures
- ⇒ was sentenced (as well as sentence imposed).

A central data base would facilitate the handling of the drug offender. It would also present a clear indication of the drug-crime problem in South Africa and form a sound research basis. This point is substantiated by the findings of the Report of the National Task Force on Correctional Substance Abuse Strategies (1991:23) which stipulates that the development of a standardised data base allows for the maintenance of

information on offender assessments and outcomes. The report includes the following minimum requirements which should be incorporated within the assessment database:

- offender demographics
- drug and alcohol use (both current and past)
- criminal history
- other areas measures by the particular assessment instrument used
- recommended intervention strategies
- actual intervention strategies
- data on the offenders actual process
- the termination date
- offender reassessment data.

According to the Report of the National Task Force on Correctional Substance Abuse Strategies (1991:24) the collection of offender data in this manner gives policy makers enough empirical evidence to decide upon what measures are effective in the handling of this category of offender and provides programme managers and administrators with the information they require to constantly improve treatment programmes.

#### **10.6. TRIAL PHASE**

The trial phase can be divided into the awaiting trial and trial phase. The researcher does not advocate soft sentencing of drug offenders. Punitive measures should be strict, as with any other category of offender, and any sentence imposed should be based on the accepted theoretical principles. The form of punishment inflicted

however, should facilitate the treatment and rehabilitation of the drug offender. Research and the high recidivism rate clearly indicates that the mere punishment of a drug offender will not bring about an inherent change or stop drugging behaviour. Social workers at Central prison for example, judge that approximately 75 percent of all inmates use drugs in prison. Many prisoners start using substances for the first time once they are incarcerated.

It is the researcher's opinion that the offender's sentence must include an option to carry out that sentence either in a normal prison institution or in a Drug Clinic, under the auspices of the Department of Correctional Services. If the drug offender chooses to enter the Drug Clinic this must be done under strict conditions which encourage the offender to reform and create an environment which facilitates this process yet should still adhere to punitive principles (as in the prison). The offender should undertake to enter a contract with the court in which contravention thereof results in transfer to a normal prison.

#### **10.7 POST TRIAL PHASE OR THE PUNITIVE PHASE**

Research and personal investigations at the Department of Correctional Services clearly indicate that the prison environment is not conducive to the handling and treatment of the drug offender. Overcrowding and a limited staff, merely compound the problem. It is thus important to create or establish separate facilities for the treatment of drug offenders.

According to the Report of the National Task force on Correctional Substance Abuse Strategies (1991:5) extensive research has shown that any substance abuse programme in a correctional setting, should be strictly monitored and must be under constant supervision. It is thus necessary to take these aspects into consideration when establishing a Drug clinic or centre. The environment should facilitate the supervision and control of inmates at all times in order to allow for the swift application of either sanctions or punishment for negative behaviour or rewards and incentives for positive behaviour.

#### **10.7.1 Entry into the Drug clinic**

When the offender volunteers to enter the contract with the court to undergo treatment, placement is made to a Drug Clinic. The drug offender should undergo further assessment upon entry into this phase of the criminal justice system. The Florida Department of Corrections has an effective system whereby all offenders sentenced to the Department are assessed at reception for substance use (Report of the National Task Force on Correctional Substance Abuse Strategies 1991:141). This is an effective mechanism and should be implemented especially if mandatory drug testing has not yet taken place. For purposes of this model the researcher is of the opinion that if the offender has been processed according to the model, it is not necessary to repeat this procedure at this stage.

The main rationale for the establishment of a separate facility for the handling of drug offenders is that it is the researcher's belief that no treatment is possible in the current

settings in South African prisons. Any treatment, therapy or drug rehabilitation programmes would be futile if prisoners were just released back into the "normal" prison environment. Free access to substances and the lack of desire to stop using substances in the current prison environment would cripple the most effective drug treatment system.

Another important rationale for the creation of separate housing for drug offenders would be the limitation of the effect of drugs on non drug-users who enter the system. Offenders' who possibly had never used drugs or who may have had limited contact there with, come into closer contact with substances and substance users. The negative effect is that prisoners' start using substances and may become dependant thereon. A prisoner in the researcher's group fell into this category. He had never used any psychoactive substances prior to his imprisonment. After two years of detention he admits to being a chronic dagga user and will experiment with and use any other substance which he gains access to.

The creation of Drug Clinics within prisons would possibly offer a more suitable environment for the handling and treatment of drug offenders. The researcher proposes the implementation of the following aspects to create a suitable Drug Clinic:

#### **10.7.2 Staffing of the Clinic**

Staff within the Drug Clinic can be divided into two groups, those supervising and controlling the inmates, and those providing treatment and counselling. However,

according to the Report of the National Task Force on Correctional Substance Abuse Strategies (1991:39), it is necessary to integrate **security** and **treatment functions** because they are intertwined. Security and treatment staff should work co-operatively. Correctional staff should understand and support the aims, strategies and methods adopted by the treatment staff as they spend more time with the inmates than the treatment staff do. Security staff in turn, should support the efforts of the treatment team as treatment improves security within prison.

The **security team** are responsible for the inmates movement within the institution. If they facilitate the smooth functioning of the inmates movement to and from the treatment staff they make the treatment teams task easier. On the other hand the treatment staff should be aware that increased movement of inmates increases security concerns. They should be sensitive to this phenomenon which takes place in the system and incorporate it in their training of security staff. The security teams training should include education about substance abuse issues so that they can aid rather than hinder the treatment process. Constant training and information sessions should be available to both security and treatment staff in order to maintain constant *input* into the system. This will allow for the Drug Clinic to function as a **dynamic system** as it will be exposed to any new data regarding treatment methods and procedures for the handling of the drug offender. Cross training, involving various disciplines and agencies, should take place within this **multidisciplinary** approach to the treatment and handling of the drug offender.

### **10.7.3 Implementation of programmes**

For the Drug Clinic to be a success it is crucial to implement workable programmes that facilitate behavioural change in drug offenders. It is also important that these programmes undergo constant evaluation and that any changes or improvements are speedily undertaken. According to Platt, Labate and Wicks (1977:91), experts in the correctional field, any treatment programme should constantly undergo evaluation. They state that research on drug abuse treatment indicates that alternative methods should constantly be explored by the judicious use of intraprogramme comparisons. In order to adhere to this principle the researcher proposes that the model, once implemented, should constantly be monitored and evaluated to determine the success thereof. This can be done by means of scientific evaluation through short and long term research on outcomes.

According to Inciardi and Saum (1997:195) it is necessary to diversify drug treatment programmes in order to serve a wide group of drug users. It is necessary to determine what type of treatment will be effective for which type of individual. They believe that substance abuse treatment can be effective if individual treatment needs are incorporated into specific treatment modalities.

The view of the Report of the National Task Force on Correctional Substance Abuse Strategies (1991:29) argues that treatment in a correctional setting is not only possible but also provides an opportunity to involve offenders in therapy. Often it is the first time that offenders have had access to help. "Correctional treatment provides the

opportunity to confront offenders' with the clear and unavoidable consequences of past and future drug use, to reduce the denial that can undermine participation in programme activities, and to help offenders' to develop life skills and coping skills in a structures and supportive environment" (Report of the National Task Force on Correctional Substance Abuse Strategies 1991:29). Any treatment programme should, therefore, be based upon this principle.

Modern approaches to substance treatment are based upon **community-based options, residential programmes, case management programmes** and day treatment programmes, and multimodality and other eclectic programmes (Inciardi and Saum 1997:1985). For purpose of this study the researcher will examine **community-based options, residential programmes, and case management programmes**.

### **1) Community based options**

According to Inciardi and Saum (1997:195) it is clear that since its inception in the 1960's, **community-based** substance abuse programmes have become more innovative and new strategies are constantly being sought to address the increase in drug-related crime. The problem with the use of **community-based options** for drug offenders is their potential threat to the community. In certain instances this category of offenders' crimes are of such a nature that a **community-based option** is not desirable for the welfare of the community and it is necessary to impose a prison

sentence. If, however, a **community-based** option is suitable, it should be applied under strict supervision and specific terms. Methadone maintenance is a suitable measure which can be applied for the treatment of drug offenders in a community-based setting (Inciardi and Saum 1997:195).

However for the violent drug offender who poses a threat to the community or who is classified as a repeat offender, a prison-based treatment option is often the only solution.

## **2) Prison-based treatment programmes for drug offenders**

The Delaware model discussed in Chapter five is an example of a prison-based treatment method for drug offenders'. A study conducted by Inciardi, Martin, Butzin, Hooper and Harrison (1997:261) indicated that offenders' who received treatment during work release and aftercare ( known as the two stage phase) and whilst in prison, during work release and aftercare (three stage phase) showed significantly lower rates of relapse than offenders who have not undergone therapy and treatment. The researcher is of the opinion that the findings of these studies merit the aim of developing a treatment model for the effective handling and rehabilitation of drug offenders. A further rationale is set by the number of drug offenders entering the criminal justice system. Inciardi, Martin, Butzin, Hooper and Harrison (1997:261) quote sources such as Chaiken (1989), Chavaria (1992), and Leukfield and Tims (1992) who postulate that almost two-thirds of offenders entering prisons in the United States of America, have histories of drug abuse. Thus, criminal justice systems offer researchers

an ideal environment in which to assess the treatment needs of drug involved offenders'. Furthermore, they believe that it also allows for treatment to be provided in an efficient and clinically sound manner.

The adoption of a ***therapeutic community*** within a normal prison setting is a possible solution to the treatment of the drug offender. The creation of an environment away from the rest of the prison population, where drugs are freely available and violence and other aspects of prison life make rehabilitation almost impossible, may facilitate the treatment process.

The validity of such an approach has not been properly researched, as process rather than outcome-based research has been conducted, to determine the effectiveness hereof (Inciardi, Martin, Butzin, Hooper and Harrison 1997:263). The latter authors however, have consensus on the value of a ***multistage therapeutic community continuum*** for the treatment of the drug offender. In this model the value of rehabilitation efforts in prison and the process of integration into society are recognised and addressed. Upon entry into the prison the drug offender undergoes treatment within a prison-based ***therapeutic community***. The offender is separated from the negative effects of the prison community where recovery from drug abuse is facilitated. Inciardi et al (1997:264) mention that the ***therapeutic community*** forms an ideal environment for rehabilitation to take place. The offender has a lot of time, and the demands of normal life such as family commitments, work and peer pressure are absent, allowing the offender much free time to concentrate on the problem at hand. Focused and comprehensive treatment can be applied while pro-social values and a

positive work ethic can be introduced and reinforced. In the second stage emphasises is placed on preparation for work release. The ***therapeutic community*** is thus transformed into a ***work release setting*** in which the offender is slowly reintroduced to a work environment. Care should be taken to avoid the individual's exposure to individuals', groups or behaviour that can lead back to substance abuse and criminal activities. After release it is necessary to maintain contact with the offender and ***aftercare*** is a necessity. Treatment can be continued on an outpatient basis and group therapy may be of value to prevent recidivism or renewed drug use.

Recidivists within the researcher's drug group expressed the belief that the latter procedures may have prevented them from returning to drugs and crime. A lack of support after release and returning to the previous environment, merely led to these offenders' having to face exactly the same situations and circumstances which contributed to their committing crime in the first place.

Nielson and Scarpitti (1997:279), sociologists and experts on drug abuse, state that the success of the ***therapeutic community*** rests on the creation of a total treatment environment. Inmates are exposed to constant contact with attitudes, values and emotions which facilitate the rehabilitation process.

De Leon (Nielson & Scarpitti 1997:280) postulates that these ***therapeutic communities*** work because they expose these offenders' to conventional lifestyles or skills which allow them to live normal lifestyles and drug free lives (perhaps for the first time ever). These settings thus allow offenders to learn new roles, attitudes, skills, and

definitions of self. The ***therapeutic community*** must motivate the individual to change and offer cognitive and behavioural alternatives to previous behaviour. Nielson and Scarpitti (1997:284-295) address the following elements of change within this paradigm to offender rehabilitation:

- ☒ sense of community and behavioural changes (feeling that others' care for the individual)
- ☒ behavioural change (altering previously negative, dysfunctional and deviant behavioural patterns)
- ☒ dealing with core issues (drug use is seen as a symptom of the offender's problem)
- ☒ increasing self-esteem
- ☒ identity change (genuine desire on part of offender)
- ☒ hope and belief in recovery
- ☒ motivation to change
- ☒ tools to recovery (changing friends, environment, support system, thinking before acting).

The value of the ***therapeutic community*** rests in its ability to create a new culture within a normally deviant sub-culture. Existing ***therapeutic communities*** such as the KEY programme at Gander Hill Prison create distinctive and safe environments (Mello, Pechansky, Inciardi & Surrat 1997:307).

### **3) The case management approach**

According Metja, Bokos, Mickenberg, Maslar and Senay (1997:330) American researchers, **case management** allows for the adoption of a strategy that can improve the substance abusers access to appropriate treatment models. The offender's needs determine the type of programme that will be best suited to the individual. An efficient, co-ordinated and effective service can be offered to the drug offender in a **case management** approach.

The **case manager** fulfils the following functions (Metja, Bokos, Mickenberg, Maslar and Senay 1997:330):

- ⇒ identifying the offender's treatment and service needs
- ⇒ identifying available options (ie treatment programmes)
- ⇒ linking the offender to these options
- ⇒ monitoring the offender's progress in treatment
- ⇒ evaluating the treatment programme.

The **case management** approach is of value in that the case manger can motivate and facilitate retention within treatment and solve any problems that arise which may counteract the affectivity of the treatment programme. This method ensures continuity in care and is effective in the handling of offenders who exhibit multiple, complex and chronic co-existing problems. The **case management** approach is relevant to the researcher's multidimensional model as it facilitates the multidisciplinary involvement in the drug offender's treatment. As Metja et al (1997:336) postulates, it involves other

role players and improves access to various services ranging from health and social services to the most effective and suitable treatment programmes for the specific offender. The case manager becomes “a buddy with clout”.

It is the researcher's opinion that elements of the latter programmes should be utilised in conjunction with each other. The rehabilitation of drug offenders within a ***multi-stage therapeutic community*** that creates a safe environment and facilitates treatment could be used and a ***case manager*** can be appointed to supervise cases. This would be in line with the researchers aim of a dynamic and multidisciplinary management model.

Research and liaison with other countries should be undertaken on a continual basis to ensure that current methods and workable methods and programmes are available to correctional workers. Workshops should be held on a regular basis and international figures and experts should be invited to address correctional workers.

#### **10.7.4 Treatment a multidisciplinary approach**

As previously mentioned it is important to use a multidisciplinary approach for the treatment of the drug offender. Because of various problems that have to be addressed and dealt with in drug offender treatment, it is necessary to involve experts in the field of drug addictions, social workers and psychologists who have experience with drug related issues, and any other fields that may contribute to the drug dependents rehabilitation.

Because of the shortage of support staff in Correctional Services it is necessary to involve the community in these rehabilitation efforts. The researcher proposes the establishment of a Working Committee in order to facilitate the treatment aim and to involve outside expertise. Thus the community can work together with the Department and can assist the Department where specific needs are identified.

#### **10.7.5 Creation of a dynamic treatment environment**

It will be necessary to create a dynamic treatment environment for the handling and treatment of the drug offender. This environment should be open and receptive to positive changes and input which will lead to its ability to facilitate positive change within its residents. According to the Report of the National Task Force on Correctional Substance Abuse Strategies (1991:67) the development of a safe, drug free, productive environment, will enhance and facilitate reformation within the drug offender. It will also provide a safer environment for correctional workers and inmates. If the latter takes place it will have a wider effect on the community and offer more protection to the community. The dynamic environment created by the *multidisciplinary model* will be enhanced by the involvement of outside expertise and the new inputs which they can make within the system. The West Midlands Regional Health Authority in the United Kingdom, is a good example of the manner in which the community can liaise and work together with prisons. The Health Authority has developed a collaborative working relationship with six of the prisons in the district. Every effort is made to educate prison staff and inmates about the dangers of drug use and related issues such as HIV and AIDS (Padel et al 1992:90).

#### **10.7.6 Evaluation or monitoring of the Multidisciplinary model**

In order to determine and ensure the constant affectivity of the Drug Clinic it is necessary to constantly evaluate it and monitor its functions. According to Platt et al (1977:154) the affectivity of a programme or procedure can be determined by analysing its output. This can be seen in terms of the drug offender who undergoes personality, cognition and attitudinal changes which reduce the likelihood of both future drug use and related criminal behaviour.

The Report of the National Task Force on Correctional Substance Abuse Strategies (1991:74) reflects that the results of any programme can be seen in the success it has in:

- ⇒ drug abstinence
- ⇒ social adjustment
- ⇒ reduction of criminal behaviour

within those inmates undergoing such programmes. However, there must be a distinction between **short** and **long** term evaluation of the clinic. While **short** term evaluation looks at the programme's success during the offenders incarceration, **long** term evaluation includes the offender's prognosis after release. Short term and long term evaluation can be compared to programmes outcomes and impacts. Programme **outcomes** are the direct results of the programme, and can be seen as changes in the offender's behaviour. Programme **impacts**, are the long term results. Positive **impacts** are characterised by a reduction in both drug use and deviant behaviour on

a long term basis. Programme **outcomes** (evaluation conducted during term of imprisonment) are easier to measure as offenders' are able to react to and do better in treatment within a structured environment, than in in the community, and when unsupervised. When the drug offender is released, a lack of programme controls, the unstructured environment of the community, and problems which initially led to the drug abuse (family problems, unemployment, and bad associations) may result in a relapse. This makes both short term and long term research and evaluation a requirement for the continuation of a **dynamic treatment model and clinic**.

#### **10.7.7 Ongoing research**

It is necessary to conduct ongoing research to ensure the the treatment approach and the model remain dynamic. This is where the penologist can play a valuable role in monitoring changes with regard to offender handling worldwide. New systems and programmes should constantly be incorporated in order to maintain the dynamic nature of the model.

### **10.8 STRUCTURE AND FUNCTIONING OF THE DRUG CLINIC**

The following diagram illustrates the researchers model for a Drug Clinic within the criminal justice system:

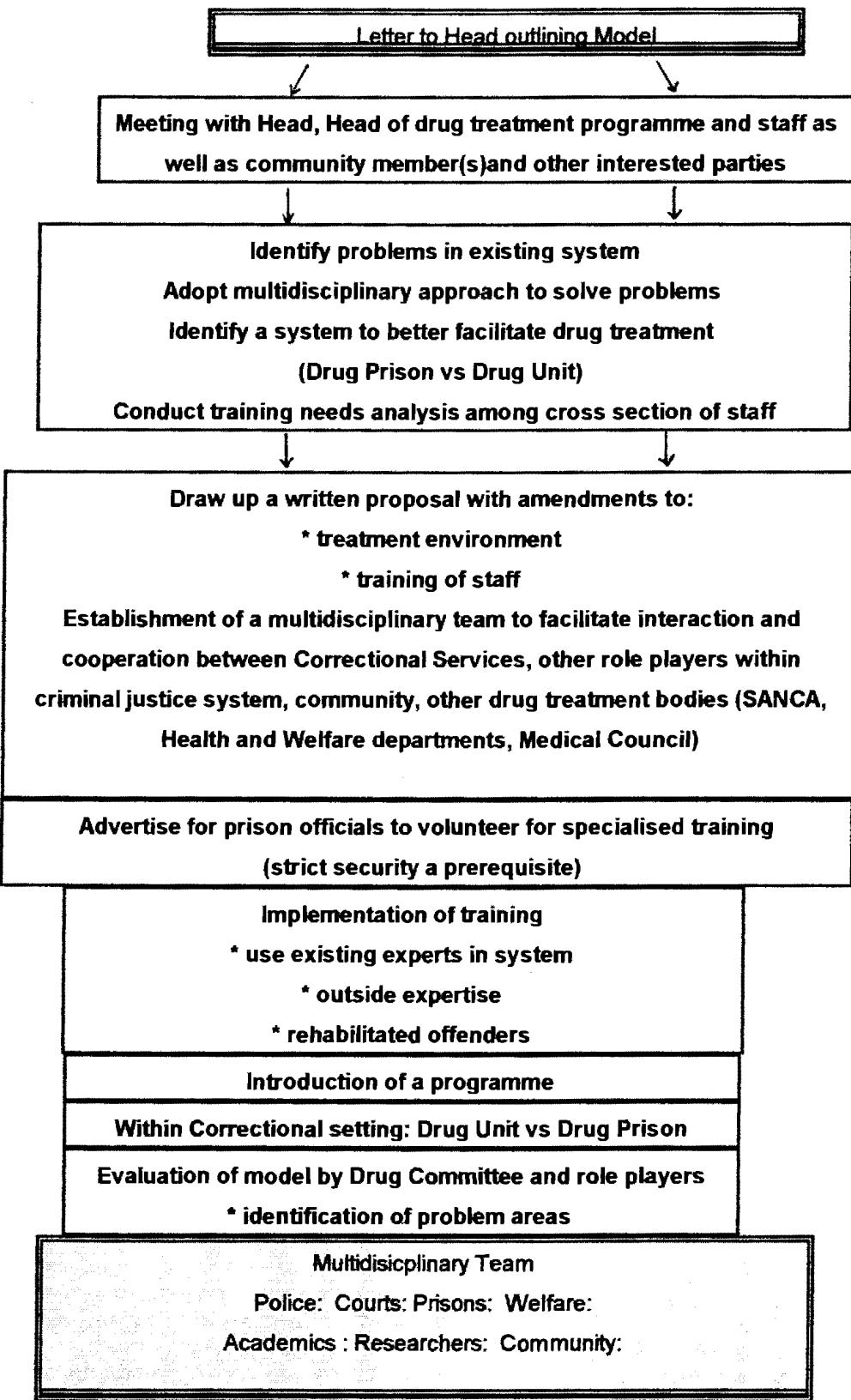
<b>Pre-trial</b>	<b>Correctional phase</b>	<b>Reintegration phase</b>
<ul style="list-style-type: none"> <li>* Arrestees testing positive for drugs- (referred for assessment)</li> <li>* diversionary options</li> </ul>	<ul style="list-style-type: none"> <li>* incarceration of sentenced drug offenders</li> <li>* multidisciplinary treatment approach</li> </ul>	<ul style="list-style-type: none"> <li>* intensive prerelease preparation</li> <li>* release back into community with support</li> </ul>

**Table 10.3 Drug clinic within the criminal justice system**

The table illustrates the continued contact with the offender, from arrest to his final release back into the community. The **drug clinic** will be based upon a system which enables mandatory drug testing of all offenders' to enable the early identification of the drug-using offender. Besides the early identification of drug offenders', it also allows for the use of diversionary measures whereby the drug offender can be channelled away from the formal justice system if it is in the offender's best interest. The model thus includes the use of alternatives sentences. If diversionary measures are not deemed suitable in the case of an offender, he can be accommodated within the correctional system, where a multidisciplinary approach is adopted towards his rehabilitation. Reintegration preparation begins during the offenders incarceration and fully prepares the inmate for the day of his release. The South Australian policy for drug offender handling can be utilised as a framework to facilitate this process.

## **10.9 PROCESS FOR THE IMPLEMENTATION OF THE MULTIDISCIPLINARY MANAGEMENT APPROACH**

The following diagrammatical presentation of the process by which the new model can be implemented within the criminal justice system (and the Department of Correctional Services ). This approach is based on the process adopted by the *HIV/AIDS and Drug Misusing Offenders Project* initiated by the United Kingdoms Health Education Authority and is streamlined to comply with current South African needs.



**Diagram 10.1 Initiation of the Multidisciplinary approach**

The diagram thus illustrates the procedure necessary for the implementation of the multidisciplinary model. It starts with a letter addressed to the head of the prison, outlining the model, its implications and workings. Thereafter, a meeting must be scheduled with the head, the area manager, and various role players. The model and its implications must be discussed in full at various meetings. A written working document should be established, in co-operation with correctional workers and the multidisciplinary team. The model must then be implemented and must be monitored, and constantly updated to fit into the present system.

#### **10.10 CONCLUSION**

According to Palmer (1994:213), a senior researcher at the California Youth Authority, an appropriate service (effective handling of an offender) should include the following: a service delivered to the high risk category of offenders, implementation of behavioural programmes, an analysis of responses to treatment and programmes targeting criminogenic need and intervention. The researcher believes that these issues are addressed and dealt with by the model.

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## **CHAPTER 11**

### **CONCLUSION AND RECOMMENDATIONS**

#### **11.1 CONCLUSION**

The extensive study of drug treatment approaches and models' used by different countries merely highlights and emphasises the need for the creation and implementation of a suitable treatment modality for drug offenders'. Other countries do not and cannot offer solutions to South Africa's dilemma in the handling of its large offender population. It is for this reason that the researcher has selected workable aspects from various systems in a **multidimensional and multidisciplinary management approach** to the handling of drug offenders in the South African context. This approach should be understood in relation to the current situation in South Africa. The South African criminal justice system is under increasing pressure to function more effectively than it is at present and yet society does little to relieve the burden placed on the system. Changes within the socio-political structure of society have possibly contributed to the increase in crime in the various communities, while governmental changes have brought about a change in funding policies, resulting in less money being channelled into the criminal justice system. The increase in crime and violence has also contributed to a general negativity within society and feelings of hostility towards offenders.

The researcher believes that the above issues can be addressed within the **drug model**. The application of the **drug model** takes place on all levels within the criminal

justice system which deal with the handling and treatment of the drug offender. For this purpose, it is necessary to commence with the development of a suitable drug policy, that forms the basis of the **drug model**, and sets structural and procedural guidelines for dealing with this category of offender, and furthermore facilitates the implementation of such a model.

## **11.2 RECOMMENDATIONS FOR THE ESTABLISHMENT OF A MULTIDISCIPLINARY MANAGEMENT APPROACH FOR THE HANDLING OF THE DRUG OFFENDER**

For purposes of this study the researcher makes the following recommendations for the establishment of a suitable and workable drug policy for South Africa:

### **RECOMMENDATION 1:**

#### **A SUITABLE DRUG POLICY FOR SOUTH AFRICA BE ESTABLISHED**

It is necessary to establish a drug policy for South Africa that should be in line with international standards and norms. It should include prevention, education and handling procedures for this group of offenders. As Smith (1996:7) illustrates, drug policy should be formally defined and expressed in legislation, it should have clearly set guidelines and should meet national standards. Role players should include politicians, civil servants, professionals, practitioners, academics and representatives of informed opinion. The policy should be the result of an intensive process of discussion and compromise among all the above role players. According to Smith

(1996:7) if this does not take place it will result in hastily conceived policies that are ineffective and do not address the problem.

During 1997 the National Drug Advisory Council was set the specific task of formulating such a policy. The body and its work however, although consisting of various role players, were veiled and instruction was given for those involved not to divulge any information to the general public. After the document of the National Drug Advisory Board was released to ministerial level for approval, it was still not made available to the community. The researcher is of the opinion that the procedure is contradictory to that suggested by Smith (1996:7) for the successful implementation of a drug policy.

The researcher advocates the views expressed by Dr Omar (1997) the Minister of Justice, at the Illegal Drug Trade in South Africa workshop regarding the establishment of a suitable and workable drug policy. He believes that it may be necessary to amend laws in order to adhere to international standards as set by the 1988 *Vienna Convention*. The State needs to address the issue of its role in dictating to society about the use of psychoactive substances. Philosophical issues, such as whether the State has a right to infringe upon members rights to free choice or not, should be addressed. Any drug policy should be founded on a sound theoretical basis that confronts the balance of rights and privileges. Individual rights should be balanced with the rights of society and the community in order for the restoration of the disequilibrium within society. Dr Omar (1997) advocates for the use of a multidisciplinary and multidimensional approach to the drug problem. This is a necessity to address this complex issue of the handling of drug offenders. Because of the complexity of drug

dependency, it is necessary to adopt an eclectic approach to the handling and treatment of this category of offender. It is also necessary to involve all the role players to effectively deal with these offenders. Dr Omar also recommends education of the public (community) regarding drug use and dependency. He believes this should start on a primary level such as schools. He furthermore also calls for a **Master Plan**, which he suggests be developed by the Department of Welfare. His final recommendation is for the rehabilitation of this group of offenders. At the time of his statement this view was contrary to the general American approach that advocated the management of drug offenders, rather than attempts at rehabilitation. However, by February 1998, the trend once again showed that the rehabilitation of drug offenders is an integral part of a sound drug policy. Numerous sources and debates on the Internet (Corrections Connection 1997-1998) reflect the move towards rehabilitation. The new drug treatment manual **Planning for alcohol and other drug abuse treatment for adults in the criminal justice system, an improved treatment protocol (TIP) series 17 (1998)** issued by the United States Department of Health and Human Services is a physical indication of the renewed interest in treatment efforts.

It is the researcher's opinion that these points are valid and that they form the fundamental structure of the **multidisciplinary, management model for the handling of the drug offender**. It is however, the concern of the researcher that the utilisation and application of the plan may take time to implement while the number of drug offences escalate. Also, the lack of fully integrated offender handling programmes can only be to the detriment of society and the tax payer. When a drug policy is implemented, it must constantly be monitored, evaluated and updated to adhere to

current legislation, norms and values within society.

**RECOMMENDATION 2:**

**THE IMPACT OF NEW DRUG POLICY ON THE CRIMINAL JUSTICE SYSTEM AND SOCIETY BE ESTABLISHED**

It is important to review the impact of a new drug policy on the criminal justice system and to assess the effectivity and success thereof. Fox and Stinchcomb (1994:27) believe that it is imperative to conduct an impact study to assess the effect of any change in policy and to be able to react if findings reflect that it has a damaging effect on society. The researcher thus recommends that such a study be conducted by means of extensive research, once a new drug policy has been implemented. **The research must also be approached multidisciplinary in order to gain a wide perspective of the impact on all role players within the criminal justice system.** Findings must be goal oriented and problem solving should be unilateral. The purpose of this study must not only be to furnish functionaries or practitioners with the necessary information to perform their tasks efficiently, but should also function as a mechanism by which the development of an action plan can be monitored.

The second step in the adoption of the ***multidisciplinary drug model***, after the establishment of an effective drug policy is the implementation of mandatory drug testing.

**RECOMMENDATION 3:****A MANDATORY DRUG TESTING SYSTEM SHOULD BE INITIATED**

Policy must be adopted for the mandatory testing of all arrested offenders' for psychoactive substances. This will allow for the early identification of drug using (dependant) offenders and early intervention. However, intervention without the necessary mechanisms or infrastructures would be futile. Existing bodies or structures such as SANCA and other governmental agencies dealing with drug issues and treatment, should be approached and involved with diversionary programmes and for assistance with treatment. Mandatory drug testing may also enable the creation of a computer-based data bank for the purpose of management of the problem and the initiation of research on the drug-crime link.

**RECOMMENDATION 4:****A CENTRAL DATA BASE PERTAINING TO DRUG OFFENDERS BE ESTABLISHMENT**

The creation of a central data base will offer insight into the extent of drug-related crimes in South Africa, especially the number of crimes committed while the perpetrator is under the influence of psychoactive or mood altering substances. It is this category of crime that is unknown at present and this group of offenders that are channelled into the criminal justice system without specialised assistance for their drug use or dependency. A central data base will also be an effective tool for researchers and policy makers. It will also be a valuable tool for the Police Services on a proactive and reactive level. The data base will also identify the drug offender and make the task of

court officials within the criminal justice system easier.

**RECOMMENDATION 5:**

**COURT OFFICIALS BE INVOLVED WITHIN THE DRUG MODEL**

It is important that court officials become involved in the multidisciplinary approach to the handling of the drug offender. As it is their task and responsibility to address the offender's trial and sentencing, a greater understanding of the final outcome of the offender's handling is necessary. It is of little value for these officials to request and impose a prison sentence for the drug offender with the specific aim of rehabilitation, if they do not know the level of rehabilitation present within prisons. Court officials should play an integral role in the **drug model** in order to ensure the smooth processing of the drug offender and to allow officials to make recommendations and impose suitable sentences for those offenders' who have committed drug-related crimes.

**RECOMMENDATION 6:**

**A DRUG MODEL BE ESTABLISHED TO FACILITATE THE ROLE OF THE DEPARTMENT OF CORRECTIONAL SERVICES**

As in the case of court officials, functionaries within the department of Correctional Services must also be involved within the **drug model**. The development of a treatment model within the Department of Correctional Services must therefore:

- be in line with the proposals of the Drug Advisory Committee
- be in line with international trends

- 4 follow a multidisciplinary approach from a multidimensional perspective.

A multidisciplinary contribution within the correctional setting may be made by psychologists, educationalists, penologists and any other role players who can improve the services in the field of drug offender handling. Besides offering wider and more specialised services, the heavy workload placed upon correctional workers can be lightened.

It is important, however, that the drug offender not only receive treatment and attention during the period of incarceration, but that additional support be offered upon his release into the community to facilitate his reintegration back into society.

#### **RECOMMENDATION 7:**

#### **MEASURES FOR THE REINTEGRATION OF THE DRUG OFFENDER INTO THE COMMUNITY BE IMPLEMENTED**

Because of the drug offender's drug dependence it is necessary that he have additional help and support upon his release. A support system is necessary to maintain the drug free lifestyle and contact with negative elements and acquaintances must be avoided at all costs. The involvement of volunteers may ease the drug offender's reintegration into society. Halfway houses may also contribute to the drug offender's reintroduction to society.

**RECOMMENDATION 8:****A MULTIDISCIPLINARY APPROACH BE ADOPTED TO SOLVE THE DRUG ABUSE PROBLEM**

It is necessary to adopt a multidisciplinary approach to address the drug problem in society. It is not only the task of schools' to educate scholars as to the dangers of drugs, or the police to prevent drug use, or the courts to impose punishment for related offences, or correctional services to implement the punishment. Society needs to become involved to protect its morality and to support the efforts of the other role players. The multidisciplinary approach enables all role players to become involved in the fight against drugs. The penologist can also make a valuable contribution.

**RECOMMENDATION 9:****THE PENOLOGIST BECOME INVOLVED IN THE HANDLING OF THE DRUG OFFENDER**

The penologist should play a larger role in the criminal justice system in facilitating and monitoring the effective handling of offenders. The penologist can be utilised within the multidimensional drug model to facilitate and monitor the procedures dealing with this category of offender.

The penologist can be utilised to carry out presentence investigations and to prepare presentence reports for drug offenders. This will contribute to more effective sentencing of drug offenders and the consideration of suitable treatment options. The penologist should also liaise with the community and community structures to determine

whether suitable treatment, or community-based options exist or whether a custodial option would be the most beneficial to the offender, victim and the community.

The penologist can also further draft or compile parole reports for offenders who are being considered for early release. The measure of rehabilitation achieved can be determined by verification and consultation with all treatment and custodial staff. Liaison with the community will also allow the penologist to identify possible mechanisms or structure in society that can assist with the offenders successful release and reintegration back into the community.

The penologist should further monitor drug policies worldwide and identify new drug treatment approaches and programmes. These can be evaluated and aspects that may be of value to the South African situation can be implemented and tested. Close contact with both experts at home and abroad should be maintained to keep abreast of developments and changes in the field.

#### **RECOMMENDATION 10:**

#### **DRUG REHABILITATION AND RESTORATIVE JUSTICE BE LINKED**

The researcher believes that it is necessary to apply restorative justice in the handling of the drug offender. According to Wilmering (1997:1), an America Human rights activist, retribution as a form of justice no longer achieves its goal in modern society. He sees it as a false idea of justice that has been costly and ineffective. He advocates for the use of more dynamic and innovative "alternative" justice practices as seen within restorative justice. The researcher is of the opinion that to enable the latter measures,

restorative justice should be considered in the case of drug-related crimes. The adoption of radical systemic change may bring about an alternative vision and change the foundation of justice in modern societies. The concept of restoration may bring about the balance in the scales of justice and restore the trinity or status quo between victims, the community and the offenders. It is thus necessary to adopt an approach where the offender is allowed the opportunity to compensate the victim of his crime. It will allow him to see the implications of his act and may increase his chances of rehabilitation. The researcher believes that often the drug offender is too far removed from his crimes. He may act under the influence and be unaware of the implications or reality of his behaviour. If society allows him to see the consequences of his behaviour, it may bring about a sense of remorse that may further facilitate the rehabilitation process. The restorative justice approach furthermore includes the use of family-group conferences, victim-offender reconciliation programmes, victim-offender mediation, court diversion programmes, community-justice conferencing, and community-justice planning (Wilmering 1997:2). All these facilities may be of value in restoring the offender's place in society as a law-abiding member and facilitating his acceptance back into the society that he has wronged.

#### **RECOMMENDATION 11:**

#### **FURTHER RESEARCH BE CONDUCTED**

It is important that research be conducted on the effect and outcome of the model on a continual basis. The systems for drug offender handling in other countries must be constantly monitored and evaluated and valuable and useable elements be developed for the South African scenario.

**RECOMMENDATION 12:**

**THE CONTINUATION OF A DYNAMIC DRUG TREATMENT MODEL BE STRIVED  
TOWARDS**

By applying the above-mentioned recommendation to the **drug model**, it will ensure that the model remain dynamic and that it will always be based upon current trends, policy, and social views and norms.

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## **Parole report 1: Mr K**

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### **1. Contact with inmate**

Mr K volunteered to join the UNISA treatment group in June 1997. It is part of a pilot study for the proposed establishment of Drug Clinic's or treatment facilities within correctional facilities, to deal with the handling and treatment of drug offenders' and to address drug related issues. Mr K has shown a genuine desire to stay drug free after his release. He joined in all discussions and made a valuable contribution to the group. He shows an understanding of his actions and fully understands the implications thereof.

### **2. Mr K: a profile**

Mr K comes from a good family. Both his father and brother are engineers and his father is affiliated with the University of Witwatersrand. From an early age he has had problems with psychoactive substances and has had a drug dependency problem. This

drug use and dependency resulted in his criminal activities and his contact with the justice system. He feels a great remorse about his crimes and how they have affected his parents and siblings. He has said that he is a great disappointment to his family. Yet the family do not hold his misdeeds against him and would like to assist him with his return to society.

During his incarceration he has been a model prisoner, has undergone various courses and training (see file) and has volunteered to develop life skills in the juvenile offenders at Central. He teaches stain glass work. During his spare time he makes stain glass articles which he sells.

**My prognosis** is that Mr K as we see him in prison, a hardworking reliable individual, will be the same in society if he remains drug free. It is thus imperative to keep Mr K drug free. It is for this reason that I propose that he undergo treatment in the Drug treatment model \* which I will later elaborate upon. This is an experimental model and I believe its success in this instance will make allocation for the treatment and handling of all drug offenders within Corrections.

## **2. Motivation for release**

The current correctional strategies do not facilitate his rehabilitation. It is my opinion that overcrowding of facilities and the resulting staff to inmate ratio does not allow for adequate treatment options for drug dependant prisoners. Drug offenders need specialised care and treatment, with intensive release preparation and release

assistance. Up to date the programme which Mr K has volunteered to join has given the later assistance. It is my opinion that he is ready to reintegrate back into society if he still falls under the ambit of the Drug treatment model\*. It is my view that if he undertakes to join and stay in a good rehabilitation programme on an out-patient basis or continues with therapy as he has been during his incarceration, he will remain drug free. The Drug treatment model facilitates this. It is my opinion that Mr K be considered for placement on parole in terms of Section 276. 1[i]/267.A[3} and 287[4][b] of the Criminal Procedures Act Act 51 of 1977, when the following criteria are taken into consideration:

- \* offender's level of danger to society
- \* prisoner's level of self-sufficiency
- \* employment and place of residence

The inmate meets these requirements and others as will be further elaborated upon in the report.

### **3. Release options**

Because Mr K crimes were all drug related, any suitable form of release should include therapy to prevent him returning to his drug dependency, and a mechanism to monitor and deter him from using any psychoactive substance should be implemented.

The most suitable method of release for Mr K would be a form of intensive and close supervision, including both continued support and surveillance upon release, as

stipulated by Sherron's Addiction treatment model (Fox and Stinchcomb 1994:498).

The model facilitates the confrontation of underlying social and psychological causes of addictive behaviour both during incarceration as well as after release. Mr K's drug problems have been confronted in the UNISA group and in sessions with Mrs Theron. It is my humble opinion that when he is released he should continue with these sessions on an outpatient basis with both Mrs Theron and myself. He has also expressed a need to carry on with this therapy upon his release. I believe that he is truthful and really wants to rehabilitate. However, taking his previous releases into consideration, he needs additional assistance with his release. I would recommend that he report back twice a month for counselling sessions. The sessions must be accompanied by a control mechanism in the form of compulsory drug testing. All these issues will be addressed in the Drug treatment model.

The latter recommendation adheres to the principles as stipulated by the Adult Parole Board of Victoria, Australia. They postulate that "the purpose of parole is to ensure that offenders receive the management and supervision required to support their transition from prison to the community and to provide the important function of monitoring/surveillance of the parolee's behaviour.

If Mr K does not receive parole at this stage he cannot be forced into treatment and counselling. While he will still receive treatment during his incarceration, he will not develop the level of responsibility needed for his successful reintegration back into the community. However, if he does qualify for parole part of his treatment and rehabilitation will be based on the development of **social responsibility** in order to

successful rehabilitate and to adhere to social norms and values.

#### **4. The motives of punishment**

The following penal motives have been considered in the recommendation:

##### **4.1 Retribution**

It appears that Mr K feels a genuine remorse for the crimes he has committed. He accepts sole responsibility and only blames himself for his deeds. He expresses a concern for the harm he has done to his family. He acknowledges the harm his actions have done to society and himself. It is my humble opinion that he is of more harm to himself at the moment, than to society.

##### **4.2 Rehabilitation:**

According to Beck (1985:11) parole is more effective as a rehabilitative measure than full term imprisonment. It would be more beneficial to release the inmate now, with the stipulations of treatment and control, than later without these measures. The supervisory measures and compulsory substance testing should adequately deter any risk of the inmate returning to substance abuse.

Mr K's recovery should be viewed as a life-long process. This can be substantiated by the **Therapeutic Community Approach** which follows the philosophy that the drug

offender needs intensive rehabilitation and care. Thus Mr K's conditional release would be beneficial to the long term goal and prognosis of a drug free life-style, which in turn would be the most effective deterrent from crime in this particular case.

#### **4.3 Protection of society**

Even though Mr K's crimes are categorised as violent crimes, I believe the substances contributed to nature of his behaviour. According to research by Petersilla, Turner and Deschenes (1992:20) in research conducted and supported by the Bureau of Justice Assistance in the United States, intensive supervision programmes were found to ensure community safety when the released offender was placed under close surveillance and carefully monitored.

#### **5. Is the inmate suitable for parole**

It is my opinion that the prisoner is a suitable candidate for parole release as long as his conditions of release are accompanied by strict supervision to address his drug dependency. He is positive about his release back into the community.

In final analysis the use of close supervision and monitoring will bring about the following:

- \* the offender will be deterred from further crime as the condition impose a greater risk for detection and revocation
- \* counselling and treatment will have long term benefits for society.

## **6. Does inmate understand terms of conditional release fully**

Mr K understands the implications and conditions of his release fully and is willing to adhere to the rules of his conditional release. He understands the benefit of his supervision and the control mechanisms for his reintegration back into the community and to abstain from the use of detrimental substances. He is willing to join the Drug treatment model as a requirement of his parole release.

## **7. Will the inmate benefit from parole supervision**

The inmate will benefit by this form of release as he has expressed a need for a support system other than his family. He has mentioned that during his previous release he felt the need to talk to someone who would not be disappointed by him. He felt that his family would not understand him and his problems. He did not want to involve them in the negative aspects of his life.

## **8. Does the inmate have a favourable attitude towards society**

Mr K is positive about his integration back into the community. He has a large support group in the form of his family, his father and brother. He also has a 10 year old daughter who is a major contributory factor to his positive welfare and wellbeing. He hopes to play a bigger role in her life upon his release.

**9. Does the inmate want parole**

Mr K has expressed a desire to be placed under parole and the restrictive conditions thereof.

**10. Will the inmate agree to abide to the rules and regulations**

Yes, Mr K expresses the desire to abide by the rules and regulations.

**11. Inmates insight into previous criminal activities**

Mr K understands the causal processes of his crimes and the consequences thereof.

**12. Parole plan**

The ideal plan would be compulsory visits to Mrs Theron and myself at Central prison on a fortnightly basis. Compulsory drug testing must be undertaken on each visit to ensure that Mr K maintains a drug free lifestyle. See Drug treatment model for comprehensive treatment plan.

**13. Environment to which inmate will return**

Mr K will be returning to supportive environment as is illustrated by the attached letters

from friends and family. Their support together with the professional support offered by the proposed parole plan will possibly succeed where previous releases did not. The offer will be extended to family to join sessions if problems with reintegration and relationships are encountered.

#### **14. Inmates residence upon release**

Mr K has the option of either residing with his father or his girlfriend and business partner, Mrs R. Both parties are committed to ensuring that Mr K meet the requirements of the proposed parole release. Both will offer a well adjusted and supportive environment. Mrs R is involved with religious work with inmates and will offer him security and a balanced lifestyle.

#### **15. Employment programme**

Mr K can support himself. He produces stain glass articles which he already sells. He has taught at the juvenile section and will be able to teach private classes as well as sell his products. Please see letter from Mrs S for more information in this regard.

#### **16. Proposed treatment programme**

The treatment programme will follow a multidisciplinary approach where specialists in all relevant fields will be utilised to address the reform, rehabilitation and reintegration of drug offenders back into the community and assist them to lead a drug and crime

free lifestyle. Presently the Drug treatment programme is in an experimental stage and the programme is being conducted by Mrs Theron, a social worker with many years experience in the field of offender handling, counselling and treatment, and myself.

The following is a brief sketch of the working of the model.

Drug treatment programme		
Pre-release	Release	Post-release
In prison: joins Clinic treatment programme and care which deals with drug problem Deal with life issues Involvement of multi-disciplinary team	When prepared for release Parole report is prepared	Compulsory attendance of Drug Multidisciplinary team treatment Compulsory drug testing Family therapy

After release the ex-offender has the option to maintain contact with the programme for further assistance if necessary and may undertake to do voluntary work for the programme. Mr K has already made a commitment to do voluntary work.

A more comprehensive copy of the model can be made available but because it is part of a doctoral study which is not yet complete, I would not necessary like to divulge further details yet. The report is a true reflection of my interaction and communication with Mr K over the last seven and a half months. See annexure of correspondence and testimonials of friends and family of the latter individual.

## **Parole report 2: Mr P**

### **1. Contact with inmate**

Mr P volunteered to join the UNISA treatment group in June 1997. It is part of a pilot study for the proposed establishment of Drug Clinic's or treatment facilities within correctional facilities, to deal with the handling and treatment of drug offenders' and to address drug related issues. He joined in all discussions and made a valuable contribution to the group. During discussions about the crimes he committed, he showed an understanding of his actions and the implications thereof.

### **2. Mr P: a profile**

Mr P comes from a good family. His father is a successful business man. His family reside on a small holding outside Pretoria from which they run a successful business. Mr P attributes his criminal behaviour to a rebelliousness and desire for adventure during his teenage years. He left home at an early age and moved into a flat with his girlfriend. His job (working at a night club) exposed him to negative and criminal elements. His girlfriend also placed a lot of pressure on him to provide her with material things that were beyond his means as a youth. All these factors together with his age and inexperience snowballed and sent him into a situation in which he could not cope. While he saw his fall into a life of crime escalating he believed that he could control the situation. His age and lack of experience impeded his futile attempts to

eventual go straight when he realised the full implications of his actions.

After more than three years M P is in prison, a young man who has lost many years of his youthful life, years that can never be recovered. He feels a great remorse about his crimes and how they have affected his parents and siblings. He has said that he is a great disappointment to his family. Yet the family do not hold his misdeeds against him and would like to assist him with his return to society.

During his incarceration he has been a model prisoner, has undergone various courses and training (see file). He has learned to do stain glass work and during his spare time he makes stain glass articles. **My prognosis** is that Mr P has matured in prison. He is no longer the teenager who had the feeling that he would live forever and could do anything without having to face the consequences thereof. He has paid dearly for his mistakes.

His contact with the contamination of the prison environment has also (See contamination theory) left him relatively unscathed. His good upbringing and the high morals of his family have probably contributed to him not being influenced more severely by the negative effects of prison life than he is. He however, has come into contact with drugs, the reason for his joining the Unisa group. This group is an experimental model which deals with the treatment and handling of all drug offenders within Corrections. His drug use has been addressed and at this stage he has rehabilitated to a point that it will not impede his successful release.

Mr P age makes it important for him to be released as early as possible for the following reasons:

- \* his age and lack of experience contributed to his crimes - he is not inherently bad
- \* he needs to plan his life - this will be addressed in the programmes he undergoes in the Unisa group
- \* his age will make it easier for him to be accepted back into society

## **2. Motivation for release**

Mr P age makes him more impressionable than the more hardened offender and it is not in his best interest to remain in the company of this category of offender. The current correctional strategies do not facilitate his rehabilitation. Considering the court transcript and to quote the Magistrates sentencing remarks: To quote the Court it states that he had acted in a reckless manner and should be punished therefor **to set an example to other car thieves yet it is explicitly stated that he requires rehabilitation. Further more it is clearly stated that Mr P must not (and I use the Magistrates words) be broken down.** Prior to entering the Unisa group, Mr P had not been given the intensive rehabilitation to which the Magistrate refers. The system does not facilitate it and his social worker does not have the time to administer the necessary programmes. It is my opinion that these sessions can just as successfully be facilitated within the community if he is released.

Under the intensive release preparation and release assistance he will receive in the

Unisa group and with Mrs J Theron, it is my opinion that he is ready to reintegrate back into society. It is my opinion that Mr P be considered for placement on parole in terms of Section 276. 1[i]/267.A[3] and 287[4][b] of the Criminal Procedures Act 51 of 1977, when the following criteria are taken into consideration:

- \* offender's level of danger to society
- \* prisoner's level of self-sufficiency
- \* employment and place of residence

The inmate meets these requirements and others as will be further elaborated upon in the report. If Mr P does not qualify for parole, that he be given a date. This will give him something to strive for and to work towards. A parole date with requirements which this Committee sets will enhance the purpose of his incarceration (ie rehabilitation and successful return to society as a law-abiding citizen). It is also my opinion that he see a psychologist on a weekly basis. Certain issues which were highlighted by a clinical psychologist, K Redelinghuys, on the 19 September 1995, have never been adequately addressed. Dr Redelinghuys recommends intensive individual psychotherapy. By assisting Mr P with these problems prior to his release, and him having a set parole date will successfully prepare him for his release.

**These recommendations take the Magistrates comments into consideration and I request that they be considered in this matter.**

### **3. Release options**

Because of his age and personal makeup it is important to set clear goals for Mr P to work towards. Mr P would benefit from a form of intensive and close supervision, including both continued support and surveillance upon release, as stipulated by Sherron's Addiction treatment model (Fox and Stinchcomb 1994:498).

The latter recommendation adheres to the principles as stipulated by the Adult Parole Board of Victoria, Australia. They postulate that "the purpose of parole is to ensure that offenders receive the management and supervision required to support their transition from prison to the community and to provide the important function of monitoring/surveillance of the parolee's behaviour.

Mr P is still young and many opportunities exist for him at present to become a law abiding member of society and even more important to make a contribution to society.

#### **4. The motives of punishment**

The following penal motives have been considered in the recommendation:

##### **4.1 Retribution**

Mr P feels a genuine remorse for the crimes he has committed. He accepts sole responsibility and only blames himself for his deeds. He expresses a concern for the harm he has done to his family. He acknowledges the harm his actions have done to society and himself.

**4.2 Rehabilitation:** According to Beck (1985:11) parole is more effective as a rehabilitative measure than full term imprisonment. It would be more beneficial to release the inmate now, with the stipulations of therapy and control, than later without these. He is young and has learned that his behaviour was wrong.

#### **4.3 Protection of society**

Even though Mr Ps crimes were serious, he was a juvenile and a first time offender. His sentencing was in my opinion not according to the Triad of Zinn which stipulates that the interests of the offender and the community and the nature of the crime must be considered when imposing sentence. An Appeal set up by Attorney's Viljoen, Pretorius & Sterk substantiate this point (See par 8 in document dated 1995-04-07. The harsh sentence emphasizes the protective element, whereas, he is not a threat to society. The spate of car thefts in the community placed a pressure on the Court to impose the sentence in question.

Mr P's escape was also not premeditated, and when the opportunity presented itself, he impulsively took it. His escape fits the profile the psychologist presents: he was immature and impulsive rather than inherently deviant (is not found to be psychotic)

#### **5. Is the inmate suitable for parole**

It is my opinion that the prisoner is a suitable candidate for parole release and if he has contact with the Unisa group and the assistance it offers his successful integration into

society will be facilitated. He has a supportive environment to which he will return and a career opportunity that will give his life structure and purpose. He is not the young, rebellious child that he was when he was first imprisoned. In final analysis the use of therapy and monitoring (offered by the Unisa group) will bring about the following:

- \* assistance to adapt back into society and
- \* to cope with integration problems he may encounter

#### **6. Does inmate understand terms of conditional release fully**

Mr P understands the implications and conditions of his release fully and is willing to adhere to the rules of his conditional release. He understands the benefit of his supervision and the control mechanisms for his reintegration back into the community.

#### **7. Will the inmate benefit from parole supervision**

The inmate will benefit by this form of release as he and his family receive the services of a support system.

#### **8. Does the inmate have a favourable attitude towards society**

Mr P is positive about his integration back into the community. He has a large support group in the form of his family and friends, and the church.

**9. Does the inmate want parole**

Mr P has expressed a desire to be placed under parole and the restrictive conditions thereof.

**10. Will the inmate agree to abide to the rules and regulations**

Yes, Mr P expresses the desire to abide by the rules and regulations.

**11. Inmates insight into previous criminal activities**

Mr P understands the causal processes of his crimes and the consequences thereof.

**12. Parole plan**

The ideal plan would be compulsory visits to Mrs Theron and myself at Central prison on a fortnightly basis. If a parole date is set, recommended programmes or any relevant self -development stipulations set by the Parole Board will be met.

**13. Environment to which inmate will return**

Mr P will be returning to supportive environment. This family support together with the professional support offered by the proposed parole plan will succussed to successfully

integrate him back into **society**

#### **14. Inmates residence upon release**

Mr P will be residing on the property of his parents and will enter the family business which is expanding at present. All parties are committed to ensuring that he meet the requirements of the proposed parole release. This option will offer a well adjusted and supportive environment.

#### **15. Employment programme**

Mr P has a wonderful opportunity to enter the family business. His parents will elaborate on this point. See letter from his parents Mr and Mrs P.

#### **16. Proposed treatment programme**

The treatment programme will follow a multidisciplinary approach where specialists in all relevant fields will be utilised to address the offenders integration back into the community and assist him to lead a crime free lifestyle. Presently the Treatment programme is in an experimental stage and the programme is being conducted by Mrs Theron, a social worker with many years experience in the field of offender handling, counselling and treatment, and myself.

After release the ex-offender has the option to maintain contact with the programme for further assistance if necessary and may undertake to do voluntary work for the programme. Mr P has expressed a desire to do voluntary work.

The report is a true reflection of my interaction and communication with Mr P over the last ten and a half months. See annexure of correspondence and testimonials of friends and family of the latter individual.

## **Parole report 3: Mr J**

### **1. Contact with inmate**

Mr J joined the UNISA treatment group in June 1997. It is part of a pilot study for the proposed establishment of Drug Clinic's or treatment facilities within correctional facilities, to deal with the handling and treatment of drug offenders' and to address drug related issues. Mr J has talked freely in the sessions and has participated well in all discussions. He shows an understanding of the acts that led to his incarceration and fully understands the implications thereof.

### **2. Mr J: a profile**

Mr J comes from a supportive family. His mother is old and sickly. Prior to his incarceration he cared for her and his father, who has passed away. His mother has always visited her son, but recently her health has deteriorated to such an extent that she longer is able to visit. Mr J has a good relationship with his brother Louis.

From an early age he has had problems with dagga has a drug dependency problem. This drug use and dependency resulted in his criminal activities and his contact with the justice system. While most of his crimes have been petty, they have added up and contributed to his being imprisoned. During his incarceration Mr J has been a model prisoner. He works well and tries to improve himself.

**My prognosis** is that Mr J as we see him in the prison setting, is a hardworking reliable individual. However, he needs to remain in a support group to assist him with his drug dependency. He has approached the Unisa drug group for assistance upon his release.

## **2. Motivation for release**

The current correctional strategies do not facilitate his rehabilitation. It is my opinion that overcrowding of facilities and the resulting staff to inmate ratio does not allow for adequate treatment options for drug dependant prisoners. Drug offenders need specialised care and treatment, with intensive release preparation and release assistance. Up to date the programme which Mr J has volunteered to join has given the later assistance. It is my opinion that he is ready to reintegrate back into society if he still falls under the ambit of the Drug treatment model\*. It is my view that if he undertakes to join and stay in a good rehabilitation programme on an out-patient basis or continues with therapy as he has been during his incarceration, he will remain drug free. The Drug treatment model facilitates this.

It is my opinion that Mr J be considered for placement on parole in terms of Section 276. 1[i]/267.A[3] and 287[4][b] of the Criminal Procedures Act 51 of 1977, when the following criteria are taken into consideration:

- \* offender's level of danger to society
- \* prisoner's level of self-sufficiency
- \* employment and place of residence

The inmate meets these requirements and others as will be further elaborated upon in the report.

### **3. Release options**

Because Mr J's crimes were all drug related, any suitable form of release should include therapy to prevent him returning to his drug dependency, and a mechanism to monitor and deter him from using any psychoactive substance should be implemented.

The most suitable method of release for Mr J would be a form of intensive and close supervision, including both continued support and surveillance upon release, as stipulated by Sherron's Addiction treatment model (Fox and Stinchcomb 1994:498).

The model facilitates the confrontation of underlying social and psychological causes of addictive behaviour both during incarceration as well as after release. Mr J's drug problems have been confronted in the UNISA group and in sessions with Mrs Theron. It is my humble opinion that when he is released he should continue with these sessions on an outpatient basis with both Mrs Theron and myself. He has also expressed a need to carry on with this therapy upon his release. I believe that he is truthful and really wants to rehabilitate.

The latter recommendation adheres to the principles as stipulated by the Adult Parole Board of Victoria, Australia. They postulate that "the purpose of parole is to ensure that offenders receive the management and supervision required to support their transition from prison to the community and to provide the important function of

monitoring/surveillance of the parolee's behaviour.

#### **4. The motives of punishment**

The following penal motives have been considered in the recommendation:

##### **4.1 Retribution**

It appears that Mr J feels remorse for the crimes he has committed. He accepts sole responsibility and understands that his drug dependency has contributed to his actions. He acknowledges the harm his actions have done to society and himself.

##### **4.2 Rehabilitation**

According to Beck (1985:11) parole is more effective as a rehabilitative measure than full term imprisonment. It would be more beneficial to release the inmate now, with the stipulations of treatment and control, than later without these measures. The supervisory measures and compulsory substance testing should adequately deter any risk of the inmate returning to substance abuse.

Mr J's recovery should be viewed as a life-long process. This can be substantiated by the **Therapeutic Community Approach** which follows the philosophy that the drug offender needs intensive rehabilitation and care. Thus Mr J's conditional release would be beneficial to the long term goal and prognosis of a drug free life-style, which

in turn would be the most effective deterrent from crime in this particular case.

#### **4.3 Protection of society**

Mr J is not violent and does not pose a direct threat to the community. If he is assisted with his release and receives therapy for a life long drug addiction he should also not pose an indirect threat to society. According to research by Petersilla, Turner and Deschenes (1992:20) in research conducted and supported by the Bureau of Justice Assistance in the United States, intensive supervision programmes were found to ensure community safety when the released offender was placed under close surveillance and carefully monitored.

#### **5. Is the inmate suitable for parole**

It is my opinion that the prisoner is a suitable candidate for parole release as long as his conditions of release are accompanied by strict supervision to address his drug dependency. He is positive about his release back into the community. In final analysis the use of close supervision and monitoring will bring about the following:

- \* the offender will be deterred from further crime as the condition impose a greater risk for detection and revocation
- \* counselling and treatment will have long term benefits for society.

#### **6. Does inmate understand terms of conditional release fully**

Mr J understands the implications and conditions of his release fully and is willing to adhere to the rules of his conditional release. He understands the benefit of his supervision and the control mechanisms for his reintegration back into the community and to abstain from the use of detrimental substances. He is willing to join the Drug treatment model as a requirement of his parole release.

**7. Will the inmate benefit from parole supervision**

The inmate will benefit by this form of release. He needs a support system other than his family.

**8. Does the inmate have a favourable attitude towards society**

Mr J is positive about his integration back into the community. He has a large support group in the form of his family, his mother and brother.

**9. Does the inmate want parole**

Mr J has expressed a desire to be placed under parole and the restrictive conditions thereof.

**10. Will the inmate agree to abide to the rules and regulations**

Yes, Mr J expresses the desire to abide by the rules and regulations.

#### **11. Inmates insight into previous criminal activities**

Mr J understands the causal processes of his crimes and the consequences thereof.

#### **12. Parole plan**

The ideal plan would be compulsory visits to Mrs Theron and myself at Central prison on a fortnightly basis. Compulsory drug testing must be undertaken on each visit to ensure that Mr Joubert maintains a drug free lifestyle. See Drug treatment model for comprehensive treatment plan.

#### **13. Environment to which inmate will return**

Mr J will be returning to supportive environment. He will be residing with his mother, whom he will be caring for as he did prior to his release. They will be living with his brother.

existing programmes or new ones which they come across. This enables the use of a multidisciplinary approach to treatment. They may make use of the expertise of outside persons as advisors or their assistance with practical counselling.

## **8.8 CONCLUSION**

It is the researcher's view that South African legislation and acts dealing with the handling protocol and procedure for drug dependency cannot be put into full effect because the user's drug dependency remains hidden from the authorities. It is imperative, therefore, that South Africa consider the implementation of a policy that allows for the compulsory testing of persons who break the law in order to facilitate the effective use of our existing drug policy and to deal with the drug offender productively.

It is also necessary for South Africa to learn from the progress and mistakes of other countries. It is idealistic to believe that South Africa can attain what other countries such as the United States, England, Australia, Russia and Holland, to name a few have not accomplished. It is, however, possible that if South Africa acts quickly and effectively, it can combat and prevent the drug trade and thus prevent a major drug epidemic in the future. According to Dr Parry (1997) from the Medical Research Council, it is important that South Africa act quickly to adopt a "master plan" to fight the drug war. He advocates for an integrated drug control strategy to organise a collective fight against drug abuse and trade. It is imperative, however, that a multidimensional approach be adopted.

It is the latter perspective that must be kept in mind when examining the handling of the drug problem. It is necessary to address the handling of the drug offender from a ***multidimensional and multidisciplinary*** approach. All role players within the justice system should co-operate to develop a model of approach and treatment for drug offenders. Section 3 of the ***Prevention and Treatment of Drug Dependency Act 20 of 1992*** allows for this multidisciplinary approach to the handling process of the drug offender. It is thus not only the responsibility of the Department of Correctional Services to treat the drug offender within the isolated and artificial prison environment but rather should be tackled by all the role players within the criminal justice system and the community.

It is with this problem in mind that the researcher proposes the adoption of the drug treatment model in Chapter 10. Certain practical aspects must, however, be kept in mind in the implementation of such a model. These practicalities will be discussed in Chapter 9.