

A COMPARATIVE PENOLOGICAL STUDY ON RECIDIVISM

by

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CORRECTIONS MANAGEMENT

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DECLARATION

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A COMPARATIVE PENOLOGICAL STUDY ON RECIDIVISM

I declare that the above dissertation is my own work and that all the sources that I have used or quoted have been indicated and acknowledged by means of complete references.

SIGNATURE
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DATE

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SUMMARY

TITLE : A COMPARATIVE PENOLOGICAL STUDY ON RECIDIVISM
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South Africa has a high level of Crime and thus also has a high level of recidivism. The high rate of crime contributes to overcrowding in prison. The Department of Correctional Services has programmes for the offenders such as rehabilitation, parole, probation, re-entry and reintegration. These programmes are not effective to an extent that they are not changing the offenders' behaviour.

The qualitative aim of this study was to explore recidivism through the application of concepts and theories. The significant impact that rehabilitation, parole, re-entry, probation and reintegration exerted on recidivism cause more problems for the Department Correctional Services. Ineffectiveness of these programmes has a negative impact on the escalation of recidivism. The study revealed that programmes are not effective or adequate and that recidivism is the end-product.

The recommendation from the study indicates that Correctional Services should encourage offenders to participate in these programmes. The department should also review policies on these programmes and align them with international standards. The study also recommended that more research needs to be conducted on recidivism in order to understand its impact into the community and Correctional Services. The recommendations on this study indicates that recidivists should have their own specific facilities and offenders that have committed different type of crimes be treated and offered a programme designed for a particular offender and not to use a "one size fits all" approach.

KEY TERMS: Recidivism, parole, rehabilitation, probation, re-entry, reintegration, imprisonment, incarceration and prison.

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CHAPTER ONE

INTRODUCTION TO THE STUDY

1.1 INTRODUCTION AND BACKGROUND TO THE STUDY

South Africa as a developing country is still facing a number of challenges that need to be prioritized such as a high level of crime. It is also a noted fact that the causes and effects of the crime committed have a detrimental impact towards growth and development of the republic and the continent at large. There are various key elements that are hampered, amongst others include; financial stability in terms of trade relations, infrastructure development, good education systems, poverty alleviation programmes, sustainable farming and land reform etc. These key areas are negatively affected due to the high rate of crime and as a result the country is failing to achieve its intended goals that are established to improve the lives and safety of own our people.

It has been discovered through research that efforts to develop strategies and techniques towards crime prevention and eradication are still not sufficient as the current initiatives and interventions are not adequate to optimally enhance and promote law abiding behaviour in South Africa (McKean & Randsford, 2004:33). Carney (1977:54) reiterated that the focal point of this study is based on recidivism as an element of unwanted criminal behaviour. He therefore made an imperative indication to all the citizens of the country and for the criminal justice system to realize the harm attached to the rate of recidivism that is escalating in South Africa. As a result, this study is motivated by the high level of recidivism emanating from the unwanted criminal conduct, as supported by the literature study.

Based on the penological perspective, this research provides a platform for role-players to apply specific rehabilitation programmes to the recidivists so as to obtain a sense of complete acceptance in the community through the reintegration programmes. The restorative justice system in terms of addressing issues relating to stigma attached to offenders after their release from prison becomes an important instrument to deal with criminal behaviour.

The South African Department of Correctional Services (DCS) has a challenge to provide additional support to offenders more than reintegration and such support may be in a form of collaborative efforts and interventions by all stakeholders to henceforth monitor the offenders' activities and behaviour so that corrective measures such as further counselling and therapy could be provided to deal with offenders societal challenges from the beginning.

The researcher has observed while in the employ of the Department of Correctional Services that it applies the same rehabilitation and reintegration methods to all offenders irrespective of the type of offences committed.

1.2 PROBLEM FORMULATION FOR THE LITERATURE REVIEW

The study has a number of problems that influenced the research to be conducted. There is a need for specific rehabilitation programmes for recidivism in prisons. The problems for this study are as follows:

- High rate of recidivists/ re-offending in the country
- Societal values and norms violated by recidivists
- High rate of overcrowding
- Financial implications attached to recidivism
- Ineffective/inadequate training of correctional officials in relation to recidivism

In order to address recidivism, there is a need to evaluate and further investigate the challenges associated with it and whether there are any adequate deterrent measures to avoid it from happening. Taking accrue from this problem, the research aim and objectives are formulated and answered by the literature review.

1.2.1 RESEARCH QUESTIONS

The following are the research questions of the study:

- What are the trends and the patterns attached to the concept of recidivism?
- How to identify recidivism through the application of concepts and theories?
- What are the relevant rehabilitation programmes to deal with recidivism?
- What are the international methods of addressing recidivism?
- Are there any other obstacles associated with recidivism that needs to be addressed?

1.2.2 DEMARCATION OF THE STUDY

The point of departure for this study is recidivism of offenders in prison in relation to parole, probation and reentry as matters that the phenomenon under investigation is centered around. This simply means that the crux of the study revolves around these aspects and only applicable as the central issues of the study. According to Corbin and Strauss (2008:32) demarcation is defined as the act of establishing limit. The study focuses on recidivism in South Africa, USA, and England and Wales.

1.2.3 INCLUSION AND EXCLUSION CRITERIA

The inclusion and exclusion indicate what should be included and excluded in the study, therefore, what was excluded in this study is the literature irrelevant to the study. The following criteria of inclusion were used:

- Literature relevant to the topic
- National and international literature
- Policies and legislation
- Literature between 1970 and 2015
- Dissertations on penology
- Academic and non-academic reports
- Only literature that was written in English
- The study was conducted in USA, England and Wales, and South Africa

The following was the criteria of exclusion:

- Literature that was not relevant to the topic
- Personal documents such as autobiographies and diaries
- Newspaper articles

1.3 DEFINITION OF KEY THEORETICAL WORKING CONCEPTS

The following definitions form an integral part of this research and were used frequently. The main aim was to clarify these concepts to prevent any misunderstandings and to ascertain the fact that readers and researchers attach the same meaning to the concepts mentioned in the study (De Vos, Strydom, Fouche & Delpont, 2002:12).

1.3.1 Recidivism

Recidivism is defined as the act of relapsing into a former mode of behaviour, in this case criminal behaviour (Carney, 1977:204). However, Urahn (2011:7) indicates that recidivism is the act of reengaging in criminal offending despite having been punished. The prison recidivism refers to the subject or the proportion of persons that are released from prison, then rearrested, reconvicted or returned to custody within a specified time period.

Recidivism is the reversion of an individual to criminal behaviour after he or she has been convicted of new offence (Champion, 2001:37). Recidivism is defined as “any unfavourable movement of a parolee out of active parole supervision”. This is measured as re-incarceration and absconding (Zhang, Roberts & Callanan, 2006). Recidivism and reoffending are most synonymous (Blumstein & Larson, 1971).

Harries, Lockwood and Mengers (2009: 1) indicated that recidivism is the most commonly measured in terms of rearrests, referral to court, reconvictions or re-confinement. According to Ssebuggwawo (2010), recidivism is also called backsliding or falling back into a previous criminal behaviour. According to McKean and Randsford (2004:11), recidivism is generally understood to be a relapse into prior criminal behaviour and is measured by a former prisoner’s return to prison for a new offence.

Recidivists may also be (1) parolees who violate one or more terms of their parole and were returned to prison, (2) probationers who violate one or more terms of their probation and are sentenced by the judge to jail or prison, (3) those who fail to complete their rehabilitation or vocational/technical training programmes, (4) those who are arrested for new offences but not necessarily convicted, (5) those simply returned to prison for parole violations, or (6) those who are convicted of a prior offence (Maltz, 2001).

1.3.2 Re-entry

Thigpen and Beauclair (2007:xii) indicates that re-entry programmes are defined as those that (1) specifically focus on the transition from prison to community or (2) initiate treatment in a prison setting and link with a community programme to provide continuity of care. According to Chin and Dandurand (2012:149), re-entry is referred to as a process through which a prisoner is moved from custody to living in the community.

1.3.3 Incarceration

According to Durose, Cooper and Snyder (2014:15), the concept of incarceration classifies the person as recidivist when an arrest results in imprisonment. Joseph (2001:12) points out that incarceration is defined as the offender serving a sentence in jail or prison.

1.3.4 Parole

Parole is a programme designed for early release of offenders to spend the remainder of their sentence outside the prison camp, yet under the supervision and with conditions (Florida Parole Commission, 2004:6).

1.3.5 Rehabilitation

Champion (2001:17) defines rehabilitation as a philosophy of corrections that promotes educational and vocational training for prisoners to bring about prisoner reform or change and help integrate offenders back into society to lead productive and conforming lives.

1.3.6 Reintegration

According to Champion (2001:19), reintegration is defined as a punishment philosophy that promotes programmes that lead offenders back into their community. It includes programmes such as furloughs, work release and halfway house.

1.3.7 Correctional Centre

According to Louw (2008:13), correctional centre is an institution in which offenders are detained for the purposes of punishment, protecting the community and for rehabilitation purposes.

1.3.8 Overcrowding

Overcrowding is defined as the consequences of housing too many people in too little space whereby inmates are double bunked in small cells designed for one, or forced to sleep on mattresses in

unheated prison gym, day rooms, hallways or basements, or when others sleep in makeshift trailers, tents or converted ferries (Stinchcomb & Fox, 1999:228).

1.3.9 Imprisonment

Durose, et al. (2014: 15) define the concept of imprisonment as the concept that classifies a person as recidivist when his or her arrest results in prison sentence.

1.4 VALUE OF THE RESEARCH

There is no doubt that the fruition of this study will bring insight into the subject matter. Different stakeholders, people and interest groups will benefit from it. Thus, the value of the research can be outlined as follows:

1.4.1 Value for the correctional system

The results of the study can assist the correctional services around the globe in their policy formulation regarding offender programmes, such as policies on probation, re-entry, parole with regard to their effectiveness on addressing recidivism.

1.4.2 Value for the broader community

The value of the study lies in correctional services using the information to develop policies that heighten community involvement in correctional service's programmes and thus encourage participation and understanding of those programmes. These ensure that implementation of the programmes and interventions are effectively achieved. In other words, the success of the study should be confirmed through the improvement of safe environment as a result of rehabilitated offenders who have been reintegrated into the community.

1.4.3 Value for the academia

The academia will benefit in terms of methodological knowledge, theoretical and practical solutions to the problem under investigation.

1.5 RESEARCH DESIGN

According to Creswell (2008:65), research designs are plans and the procedures for research that span the decisions from broad assumptions to detailed methods of data collection and analysis, where the three families of research designs; such as qualitative, quantitative and mixed methods are discussed. Research design is a complete strategy of attack upon the central research problem (Leedy, 1993:208). Yin (2009:26) defines research design as a plan that guides the researcher in the process of data collection, analyzing, and interpreting observation.

Schumacher and McMillan (1993:31) state that research design ensures that the study fulfils a particular response, as it provides answers to research questions that will stand against criticism and ensure that the design has an impact on the validity and correctness of the research findings. According to Gerring (2001:21), the following are the elements of research design:

- Theoretical framework
- Conceptual framework
- Types of propositions such as generalizations, classifications, predictions and causal propositions
- Research questions
- Causality, especially using evidence to draw causal inference
- Selection of cases
- Variables
- Explanation (what is the type of explanation we are seeking with a research project, an article, etc.)
- Mechanisms
- Methods

According to Van Wyk (2012:113), research design focuses on the end product; which determines the type of study being planned and the kind of results aimed at. Bhattacharjee (2012: 35) contents that research design is a “blueprint” for empirical research aimed at answering specific research questions of testing specific hypotheses and must specify at least three processes: (1) the data collection process, (2) the instrument development process, and (3) the sampling process. Therefore, Kothari (2004: 76) indicates that decisions regarding what, when, how much, by what means concerning an inquiry or a research study, constitute a research design.

1.6 RESEARCH METHODOLOGY

According to Babbie (2011:54), qualitative research always attempts to study human action from the perspective of social actors themselves (also referred to by anthropologist as “emic” perspective). Qualitative research methods are a subjective approach, which include examining and reflection of perception in order to gain understanding of social and human activities (Hussey and Hussey, 1997:20). Merriam (1988:6) argues that qualitative research is used as an effort to understand situations in their uniqueness as part of a particular context and the interactions therefore, and that this understanding is an end in itself so that it is not necessarily attempting to predict what may happen in the future, but to understand the nature of the setting.

According to Hancock, Ockleford and Windridge (2009:7) qualitative research is concerned with developing explanations of social phenomena. Maree (2012:123) describes qualitative research as a research that attempted to collect rich descriptive data in respect of a specific phenomenon with the aim to gain understanding of what is being observed or studied and not necessarily to proof hypotheses. Qualitative research is concerned with developing explanations of social phenomena (Hancock & Windridge, 2007:7).

1.6.1 Study population

Brink (1996: 132) defines population in research as the entire group of persons that is of interest to the researcher, and which meets the criteria for inclusion in the study. A population is the entire aggregation of cases that meets designated criteria. The accessible population is the aggregated cases that conforms to the designated criteria and which is accessible to the researcher as a pool of subjects for a study (Yvonne & Williamson, 1981:171).

According to Burns and Grove (2004:42), population refers to all the elements that conform to the criteria that make them suitable for inclusion in a study, such elements may be people, objects, events or substances. The accessible population is the aggregated cases that conforms to the designated criteria and which is accessible to the researcher as a pool of subjects for a study (Yvonne & Williamson, 1981:171). Due to the nature of this study, the population in this study is literature review such as books, journals, legislations and policy documents.

1.6.2 Sample procedure

A purposive sampling technique, which is one of the non-probability sampling techniques, was used. This non-probability sampling technique involves non-random sampling of subjects (Wilson, 1989: 260). Purposive sampling enables the researcher to handpick participants on the basis of knowledge of a population and the purpose of the research (McBurney & White, 2007:247).

According to Bless and Smith (1995:95), purposive sampling is based on the judgement of a researcher regarding the characteristics of a representative sample. A sample was chosen on the basis of what the researcher thinks to be an average person. Bailey, (1987:94) argues that in purposive sampling; the researcher uses his or her judgement about which participants to choose and pick. The researcher chooses only those who best meet the purposes of the study. This was based on the fact that only literature relevant to the topic was used according to the criteria of inclusion and exclusion.

1.6.3 Methods of data collection

There are many methods of data collection such as interviews, questionnaire and various forms of observation. However, the nature of the study collected information through literature review as this study focuses on secondary sources which include existing data in the form of literature.

1.6.4 Data evaluation

The collected data according to the criteria of inclusion and exclusion focused on recidivism and correctional centres around the globe. The main focus was to look at the literature that speaks about recidivism in England and Wales, USA and South Africa. The purpose was to exhaust literature in correctional centres in these countries. The use of literature review was found relevant in answering the research questions under the study.

1.6.5 Data analysis and interpretation

This is the stage where literature was reviewed. Therefore, data analysis was conducted throughout the study, especially in chapters 2,3,4,5 and 6, which focused on the following:

- Reports
- Statistics

- Legislations and policies

Issues relating to the causes of recidivism were analysed based on the sources used in answering the research questions. The study avoided the issue of plagiarism by all means in order to increase the validity and reliability of the study. In addition, the researcher did state in his own words in an attempt to clarify certain issues.

1.6.6 Public presentation

In public presentation which is the stage of report writing, the researcher used a thematic analysis in order to determine the recidivism aspects of the study.

1.7 RELIABILITY AND VALIDITY ISSUES

Anderson and Halcomb (2009:123) indicate that research validation assumes the scientific standard of rigor. McMillan and Schumacher (2010:104) further mention that validity means the degree to which scientific explanations of a phenomenon match reality, thus the truthfulness of findings and conclusions. The researcher analysed the interpretations based on the source of invalidity, for example, the researcher avoided leading questions to influence the answers. The researcher saw it fit to apply the following:

- Trustworthiness

Credibility

According to Wahyuni (2012:1) credibility deals with the accuracy of data to reflect the observed social phenomena and is defined as being parallel to internal validity. It focuses on establishing a match between the constructed realities of respondents and those realities represented by the researcher(s), in other words, credibility is concerned with whether the study actually measures or tests what is intended.

Transferability / Generalizability

Generalizability is concerned with how applicable theories, which are generated in one setting, are related to other settings (Carcary, 2009:43). However, Creswell (2007:110) cautions researchers that qualitative study's transferability or generalizability may be problematic since the data collected from the sample under study can be generalized to the entire population.

Dependability

Dependability is viewed as the alternative to reliability and refers to the stability of a research inquiry (Graneheim & Lundman, 2004:45). On the other hand, Shenton (2004:65), states that dependability can be determined if the research design is used as a prototype model and all data is reported in detail, without being fabricated or distorted.

Conformability

Conformability is regarded as capturing the traditional concept of objectivity and refers to the extent to which others can confirm the findings in order to ensure that the results yield the understandings and experiences from involved participants, as opposed to the researcher's own influences and preferences (Wahyuni, 2012: 7).

In order for the study to achieve objectivity, the researcher should use audit trail to ensure that there is confirmation of the study, since an audit trail is a transparent description of the research steps taken from the start of a research projects to ensure the development and reporting of the research findings (Carcary, 2009: 23).

1.8 ETHICAL CONSIDERATIONS

According to Saunders, Lewis and Thornhill (2007:178), ethical considerations refer to ethics in a context of research to the appropriateness of the researcher's behaviour in relation to the rights of those who become the study participants. Noakes and Wincup (2004:37) suggest that the researcher take such considerations into account in order to conduct research that is in the best interest of the research participants. A common ethical issue includes the following:

- Informed consent which should be done voluntarily;
- Privacy and confidentiality should be protected;
- Participants should be protected from harm during the course of the study; and
- All the participants should participate voluntarily.

1.8.1 AVOIDING DUPLICATE PUBLICATION

The purpose of conducting this study was to obtain the qualification at UNISA and not for the purpose of peer review. Therefore, publication (in whatever forms) of this dissertation prior completion of the study is prohibited.

1.8.2 AVOIDING PLAGIARISM

The researcher ensured that all the sources in the study are all referenced in order to prevent plagiarism. All the sources such as books, articles read and used were acknowledged and referenced according to UNISA standard of referencing.

1.8.3 TRANSPARENCY

The study is funded through bursary acquired from UNISA and the researcher does not have any conflict of interest and as a result the study cannot be influenced or be biased in anyway.

1.9 OUTLINE OF THE STUDY

The researcher structured this research in three sections namely: section A covers the overview of the study, background and introduction to research, research problem, and section B covers systematic literature review. The Literature review is divided into five chapters, which are philosophical approach towards recidivism, international standards and theoretical concepts, recidivism in England and Wales, recidivism in the USA and recidivism in the Republic of South Africa, and in section C is public presentation which covers the results and recommendations of the study. The division of these chapters is as follows:

SECTION A: OVERVIEW OF THE STUDY

CHAPTER 1: INTRODUCTION TO THE STUDY

The purpose of this chapter is to introduce the reader to the study by providing introduction and background to the study. The background highlights the role of correctional centres in South Africa, USA, and England and Wales, which contributes to the formulation of the research questions and inclusion and exclusion criteria as well as demarcation for the literature study. In addition to this, the

key theoretical working concepts were defined. Furthermore, the chapter discussed the value of research, research methodology, reliability and validity issues and ethical considerations.

SECTION B: SYSTEMATIC LITERATURE REVIEW

CHAPTER 2: PHILOSOPHICAL APPROACH TOWARDS RECIDIVISM

The chapter provides detailed discussion on recidivism. The decisions on which parole is based, the functions of prisons and the differences between parole and probation, community-based alternatives to punishment formed an important element of the discussion within the context of recidivism. A detailed discussion on the historical overview of recidivism, the advantages and disadvantages of recidivism and patterns in recidivism are discussed in this chapter. The chapter concludes by discussing the trends and the fundamental causes of recidivism and the measures for recidivism rates are outlined.

CHAPTER 3: THE INTERNATIONAL STANDARDS AND THEORETICAL CONCEPTS IN THE DEFINITION OF RECIDIVISM

This chapter offers a detailed discussion on the key theoretical concepts used in the literature review, the international standards, measurements of recidivism, general standards for measuring recidivism and the characteristics that lead offenders to recidivism are also discussed in this chapter.

CHAPTER 4: RECIDIVISM IN ENGLAND AND WALES

The point of departure in this chapter is the legislative framework on parole in England and Wales, the background about crime and punishment. The rate of recidivism for sex offenders are highlighted in this chapter as well. Furthermore, the chapter discusses the measurement of prison performance in reducing reoffending, the characteristics of the probation services as well as the sources of crime information formed an important deliberation in the chapter. Measuring reoffending, the national reoffending trend, factors which influence reoffending, probation service and offender re-entry programmes are discussed in this chapter. The chapter also discusses the profile of inmates, parole system, prison and imprisonments as well as the considerations in developing successful reintegration programmes.

CHAPTER 5: RECIDIVISM IN THE UNITED STATES OF AMERICA (USA)

The discussion commences with the recidivism rate in the USA, African Americans recidivism and the factors related to recidivism. The focal point of the discussion includes arrest in the USA, programme changes, risk factors, predicting recidivism, habitual criminality and recidivism. The chapter entails the last four discussions such as four measures of recidivism, re-entry and parole, the purpose of sentencing and concludes with community-based alternatives to confinements and the types of prisons and their functions.

CHAPTER 6: RECIDIVISM IN THE REPUBLIC OF SOUTH AFRICA (RSA)

The chapter provides deliberation of factors on recidivism, legislative framework on prisons in South Africa; the rights of accused, arrested and detained are discussed. Furthermore, the chapter details a discussion on restorative justice, recidivism in South Africa, rehabilitation initiatives in South Africa. The chapter also discussed the community corrections, diversion programmes, South African parole system as well as the reintegration as a programme for the correctional services.

SECTION C: PUBLIC PRESENTATION

CHAPTER 7: LITERATURE REVIEW RESULTS AND RECOMMENDATIONS

In the last step of the literature review, is the presentation of results and recommendations of the study. This is an evaluation chapter that concludes on the dissertation, which presents the results and recommendation for the whole dissertation.

1.10 CONCLUSION

The overview of the study is important since it provides a detailed discussion to the reader about what the study is all about. The study also covers the essential steps in the formulation of the literature review hence the objective of study was achieved. The other steps of the systematic literature review which includes data collection, data evaluation, data analysis and interpretation were identified in this study.

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CHAPTER TWO

PHILOSOPHICAL APPROACH TOWARDS RECIDIVISM

2.1 INTRODUCTION

The concept of recidivism derived from the latin word "*recidere*" which is translated as "*to fall back*" (Maltz, 2001:1). It is clear from Williams (1979:3) that despite current public concern over career criminals, research proved that recidivism is not a new field and it dates back to Warner's 1923 study of the success or failure of parolees in Massachusetts. In the same token Williams (1979:15) indicates the three questions that had to be resolved in order to form recidivism scale, which are; what criminal justice system *event* is to be considered recidivistic, a rearrest, a re prosecution, or a reconviction? How can the *seriousness* of the offence that gave rise to the event be taken into account? How can the *frequency* of the event be taken into account?

The length of confinement has little or no effect on the likelihood of recidivism while other studies report that persons who serve longer prison terms are more likely to recidivate (Frederique, 2005: 10). Maltz (1984:11) posed a question whether conviction does stop people from recidivating, it is common course that convicted people who spend time in prison do reoffend. This undermines the role of crime fighting agencies.

Turning to rearrests rates by characteristics of the released prisoners, the rate of rearrests is modestly higher within the black communities (Freeman, 2003:8). According to Schoeman (2010: 80), recidivism is similar to other terms such as habitual, chronic or career offender and refers to re-offending behaviour patterns and a pro-criminal lifestyle. Prinsloo (1995:8) states that recidivism is a popular academic metaphor that is widely and sometimes contrarily used in various contexts. Evidence from the United States indicated that of about 35-45% of the persons from prisons are reconvicted within their six years of being released (Baumer, 1997:608).

The purpose of this chapter is to discuss the philosophical approach towards recidivism.

2.2 DISCUSSION ON PAROLE, PROBATION AND REENTRY

The following concepts are regarded as the core factors in the discussion of this study due to their impact on the recidivism rate:

2.2.1 PAROLE

Parole is a form of *release from incarceration*, (where the offender is released to home, with the aim of ensuring that when he is in the community, there are no signs of reverting back to criminality with the primary intention to ensure that they do not commit any conduct that will violate the parole conditions). Selection for *parole release* is discretionary, (prior the release on probation, the Parole Board should be first satisfied and certain that the offender is not going to deviate from the parole conditions, so the Parole Boards are the one taking such decisions, which are guided by certainty that no further/similar crimes are to be committed). The *authority to release* rests with an administrative agency in the executive branch, parole release involves the *control or supervision* of those released and release is conditional and the parole authority retains power to revoke liberty (Carter, Glaser & Wilkens, 1984: 105). Then after the offender has been released into the community with conditions set by the Parole Board, it means that it is not the means to an end, but supervision process will take place to ensure that he/she is not going to commit crime any time soon. Some offenders that are on parole, continue to violate parole conditions and thus be rearrested which amounts to recidivism.

Smykla (1984:5) indicates that when the individual has served the prescribed amount of time, he or she is typically released to the community under the auspices of the parole board or commission. Parole is conceptually different from probation in that it entails the release of an individual after having served a portion of the time, whereas, probation refers to non-institutional supervision, usually under the direction of the court and/or probation department.

Parole usually does have two types; namely, court parole or Department of Correctional Services parole. In the first example, the court is the paroling authority, and the decision to grant parole is usually contingent upon prison officials and their recommendations (Smykla, 1984:6). According to Carney (1977: 204) any attempt to evaluate the success of parole must involve analysis of the following interrelated factors:

- The indeterminate sentence by determining whether this has an impact on recidivism.
- The parole board and its political philosophy should be scrutinized for the purpose of ensuring that the parole board members are apolitical to avoiding special treatment.
- Decision-making by the several professional levels should be in a way that an effective decision making is done to ensure that the offender does not return to his unlawful behaviour.
- The quality of parole supervision should be such that it focuses on ensuring that parolees are under supervision in order to monitor their conduct in the community.
- The nature and definition of recidivism should be such that it should be understood how recidivism occurs and it should be defined accordingly.

Fox and Stinchcomb (1997:424) state the following as objectives of parole:

- Providing the inmates with an incentive for learning new skills, seeking treatment and behaving properly in prison, while at the same time;
- Protecting the public by keeping offenders incarcerated until they are no longer perceived as a danger to society. Beyond these conflicting objectives, parole has included the need:
- Assure fairness and equity overall, in ensuring that programmes are used effective to benefit the parolee which ensures the effectiveness of the programmes in the correctional service; and also
- Address the merits of each case individually by ensuring that the needs of each individual differ and therefore, one size fits all kind of approach cannot make any impact in reducing recidivism.

The major distinguishing feature between probation and parole is that parolees have served some time in prisons, while probationers have avoided incarceration with limited exceptions. Some common characteristics shared by both parolees and probationers are that (1) they have committed crimes, (2) they have been convicted of crimes, (3) they are under the supervision or control of probation or parole officers, and (4) they are subject to one or more similar conditions accompanying their probation or parole programs (Champion, 1999:193). However, there are some general differences; parolees have been incarcerated for a portion of their sentences while probationers are not generally incarcerated following their convictions for crimes. Furthermore, parolees may have more stringent conditions (such as curfew, accompanying their role programmes with probationers).

According to Carney (1977:204) the success or failure of parole is usually measured in terms of recidivism. He further indicates that recidivism means the act of relapsing into a former mode of behaviour, which is a criminal behaviour. When a parolee resumes criminal behaviour after release

from prison, he or she is said to have recidivated (Carney, 1977:204). When a parolee is rearrested for a serious felony, tried in the courts and sentenced to state prison, there is no question about recidivism, and this would appear to be a clear-cut indicator of success or failure (Carney, 1977:205).

According to Callison (1983:254) only those violations known to parole officers and serious enough to result in revocation are included in the concept of recidivism. Champion (2001:37) indicates that recidivism is the reversion of an individual to criminal behaviour after he or she has been convicted of a prior offence, sentenced and corrected.

2.2.2 PROBATION

Probation is a programme to ensure that inmates are provided with the necessary services in order to ensure that they do not revert to their criminality and thus contributes to recidivism. According to Callison (1983:125) probation may be the most commonly recognized form of community-based corrections. Reid (1981:99) argues that the goal of probation is achieved through the counselling, guidance, assistance, surveillance and restraint of offenders to enable their reintegration into society as law-abiding and productive members. Clear and Cole (1990: 106) define probation as designed to maintain control and to assist offenders while permitting them to live in the community under supervision.

According to Carney (1977:83) probation's destiny is to be the right hand in the administration of justice, refinement of its operation and greater sophistication in its implementation will have to occur, however, probation as a criminal justice concept is wholly consistent with the modern community-based trend in corrections. According to Callison (1983: 101), the advantages of probation are as follows:

- Offenders are spared the experience of imprisonment and isolation from normal community contacts. Consequently, they are not labeled convicts in the minds of family, friends and potential employers.
- Offenders benefit from professional supervision, counseling and guidance, which is available in the community. The needed resources such as schools, mental health clinics and vocational training courses are readily available. An offender who fails to adjust to supervised freedom can always be placed in a correctional institution with a greater degree of control.
- Probation is more economical than imprisonment, as offenders continue to support themselves and their dependents. Moreover, the cost of administering probation is 13 times less expensive

per offender than the cost of incarceration. Offenders also continue to pay taxes and their families do not need public assistance.

- Offenders who remain in the community maintain employment, live with their families and do not associate with the anti-community culture that exists in prison. There is no disruption of their lives. They can pay court costs, fines and restitution.
- Offenders are in a position to make financial reparations for their offences.
- Minor offences are supervised rather than merely being dismissed.

Probation means that a convicted offender, whether juvenile or adult, is sentenced by a judge or referee to either a prescribed or indeterminate period of conditional freedom in the community under the direction of the probation department and its officers (Smykla, 1984: 15). Reid (1981: 99) states that the success of probationers is usually measured by the degree of recidivism of those persons compared to the rate of recidivism of persons who had been incarcerated. Champion (1999:65) indicates that the majority of those who are sentenced to probation share similar characteristics:

Probationers tend to be first offender or low risk offenders.

- More property offenders than violent offenders are considered for probation.
- More convicted females are considered for probation than convicted males.
- Not having a history of drugs or alcohol use or abuse is considered as a positive factor in granting probation.
- If there are no physical injuries resulting from the convicted offender's actions and/or if no weapons were used to commit the crime, the chances for probation are greater.

Carney (1977:84) contends that it is clear that probation is more than a purely legal concept. It confers a status and it invokes social network services, four essential items must therefore be contained in any comprehensive definition of probation:

- Suspension of sentence
- Creation of a status
- Imposition of conditions
- Supervision

2.2.3 RE-ENTRY

Re-entry programmes are typically divided into three phases: programmes that prepare offenders to re-enter society while they are in prison, programmes that connect ex-offenders with services immediately after they are released from prison and programmes that provide long-term support and supervision for ex-offenders as they settle into communities permanently (James, 2014:4). Miller and Drake (2006:26) although they indicate that there is no answer, a growing body of evidence shows that providing offenders with education and training increases their employment opportunities, addressing their cognitive deficits and helps to reduce their likelihood of recidivating and therefore, in order for education service to be effective, a strong programme infrastructure is needed.

The release of individuals from prison to communities is a practice that has long been fraught with systemic challenges and one which evokes considerable public concern (Centre for Sex Offender Management, 2007:5). However, an effective re-entry strategy cannot rely solely upon the use of risk management strategies, such as surveillance and intensive supervision as the sole means of reducing recidivism (Travis, 2005:31).

According to Petersilia (2003:12) beyond the use of community meetings as a means of public education, multidisciplinary re-entry initiatives can dedicate resources towards developing educational materials that can be accessed through a variety of venues, such as sites, public service announcements, newspapers and television. Prisoner re-entry services are designed to assist convicted offender's transition back to the community following a period of incarceration and these services generally include educational and treatment services, housing assistance, job readiness preparation and assistance in gaining access to available community services (Bauer & Charmichael, 2006:21).

2.3 HISTORICAL OVERVIEW OF RECIDIVISM

Early penitentiaries did not offer leisure activities since it was believed that prisoners could only be reformed through constant labour and religious reflection (Maltz, 1984:7). According to Sykes (1958:67), in the mid-19th century inmates in many institutions were allowed to assemble after chapel service or to be released into the yard free time for about hour of fresh air exercise. However, he further indicated that in 1876, New York became the first institution to offer a variety of recreational and leisure programmes which include sports, social clubs, drama and arts and many others.

It was also established that many inmates in other countries were limited in using the yard, library and auditorium. Maltz (1984:45) also indicates that it was not until 1960s that leisure activities became part of mainstream prison life.

It was discovered that within 3 years in 1994 of the prisoners sentenced for violence, were arrested for a new crime though not necessarily another violent crimes (Southey, Braybrook & Spier, 1994:56). In their study Barnett and Hagel (1977:34) reported that “a view of FBI data indicated that between 64 and 81 percent of criminals that were released in 1972 were rearrested in 1972. This is an indication that it is indeed revelation that prisoners that got arrested have more chance of being rearrested. The above statement is supported by Klein and Caggiano (1986:iv) when they indicated that in 1978 there were investigation orders to determine the degree to which the California, Michigan and Texas prisoners who were arrested, convicted and incarcerated for crimes they committed after their release.

While in New Jersey, of about 336 criminals who were released between 1990 and 2000 were followed in a minimum period of five years in order to determine criminals who had no criminal records prior their convictions were recidivated less (Lievore, 2004:87).

Broadhurst and Maller (1992:12) investigated the question of whether sex criminals are specialist since they followed of about 502 sex criminals released from Western Australian prisons between 1975 and 1987 for up to 12 years where the majority of criminals were imprisoned for serious sex crimes such as rape and carnal knowledge of girls under the age of 13 years with further 113 incarcerated for indecent dealings, 63 for carnal knowledge and 31 for incest.

According to Robert, Zgoba & Shadullah (2007:494) in the United States of about 826 sex criminals who were released from Ohio prison in 1989 were followed for about five years where 15 percent of them had been previously incarcerated with slightly fewer than two percent having served sentence prior sex crimes. Their study also revealed that almost half of the victims of the most recent sex crimes were aged less than 13 years with further 23 percent were aged between 13 and 17 years.

In New Zealand, Burgones (1979:123) has examined recidivism among 115 men who were incarcerated for rape and attempted rape in Victorian prisons where most of them were convicted of other crimes at the same time as the rape conviction or other sexual crimes which were the most second crimes. Burgones also indicated that during the four to nine years of follow up over half of the criminals were convicted of at least one of the crime most often in the two years following their release.

In the same vein, Southey, Braybrook and Spier (1994:76) established that rapists in the New Zealand were followed for a period of 5 to 10 years from prison release and found that most of the criminals commit crimes in their first years of release and that most of them recidivated.

In England and Wales, sex criminals convicted in 1973 were examined for a period over 32 years from 1963 to 1994 and were reconvicted within their first ten years of release (Ackerley, Soothil & Francis, 1998:67). While this provides some evidence that most sex criminals are unlikely to be reconvicted after this period, some have been reconvicted over 20 years after serving their last prison term (Loucks, 2002:10).

According to Langan and Levin (2002:21) the predictors of re-arrest for new sex crimes including previous arrest and imprisonment history are the following:

- Prisoners with more than 15 prior arrests were twice as likely to be re-arrested within their three years compared with prisoners with one prior arrest.
- Prior arrest predicts how quickly an offender will resume criminal activity following release.
- Just under two thirds of the first timers were rearrested following their release.

In terms of Lievore (2004:60) predictors of criminal recidivism includes socio-demographic characteristics and criminal history variables such as:

- Gender, age, race and marital status;
- Socioeconomic, educational and occupational marginalization;
- Criminal lifestyle, extensive criminal history and more serious crimes; and
- Prior conviction and prison sentences.

Crime is an uncontrollable problem in that is a nightmare for most societies in the world. Recidivism is defined in terms of the four concepts, *re-arrest*, *re-conviction*, *re-sentence to prison and return to prison with or without a new sentence* irrespective of the type of crime, race, gender, age and the nature of crime committed (Maltz, 1984:15).

Prisoners that were released in 1983 and in 1994 for three years were rearrested, reconvicted or imprisoned for new crimes within three years of follow up period (Freeman, 2003:8). However, Freeman also discovered that the rate of rearrests declines slowly by age until prisoners reach their forties when it drops noticeably.

According to Broadhurst (2000:54) there are varieties of statistical methods that are used to calculate recidivism rate which includes:

- Frozen time method which reports the cumulative percentages of criminals who have recidivated after a designated follow up period.
- Survival or failure rate analysis which takes into considerations the bias produced by censored follow up period and varying follow-ups for individual offenders. This method estimates the ultimate probability and rate or speed of recidivism.
- Life table methods which estimates the probability of recidivism in specified time intervals by comparing the numbers who fail with the numbers at risk in each interval. Not all criminals are at equal risk of reoffending sexually during the follow-up period as some may be hospitalized or incarcerated for varying periods (Broadhurst, 2000:55).

Urahn (2011:7) indicated that offenders are returned to prison for one of the two reasons:

- For committing a new crime that results in a new conviction; and
- For a technical violation of supervision, such as not reporting to their parole or probation officers or failing a drug tests.

2.4 CONCEPTUAL FACTORS IN DEFINING RECIDIVISM

According to Grunwald, Lockwood, Harries and Mennis (2010:1068) there is no consistent definition of recidivism as it is a very new field of criminology. However, Weisberg (2007:4) view the concept of recidivism as the provocation debates about the social and cultural conditions that are associated with crime. Recidivism encompasses sexual reoffending, violent sexual reoffending and any general reoffending (Lievore, 2004:25). Within the context of criminal justice, recidivism is defined as the reversion of an individual to criminal behaviour after he or she has been convicted of a prior crime, sentenced and corrected (Maltz, 1984:1).

According to Beck (2001:1), in order to understand the development of recidivism three concepts should be examined, first what is counted as recidivism, second, what is the time frame of recidivism and third, what is the basis for making sense of the information on recidivism. Beck (2001:1) defines the concept of recidivism differently when he compares the concept of recidivism as a salad concept stating that recidivism can be used within various contents where “apples, oranges and grapes are compared with each other. Recidivism and re-offending are in most cases synonymous (Blumstein & Larson,

1971). Maltz (1984:46) stipulates that recidivism is generally defined as “a falling back or relapse into prior criminal habits, especially after punishment” (Blumstein & Larson, 1971). In other words, recidivism means the commission of an offence by an individual already known to have committed at least one other offence.

Recidivism, a term meaning commission of a new offence by an individual known to be an offender, and particularly after having been sanctioned by the justice system, is typically measured in terms of an action taken by the police, a prosecutor, or a juvenile or criminal court judge (Blumstein & Larson, 1971). Recidivism is most commonly the concept that is measured in terms of rearrests, referrals to court, reconvictions or re-confinement (Snyder and Sickmund, 2006:234). While on the other, Evans (2010:7) indicated that recidivism rate is calculated using the number of offender reoffending within three years of their release divided by the total number of offenders released.

Kohl, Hoover, McDonald & Solomon (2008:7) recidivist is defined as any inmates released in a given year who is incarcerated within three years of his/her release to the community for either new sentence or a technical violation. Maltz (1984:66) emphasized the definition of recidivism further as including the concepts such as arrest, reconviction, incarceration, parole violation, parole suspension, parole revocation, a new offence, absconding and probation.

Typically, recidivism refers to a period of time that begins with release to the community or the beginning of a community based commitment. In support of the definition of recidivism, Prinsloo (1996:15) indicates the following:

- Unconditional further commitment of crime;
- Unconditional incarceration due to the committing of a further crime/or administrative procedures based on previous sentences or parole conditions
- The further crime must be legally proven, and;
- Habitual or occupational criminal behaviour (Prinsloo, 1996:15)

2.5 PATTERNS IN RECIDIVISM

Lievore (2004:36) indicated that despite various methodologies the international literature occurs on several points:

- Rates of sexual recidivism are low relative to other offence types. Most sex criminals are not reconvicted or reimprisoned for sex crimes, although a sizable group continues a general criminal career.
- There is considerable continuity between sexual and violent crimes, particularly among rapists where many of whom have extensive general criminal background.
- Subgroups of sexual criminals recidivate at different rates. Incest offenders are most likely to be reconvicted.
- Sexual recidivists often specialize in their choice of victims or behaviours and the likelihood of reoffending is contingent to some extent upon the offender's particular sexual criminal career.
- While most sex offenders' recidivate within two to three years of release from prison, then the risk of sexual recidivism remains long after.

2.6 TRENDS OF RECIDIVISM

Andrews, et al., (1990:99) argues that despite the widely divergent recidivism figures that were provided by different studies on recidivism, some trends have almost uniformity been concluded:

- In the majority of cases recidivism occurs within the first years of release and nearly all recidivism occurs within three years of release or completion of their sentence.
- Property crimes are the most common recidivism crimes. More often three quarter of property criminals have previously been convicted of property crimes. Drug crimes, housebreakings and common assault are also frequently recurring.
- Violent crimes are least likely to recidivate. Fewer than half of people convicted of murder, sexual assault and rape are convicted of another crime after their release from prison.
- With regard to age, it becomes an important factor in reoffending rates. The earlier an offender is punished, the more likely he or she is to recidivate. As a result, young offenders are also the most frequent recidivists.
- Gender plays a vital role, male are more likely to reoffend than women in nearly every criminal category of crime even when initial male dominated offending patterns are taken into

considerations.

- While recidivism for the same crime is common for certain types of crimes, recidivism can often occur with a different type of crime or not he/she will be reoffending. Those with only one arrest are less than half as likely to recidivate as those who have been arrested on more than 10 occasions.
- Roughly one third of recidivists have been previously sentenced to a term of imprisonment.
- People who reoffend are more likely to receive stiffer penalties especially on cases where they committed the same crime.
- There is little variation in rates of recidivism among different states or provinces.
- Recidivists are often sentenced to longer terms of probation than first time offenders.
- Due to a number of factors, including educational level and socioeconomic status blacks are more likely to recidivate than white in every category of crime.

2.7 FUNDAMENTAL CAUSES OF RECIDIVISM

Leighton & Roy (2001:34) indicated the following are the causes of recidivism:

2.7.1 Incurability

Proponents of this view suggest that criminals are beyond reform and as such most sanctions, particularly less onerous ones will not deter them from future crimes. In this case it is regarded that an offender makes a rational choice to commit crimes and will reoffend if they are not punished severely.

2.7.2 Failure of the sanction

It is believed that criminals will commit further crimes if their original punishment was inappropriate and not act as deterrent. Sentences may be too lenient and fail to make people recognize their wrongdoing. They may also be too harsh which can cause offender to disassociate from social norms and react criminally. Some sanctions may not be an appropriate match for the type of crime such as long term imprisonment for a first time. In this instance minor offenders need to be provided with alternative sanction measures.

2.7.3 Failure of support in reintegration

Offenders, particularly those who have served lengthy period in prison may have difficulty reacclimatizing themselves upon release. With technological advances, shifts in public policy or ideals, political changes and so on, the outside world may be significantly different from the one they

previously knew., If offenders cannot adjust to the norms of an ever changing society, they may engage in illegal practices in an attempt to satisfy their needs. Recidivism then is provoked not by the offender nor by the sentence imposed but rather by the difficulties an individual reintegrating into society and the ineffectiveness of support mechanism that are available to them.

2.7.4 Failure of programmes

A programme, whether in a prison or as part of parole or probation will only be effective if criminals participate in it fully. Without a commitment to the goals of the programme, people may reoffend. For example, if an individual is convicted of drinking and driving, and is sentenced to a 12 step programme as a condition of parole, this programme can only aid in reducing recidivism if he/she is a willing participant. Similarly, if a programme is not effective in meeting the needs of the offender, then it may not prevent reoffending. Using the same example, if the same 12-step programme is poorly run or is understaffed and underfunded, it may cause recidivism.

2.7.5 Peer pressure and other social provocations

Even if offenders are given appropriate sanctions, their willingness to change their behaviour and eagerness to participate in a sound rehabilitative programme, is a decisive factor in their return to criminal activity, due to outside social influence such as peer pressure. For example, even if a young offender is placed in a drug rehabilitation programme and wants to remain drug free, he or she may still reengage in drug use if pressured to by friends. In this case recidivism is more direct to social stimulus outside the control of the criminal justice system.

2.7.6 Economic stress

Proponents of this perspective would suggest that people will use illegitimate ways of achieving goals when they are denied legitimate ways of achieving them. If offenders are unable to support themselves upon release or if they feel pressured by their low economic status, they may reengage in illegal behaviour. As such, recidivism occurs not as a consequences of a failed programme or because an individual does not recognize his or her wrong doing but because of the offender's failure to meet economic goals within a broader perspective.

2.7.7 Mental health

Some believe that the mental health of an offender can be one of the most important factors of recidivism. The mentally ill may not respond to any punishment, including imprisonment, rehabilitative

programmes or any other measure taken in response to their crimes. As such, their tendency to reoffend may continue until their mental health is addressed.

In response to the above James (2014:16) identified factors that affect how offender re-entry works in a given community, which includes:

- The varying types of sentences handed down;
- The different kinds of release mechanism available to judges,
- The types of programmes provided in prisons by corrections
- The intensity of supervision provided by the parole board
- The family and community support available to the offender
- The kinds of social services available in the offender's community; and
- The status of the local economy and the offender's ability to obtain employment

2.8 CONCLUSION

It is clear that there is no consensus on the concept of recidivism across the world. The comparison of the conceptual factors seems to be confusing as compared from country to country. The high level of crime does require thorough conceptualization of recidivism. Recidivism is synonymously used as reoffending which refers to repetitive offending in the form of re-arrest and reconviction.

Factors such as gender, age, race, level of education and socioeconomic situation of the offender do encourage people to recidivate; until these factors are addressed, recidivism will keep on occurring. However, there is a need for research in order to continue determining the causes of recidivism in order to reduce the high rate of recidivism. South Africa, compared to other countries, does not have a central database to capture the recidivism rate which should play a role in the development of policies on crime prevention and rehabilitation programmes.

South Africa's lack of adequate programmes encourages recidivism and thus results in overcrowding. The challenge remains that those that committed crime should be sentenced for a long time but more importantly while incarcerated be properly managed. The problem is that crime in South African is considered normal and unavoidable; as a result more efforts have to be applied in order to deal with the scourge associated with recidivism.

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CHAPTER THREE

THE INTERNATIONAL STANDARDS AND THEORETICAL CONCEPTS IN THE DEFINITION OF RECIDIVISM

3.1 INTRODUCTION

Recidivism is a serious problem because it is painful and disastrous to victims and most people like to prevent its further occurrence within societies (Ssebuggwawo, 2010:1). Stevens and Nel (2014:115) are of the opinion that recidivism happens amongst all nations in the world with its negative impact on individuals, which includes the social and economic sphere of life. According to Andress, Wildes, Rehtine and Morisugu (2004:74) most of the people who are incarcerated comes from the communities and then they will return to the very same community in which they come from after been released. Prison overcrowding is also a major challenge in many countries in the world (United Nations Office on Drugs & Crime. 2012:7).

Given the increase of crime in the world, recidivism has become a factor of concern to the authorities in general since the prisoners are taken back to prisons after commission of other offences. Therefore, recidivism happens as a result of criminal rehabilitation programme failure. The key question is the effectiveness of the rehabilitation programmes and other interventions. However, it is indicated that there is no evidence that harsher sentence reduces recidivism (Chen & Shapiro, 2007:34).

According to Rakis (2005:7) recidivism is a considerable problem which faces societies and governments institutions throughout the world. Recidivism has not only being on the increase but has become a major social problem affecting the society, governments, multi-nationals, humanitarian organisations in the world (Osayi, 2013:1).

The previous chapter highlighted the historical overview of recidivism from different perspectives. According to Bureau of Justice Statistics (2002) Americans prisons accommodates roughly two million inmates, however, Organisation For Economic Cooperation And Development (2001:iv) indicates that nearly twice as many as in 1990 there are more escalating numbers of reoffending in terms of ratio than any other OECD country. Prison gang membership increases the probability of both re-arrest and

recidivism (Dooley, Seals & Skarbek, 2014:43).

Offenders have a significant lack of emotional intelligence which exposes them to keep on committing crime despite being punished for an earlier offence committed (Aucoin, 2005:78). A person changes his or her status from non-recidivist to recidivist when there are some sorts of contact with the criminal justice system (Matz, 1984:27). The following chapter discusses the international standards of practice from which recidivism is based from different countries. The chapter also discusses the definitions of concepts involved in recidivism.

3.2 THEORETICAL CONCEPTS

The following are the definitions that are used throughout this study:

3.2.1 Recidivist, recidivism or reoffending

In a criminological context, recidivism can be broadly defined as the return of a criminal behaviour after an individual has been convicted of a prior offence, sentenced and corrected (Carvalho & Bierens, 2002:8). Conceptually, recidivism does refer to the commitment of a new offence by an offender who was previously arrested, convicted or incarcerated for an offence (Zgoba & Simon, 2005:157). According to Guedalia (1979:5) recidivist is defined as a juvenile who committed a delinquent offence after being placed on restitutionary probation. Criminal recidivism rates are always very high among certain groups of offenders (United Nations Office on Drugs & Crime, 2012:7).

Recidivist is defined as “a person who is released from prison in a given year who is incarcerated within three years of his release to the community either for a new sentence or a technical violation (Durose, Cooper & Snyder, 2014:7)”. However, the researcher defines recidivist as someone whose habit is that of going to prison few months after the release.

According to James (2011:6) recidivism is often defined as the re-arrest, reconviction, or re-incarceration of an ex-offender within a given time frame. Therefore, as a result of this broad definition of recidivism, most literature includes technical violations of an offender’s parole or probation within their general recidivism statistics.

La Fond (2005:158) argues that recidivism can be consistent with the previous different types of crime. According to Erasmus (2007:89) inappropriate behaviour which may include recidivism is a result of people’s inability to control their emotions. Harries, et al. (2009:30) indicates that recidivism is defined

as commission of an offence that would be a crime for an adult, committed by an individual who has previously been declared delinquent.

It is argued that recidivism is the most important measure of an offender reintegration programme's impact, there is a growing consensus within the offender re-entry field that other outcome measures need to be considered when determining whether a programme has been effective (James, 2011:22). An analysis of the role played by time served on recidivism must take into account other key variables such as the offender's age, criminal history and type of offence (Walker, 1987; in Song & Lieb, 1993:4).

Recidivism is defined as "any unfavourable movement of a parolee out of active parole supervision" this is measured as re-incarceration and absconding (Zhang, Roberts & Callanan, 2006:34). Recidivism and reoffending are mostly used and applied synonymously (Blumstein & Larson, 1971). Harries, Lockwood and Mengers (2009:1) indicated that recidivism is the most commonly measured in terms of rearrests, referral to court, reconvictions or re-confinement.

Recidivism is an inherently negative indicator of a programme or system performance, it is an undesirable outcome if expressed in terms of the absence of an adverse outcome initiatives (Harries, Lockwood & Mengers, 2009:7). According to Fichte, Guerrero & Weatherby (2014:14) the high recidivism rates are problematic when considering techniques to reduce overall inmates' population. Freeman (2003:8) mentioned that since labour market was much stronger in the mid-1990s than in the mid-1980s, recidivism was expected to be lower in 1994 than in 1983, however this was not the same.

Freeman (2003:2) indicated that the 2-3 years that many inmates spend in prison and the additional years that some violent offenders are incarcerated, provides society with a unique opportunity to alter their behaviour and rehabilitate them to re-enter society and the labour market as productive and law abiding citizen. According to Beck (2000:18) the prisons and jails in the United States are overcrowded and therefore, the Bureau of Justice Statistics reported that at mid-year of 1999 there were 1,860,520 persons incarcerated in the nation's prisons. On average, inmates in state prisons who constitute the bulk of the US prison population serve sentence of 3-4 years (Freeman, 2003:5).

Joseph (2001:12) argues that recidivism is defined as a new arrest, new conviction, or technical violation while on probation. Offenders may reoffend after they return to the community and this re-offending behaviour is known as recidivism (Song & Lieb, 1993:1). Recidivism also referred to persons whether or not is the object of a criminal justice intervention who commits a new criminal offence (Chin

& Dandurand, 2012:148). They further indicate that recidivism is therefore an indicator of performance of social integration programmes and initiatives of government in rehabilitating prisoners. Maltz (1984:3) defines criminal recidivism as a time interval between two events, a release event (*usually from incarceration*) and a failure event (*re-arrest or reconviction*).

According to Ssebuggwawo (2010:5) recidivism is also called backsliding or falling back into a previous criminal behaviour. Langan and Levon (2002:15) indicate that most criminal recidivism occurs within the first year after their release. Factors that expose criminals to re-offend include; substance abuse, criminal history, education level, no marriage, nature of re-offence and age of first arrest among others (Florida Department of Corrections, 2014). The majority of recidivists suffer from a short circuit in the social brain which is essential in expressing an aspect of emotional intelligence and for regulating emotional impulses (Goleman, 2006:76).

According to McKean and Randsford (2004:11) “recidivism is generally understood to be a relapse into prior criminal behaviour and is measured by a former prisoner’s return to prison for a new offence”. Although there is agreement on the definition, major differences characterize the details of the definition making the measurement of recidivism remarkable for its inconsistency. Specific definitions of recidivism differ in three major ways:

- ¾ Duration of time monitored.
- ¾ Types of offences included.
- ¾ Inclusion of parole violation.

According to Lievore (2004:25) the definition of recidivism may encompass sexual reoffending, violent non-sexual reoffending and any general reoffending. Furthermore he indicated that recidivism maybe measured at different points of a known offender’s re-entry into the criminal justice system which covers the criteria for recidivism which includes the following:

- warrant, re-arrest or investigation for a subsequent sexual offence of the same type;
- reconviction for a sexual offence, or other;
- return to prison for a sexual offence, or other;
- warrant, re-arrest, reconviction or re-incarceration for violent offences;
- any new arrest resulting in conviction; and

- technical violations of parole or probation conditions that result in a return to prison although no new offences have been committed.

Warren (2007:xv) contends that local and state policy initiatives that judges needs to pursue through local or state criminal justice policy in order to gain policy support for local recidivism-reduction strategies are as follows:

- develop local or state community based corrections programmes that effectively address the criminogenic needs of felony offenders.
- develop community-based, intermediate sanctions appropriate to the nature of committed offences and offender risks.
- ensure judges and advocates have access to accurate and relevant sentencing information.
- incorporate a curriculum on Evidence-Based Practice (EBP) into professional education and training programmes for judges, probation officers, prosecutors and the defence bar.
- obtain the explicit inclusion of risk reduction as a key objective of the state sentencing policy.
- ensure that state sentencing policy allows sufficient flexibility with regard to discretion applied by sentencing judges to permit implementation of risk reduction strategies
- modify state corrections policies to provide for the development of evidence based corrections and intermediate sanctions programmes.
- create offender-based data and sentencing support systems that facilitate data driven sentencing decision.

3.2.2 Incarceration

According to Durose, Cooper and Snyder (2014:15) the concept of incarceration classifies the person as recidivist when an arrest results in imprisonment. Joseph (2001:12) points out that incarceration are defined as the offender serving a sentence in prison. The United States has the highest incarceration rates in the world (Ndrecka, 2014:14).

3.2.3 Imprisonment

Durose, et al. (2014:15) defines the concept of imprisonment as the concept that classifies a person as recidivist when his or her arrest results in prison sentence.

3.2.4 Rehabilitation

Rehabilitation is defined as an extensive variety of interventions, which are aimed at promoting abstinence by offenders from committing crime and the restoration of an offender to the status of a law-abiding citizen (Chin & Dandurand, 2012:149). Rehabilitation is defined as provoking educational services or vocational training to offenders to make them less likely to engage in further criminality (Holtzhausen & Mashabela, 2000:38; in Sebusho, 2009:18).

3.2.5 Re-entry

According to Chin and Dandurand (2012:149) re-entry is referred to as a process through which a prisoner is moved from custody to live in the community. Re-entry does occur at the end of incarceration, sometimes under formal supervision, sometimes without assistance.

Reintegration programmes are typically divided into three phases: programmes that prepare offenders to re-enter society while they are in prison, programmes that connect ex-offenders with services available immediately after they are released from prison and programmes that provide long term support and supervision for ex-offenders as they settle into communities permanently (James, 2011:1). He further indicates that offender re-entry includes all the activities and programming conducted to prepare ex-convicts to return safely to the community and to live as law-abiding citizens.

Probation has been the main alternative used to help relieve overcrowding which began in 1841 with John Augustus who created a service in which he provided bail for men for temporary suspension of their sentence (Joseph, 2001:13). Since 1878 a state-wide probation law came into effect in Massachusetts and as a result cities and towns were authorized to employ probation officers to oversee the whole process of community reintegration (Joseph, 2001:14). According to Joseph (2001:34) in order to understand why some probationers recidivate and others do not, variables such as age, gender, race, employment history, level of education, convicted offence and prior arrests need to be taken into considerations.

3.3 INTERNATIONAL STANDARDS ON RECIDIVISM

Fichte, Querrero and Weatherby (2014:213) indicated that throughout the history of the US prison systems, the means of incarceration have changed dramatically over the past centuries. These changes that have resulted in a movement from punitive measures to incarceration rehabilitation and back to punitive means of incarceration are primarily due to society's shifting perspective on criminal acts.

One of the main concerns in the US's criminal justice system is the exponential growth of the population within the past forty years. The national prison population annual growth rate is 1.9 percent which is double the growth rate of the actual national population (Sedgley, Scott, Williams & Derrick, 2008).

In the 1950's through the 1970's, the prison system embraced a medical model approach to incarceration in which prisoners were viewed as ill but could be treated and rehabilitated to re-enter society as law abiding citizen. However, in the 1970's, the US rehabilitation was deemed ineffective because it was believed that prisoners were not ill but rather been making rational, conscious decisions to commit crimes (Seiter & Kedela, 2003:17).

According to Irish Prison Service Recidivism Study (2013:7) there are no agreed international standards for measuring and reporting recidivism. However, the literature indicates that prior 1906, the laws of Great Britain did not distinguish between juvenile and adults criminals (Bureau of Justice Statistics, 2002: 299). According to UNODC (2012:7) Brazil has 500 000 inmates of recidivism in seven federal states which were commissioned by the National Council of Justice in early 2012. In the beginning of 1946, the United Nations began to develop an international criminal policy that had some slight impact on the criminal policies of certain states. It is therefore, further argued that the current United Nations policy on criminal justice revolved against the backdrop of three main principles: (1) violent crime constitutes one of the most severe problems of the late twentieth century; (2) the penal systems in many states are frequently unavailable to deal with such crime; and (3) criminal justice is not equivalent to social justice in many countries (Bureau of Justice Statistics, 2002:252).

Broadhurst and Maller (1991:26) state the following various statistical methods which are used to calculate recidivism rates and include the following:

- *Frozen time method*, this reports the cumulative percentages of offenders who have recidivated after a designated follow-up period.
- *Survival or failure rate analysis*, this takes into considerations the bias produced by censored follow-up periods and varying follow-up for individual offenders.
- *Life table method*, this estimates the probability of recidivism in specific time intervals by comparing the numbers who fall within the numbers at risk at each interval.

According to Duncan (2014:1), much of the work on the production of recidivism rates within Northern Ireland was completed in the late 1990's, early 2000's. However, difficulties in accessing information, changes to recording systems and technical problems in merging information from relevant legacy systems have resulted in a lack of available information in years.

Freeman (2003:2) stipulated that an enormous number of prisoners that were released annually were higher and the number of other ex-offender on probation implies that a massive number of persons who have been incarcerated or have been under supervision of the criminal justice system live in civil society as potential participants in the job market. The re-arrest rates by characteristics of the released prisoners and the rate of re-arrest in the US is moderately higher amongst blacks (Freeman, 2003:8).

3.4 MEASUREMENTS OF RECIDIVISM

Cusson and Pinsonneault (1986:67) suggest that the increase of punishment, such as arrest and imprisonment, gradually wears down the criminal motivation because punishment produces four types of reactions in the offenders: 1) increased estimate of the probability of punishment for a new crime; 2) increased difficulty in coping with and accepting imprisonment, especially as offenders become older; 3) increased awareness of the weight of previous convictions on the severity of subsequent sentences; and 4) increased fear of punishment. In general, as the experience of punishment increases, career criminals may gradually become dissatisfied with their way of life and decide to give up criminal activity.

Orsagh and Chen (1988:122) indicated that the longer a person is removed from "outside" society, the weaker his or her social bonds will become. These bonds include interpersonal, family, work place, and economic relationships. According to Western (2002), United States is been seen as an extensive growth in jail population, which has made incarceration a very common experience for many

disadvantaged men. Perhaps the most controversial issue related to recidivism is the difficulty of measuring its existence (Maltz, 1984:824). According to Harries, et al. (2009:30) and (Langan & Levon, 2002:67) recidivism is measured in terms of actions taken by justice system officials. Therefore, the following are the actions that can be reasonably applied for measuring recidivism:

- **Arrest:** an arrest for any offence that would be a crime for an adult where sources of information are police department files.
- **Filing charges:** filing of charges with juvenile and/or adult criminal court based on accusations of an offence that would be a crime for an adult where sources of information are juvenile court files.
- **Adjudication or conviction:** adjudication by a juvenile court or conviction by an adult criminal court of guilt based on charges filed by the prosecutor. Source of information is juvenile or criminal court files if tried as adult.
- **Commitment to a juvenile facility:** commitment to a juvenile residential facility by a juvenile court following an adjudication of delinquency where sources of information are juvenile court files.
- **Commitment to an adult facility:** commitment to a juvenile residential facility following a trial in which the defendant was found guilty of crime where the source of information is criminal court files.
- **The follow-up** period for tracking an individual's recidivism should be at least 24 months (Langan & Levon, 2002).

3.5 GENERAL STANDARDS FOR MEASURING RECIDIVISM

Harries, et al. (2009:31) indicates the following as the standards for measuring recidivism:

- When reporting programme or system outcomes, population parameters of the study should be specified; e.g. age boundaries, first time offenders only and secure care programmes. At minimal age and gender boundaries of the population should be illustrated in detail.
- The sources of the data for each data element should be clearly identified as well as who is responsible for collecting the data.
- Adult convictions should be included in order to ensure the offences occurring at some point in the follow-up time period are not excluded.

- More than one measure of recidivism should be used in order to increase opportunities for comparison. Multiple measures of recidivism such as re-arrest for a new offence, adjudication and re-incarceration for a new offence, make comparisons more meaningful and provide options for selecting appropriate comparison data.
- Measurement of recidivism should start with the date of incarceration, however, it should be reported separately for the following categories of cases:
 1. Youths who are adjudicated for new offences while in custody.
 2. Youths released from custody to the community and youth committed directly to probation, including youths receiving community-based services that are under juvenile court jurisdiction.
 3. Youths discharged from juvenile court jurisdiction.

3.6 CHARACTERISTICS THAT LEADS OFFENDER TO RECIDIVISM

Arnold (1965:213) indicated that recidivism rates are based on offender characteristics as follows:

- **Gender**

Generally, women recidivate at a lower rate than men. Both male and female offenders recidivate within two years of their return to the community (Gelb, 2007:13). It is well known that the number of women brought before courts for committing offences is much lower than that of men (Van der Werff, 1978:14).

- **Race and ethnicity**

The race of the offender is associated with recidivism rates. Black offenders are more likely to recidivate and White offenders are the least likely to recidivate.

- **Age at sentence**

Recidivism rates decline relatively as age increases. Generally, the younger the offender, the more likely the offender recidivates.

- **Employment status**

An offender with stable employment in the year prior to their instant offence is less likely to recidivate

than those who are unemployed. The Uggen (2000) study suggested that “employment may be a ‘turning point’ for criminal offenders; however, the tendency to engage in criminal activity increased when transitions to adult roles were made too early in the life-course”.

- **Educational attainment**

Recidivism rates for offenders differ with different educational backgrounds. Overall, offenders with less than a high school education are most likely to recidivate followed by offenders with a high school education and lastly offenders with some college education and offenders with college degrees.

- **Marital status**

Offenders who have never been married are most likely to recidivate. Those who are married are slightly less likely to recidivate than those who are divorced.

- **Illicit Drug Use**

There is a relationship between illicit drug use and recidivism. In general, offenders that are using illicit drugs within one year prior to their instant offence have a higher recidivism rate than those not using illicit drugs.

- **Guideline instant offence level**

There is no apparent relationship between the sentencing guideline for final offence level and recidivism risk. The recidivism rates are essentially the same, regardless of the severity of the offence committed by the offender. This relationship is consistent with the principle that the guideline offence level is not designed to predict recidivism, while the criminal history computation is designed to predict recidivism.

- **Guideline applied for instant offence**

Overall, offenders sentenced under the guidelines for robbery and firearms are most likely to recidivate.

- **Length of sentence imposed for instant offence**

The relationship between the length of the instant offence, prison sentence and recidivism rates are noticeable.

- **Sentence type: probation, alternatives, or prison**

Offenders are most likely to recidivate when their sentence is a straight prison sentence.

- **Departure status**

Overall, offenders receiving a substantial assistance departure have the lowest recidivism rate.

- **Type of Recidivating Event**

Overall, probation revocations account for the highest percentage of recidivating events. Across all recidivating offenders, one in five committed a probation violation.

3.7 CONCLUSION

The concept of recidivism is explored in detail and one may conclude that the definition is about people who have contact with the criminal justice system more often. Therefore, the problem of recidivism is a worldwide problem. The literature concluded that some offenders may reoffend after they have been convicted, treated and punished for a specific crime. It is important for the criminal justice to analyse the measurements of recidivism more often in order to understand which offenders may reoffend. However, the demographic characteristics of offenders play a role in understanding recidivism of specific crimes. Recidivism is a concept that questions the effectiveness and influence of prison programmes.

In order for the criminal justice system to prevent recidivism and also to stop the cycle of failed social integration, they should ensure that they design and deliver effective reintegration programmes (United Nations Office on Drugs and Crime. 2012:8).

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CHAPTER FOUR

RECIDIVISM IN ENGLAND AND WALES

4.1 INTRODUCTION

The United Kingdom (UK) of Great Britain comprises of four constituent countries; namely, England, Scotland, Wales and Northern Ireland. Within United Kingdom, a unitary sovereign state, Northern Ireland, Scotland and Wales have gained a degree of autonomy through the process of devolution. The UK Parliament and British government deal with all reserved matters for Northern Ireland and Scotland and all non-transferred matters for Wales, but not in general matters that have been devolved to the Northern Ireland Assembly, Scottish Parliament and National Assembly for Wales. Additionally, devolution in the Northern Ireland is conditional on co-operation between the Northern Ireland Executive and the Government of Ireland and the British government consults with the Government of Ireland to reach agreement on some non-devolved matters for Northern Ireland. England remains fully the responsibility of the Parliament of the United Kingdom, which is centralized in London (Home Office, 2011: III). There is no agreed international standard for measuring and reporting re-offending (Ministry of Justice, 2014:13).

Historically, from 1801, following the Acts of Union until 1921, the whole island of Ireland was a country within the UK. Ireland was split into two separate jurisdictions in 1921; Southern Ireland and Northern Ireland. Therefore, Southern Ireland left the United Kingdom under the Irish Free State Constitution Act 1922. The Laws in Wales Act 1535-1542 annexed the legal system of Wales to England in order to create the single entity commonly known for centuries simply as England but later officially renamed England and Wales (Home Office, 2011).

The prison population in England and Wales has almost doubled over the last 20 years from about 45, 000 to over 85, 000 (Cardwell, 2012:43). He (Cardwell, 2012) further indicates the following reasons for the increase in imprisonment:

- Courts are much more likely to sentence offenders to prison than in 1992.
- The main change happened between 1992 and 2002 when the custodial sentencing rate increased from 5% to 17 % in magistrates' courts and from 45% to 63% in the crown courts.

This chapter evaluates the prevalence of recidivism in England and Wales prisons. Recidivism is a common phenomenon in prisons in England and Wales, both male and female recidivism from different types of crimes are evaluated taking into considerations the factors that play a role on the increase of recidivism.

The high rate of recidivism has social and economic consequences. In 2007/08 around one-fifth of police recorded serious offences in England and Wales including attempted murder, wounding intending to do grievous bodily harm (GBH) and robbery (Chapter 9: 2009:132). According to Ministry of Justice (2012:13) in England and Wales, there were 4.2 million crimes recorded by the police in 2010/2011, down from 5.6 million in 2005/2006. Elkins (2013:5) contends that there are no agreed international standards for measuring and reporting re-offending.

4.2 LEGISLATIVE FRAMEWORK ON PAROLE IN ENGLAND AND WALES

The Criminal Justice Act, 1991 provided that prisoners serving less than four years should be automatically released at the halfway point of their sentence. With the exception of prisoners sentenced to 15 years or more (where the Parole Board's power is limited to making a recommendation to the secretary of state), those prisoners sentenced to four years or more could be released at the halfway point under powers delegated to the Parole Board by the Secretary of State (Chung O'Leary & Hand, 2006:43).

According to Gelb (2006:44) extended license and extended sentence prisoners (whose custodial term was more than four years) were eligible for release at the halfway point in line with the procedures of DCR (Discretionary Conditional Release) annually, until the expiry of their custodial term. In 2005, prior to implementation of the relevant provisions of the Criminal Justice Act, 2003, the Parole Board considered 7,528 such applications. Parole was granted in 49.4 percent of cases that were applied for.

The Criminal Justice Act, 2003 removed the distinction between long term and short term prisoners, so that where offences were committed after the Act came into force, long term prisoners could also be released at the halfway point. However, those prisoners who had been sentenced to four years or more for sexual or violent offences committed before April 2005 were separated out and the involvement of the Parole Board in their release retained (Hanson & Morton-Bourgon, 2005:89). Under the parole system implemented in England and Wales in 1968, prisoners serving sentences of at least 12 months

became eligible for parole after serving one third of their sentence, or 12 months, whichever was longer (Murphie & Wilkins, 2006:102).

4.3 BACKGROUND: KEY FACTS ABOUT CRIME AND PUNISHMENT IN ENGLAND AND WALES IN 2008

Murphie and Wilkins (2006:11) indicate the following as the key facts about crime and punishment in England and Wales:

- **Administration**

In England and Wales, law and order is managed by the Home Office which is the lead central government department for the police and the Ministry of Justice, which oversees prisons and the legal system. Sitting beneath the Ministry of Justice is the National Offender Management Service which unites the Probation and Prison Services to provide more effective end to end management of offenders both in prison and in the community following release.

- **Crime trends, policies and perceptions**

Since peaking in the mid-1900s, overall crime in England and Wales has fallen significantly. Between 1995 and 2007/08, for example, there was a 48% decline in all crimes as recorded in the British Survey. Over the same period, violent crime fell by 48% and burglary by 59%.

- **Criminality of the population**

A larger number of recorded crimes are not automatically reflective of significantly higher criminality among the population of England and Wales than in comparable Western European societies. International comparisons between crime rates are notoriously problematic but nevertheless, one area where comparison is possible is homicide for which data from 1999-2001 found that England and Wales had a relatively low homicide rate compared to other developed nations.

- **Prison population**

England and Wales have one of the highest incarceration rates in Western Europe. In December 2007, the prison population was 153 per 100,000 members of population greater than those of France and

Germany and only a fraction of that in the United States, which in 2007 had a population of 762 per 10,000. As at 27 June 2008, the total prison population of England and Wales was 83,000 of whom 73,000 were in public sector prisons and the remainder in private facilities where the majority was adult males above the age of 20.

- **Demographic breakdown of prison population**

Marginalized groups in society are disproportionately represented in the prison population as follows:

- More than two-thirds of prisoners were unemployed upon going to prison
- 52% males and 71% of female prisoners have no educational qualifications
- 48% of prisoners have literacy levels below that of the average of a 11-year-old
- More than 70% of all prisoners suffer from two or more mental health disorders

- **The maintenance of the prison estate**

The average annual cost per place in custody in England and Wales is approximately 30, 000. The prison estate consists of Victorian prisons, former stately homes and former air bases to 1960s and 1970s buildings which are considered to be of particularly poor quality. All require regular maintenance to ensure they remain operational, especially as the prison estate depreciates at a high rate due to vandalism, disturbances and high rates of occupation.

- **Overcrowding**

The increase in the prison population and the aging of the prison estate has led to fears about prison overcrowding. Current projections suggest that by June 2014 there could be a shortfall of 13,000 places. The government has committed to build another 10,500 prison places. Many of these will be in “Titan” prisons which are intended to house up to 2,500 inmates each.

- **Barriers to the effectiveness of the criminal justice system**

Policy makers seeking greater efficiency in the criminal justice system have long been concerned that the system’s different parts such as police, prisons, courts and private companies do not collaborate effectively and cause wastage. The National Audit Office found that 62 percent of planned trials in magistrate’s court did not go ahead. Around 38 percent failed either because the prosecution was unprepared or dropped charges on the day of the trial.

- **Potential future direction of criminal justice**

Around 200,000 community sentence are given in England and Wales annually, with conditions such as performing unpaid work. The use of electronic monitoring devices increased from 9,000 in 1999/2000 to 53,000 in 2004/2005. Given the population pressures and the cost of prison, policy focused on ensuring community orders are as cost effective as possible.

4.4 SEX OFFENDER RECIDIVISM RATE IN ENGLAND AND WALES

Most of the laws that are directed at sex offenders are premised on the idea that sex offenders lack capacity to control their behaviour without continuing supervision (Freeman-Longo, 2000). Recidivism rates vary based on operational definitions and over the length of time that the offenders are followed (Weinrott & Saylor, 1991:286). According to Langan, Schmitt and Durose (2003:87) sex offenders had a lower overall re-arrests rate within three years from prison than released non-sex offenders, which is 43% compared to 68%, respectively. In a recent study that aggregated ten individual samples from across the United States, Canada, and England and Wales for a total of 4,724 sex offenders, the five-year recidivism rate was 14% (Hanson, Morton & Harries, 2003:47). On the other hand, studies utilizing victim rather than police reports have indicated that sex crimes are vastly under-reported (Kilpatrick, 2004:65). The national study estimated that only 16% of rapes were reported to the police (Seymour, 1992:54).

National Crime Victimization Survey reported a higher but still alarming figure in the estimation only, about one-third of rapes and sexual assaults were reported to the police (BJS, 2000). Furthermore, studies of self-reported crimes of sex offenders have shown a higher frequency of sex offending than that reported in official records (Weinrott & Saylor, 1991:297). Rapists have higher rates of recidivism than child molesters and incest offenders (Alexander, 1999:21). Hanson and Bussiere (1998:32) indicates that 61% of sex offender recidivism studies reported the less sex re-offence rate over an average period of 4 to 5 years as was approximately 13% before; however, nearly 19% of rapists compared to 13% of child molesters committed sexual recidivism.

4.5 MEASURING PRISON PERFORMANCE: REDUCING RE-OFFENDING IN ENGLAND AND WALES

The key metric by which the government measures the effectiveness of expenditure on prisons and alternatives to prison is by the re-offending rate. The government sets targets for departmental performance called Public Sector Agreements (PSAs). PSA Delivery Agreement 23: Making Community Safer commits the Ministry of Justice to reducing reoffending by:

- The adult re-offending rate must fall nationally.
- The youth re-offending rate must fall nationally.
- The level of serious re-offences (violent, drug and alcohol related crimes) must be reduced.

In 2005, 41.6% of adult ex-offender in England and Wales re-offended within a year of being released from custody, a fall in the re-offending rate of 4.9% from 2000. Changes to the measurement of re-offending mean that it can judge the frequency and severity of re-offending. Between 2000 and 2005, the frequency rate at which ex-offenders re-offended declined by 11.4% from 189.4 to 167.9 re-offences per 100 offenders. However, offences classified as severe increased by 12.5% from 0.78 to 0.88 re-offences per 100 offenders. Younger offenders are more likely to re-offend.

There is a strong pragmatic case for reducing re-offending as a small proportion of offenders are responsible for a large proportion of crime. The Home Office estimates around 10% of offenders are responsible for half of all crime and that 0.5% of offenders. Re-offending costs 15 billion euros annually. The unemployed and educationally unqualified are disproportionately represented in the prison population. To remedy this, prisons provide prisoners with opportunities to gain qualifications or skills and in 2006/07 public prisons offered their inmates 25 hours per week on “purposeful activity”. This included educational and vocational training as well as offender behaviour programme. Just under a third of the prison population is attending education classes and in 2005/06 achieved 150,000 vocational awards and 40,000 basic skills qualifications.

4.6 CHARACTERISTICS OF THE PROBATION SERVICES

The National Probation Service for England and Wales (established in 2000) is a governmental Service, which falls under the authority of the Ministry of Justice (Ministry of Justice, 2007). The Welsh Assembly Government (the devolved Government for Wales) does not have direct authority over the provision of Probation Services in Wales. This means that the Probation Service in Wales has to have close working relationships with the Welsh Assembly and its ministers (Friendship, Street, Cann & Harper, 2004). The National Probation Service is organized into Probation Trusts. Each Probation Trust has a Chief Officer and the Board that employs the staff. The Chief Officer is accountable for the expenditure within the area and is responsible for all operational performance issues and the advice provided to the Board on strategy and policy.

In 2004, The National Offender Management Service (the NOMS) was created to enhance cooperation between the Prison Service and the Probation Service because the Government wanted to encourage the private sector to be a major provider of probation work in the future. Through the use of commissioning and competition the Government believes that the Probation Service will deliver better value for money and will become more effective.

Since the creation of the Youth Justice Board (YJB) and the Youth Offending Teams (YOTs) in 1998, the Probation Service deals mainly with adults. Most YOTs, however, include members of staff from the Probation Service. Volunteers support probation staff, although in recent years their use has become more specialized and incorporated into specific programmes providing mentoring and advice. The Society of Voluntary Associates (SOVAs) was established in 1975 and this provides support for the use of volunteers with offenders through training, partnership projects and the promotion of best practices.

A wide range of national and local organizations are involved in probation work. NOMS is anticipating that these organizations will play a greater role in the delivery of services to offenders. Offender Management remains the responsibility of probation staff although it is likely that the supervision of Unpaid Work will be done by a mixture of public, private and voluntary sector providers. The organizations assist mainly in the provision of interventions such as accommodation, training, employment, education, substance misuse and welfare issues. Some specialist agencies work directly with offenders, such as the Lucy Faithful Foundation (sex offenders), the Langley House Trust (hostel accommodation), the National Association for the Care and Resettlement of Offenders (employment, accommodation) and Turning Point (substance misuse).

4.7 SOURCES OF CRIME INFORMATION IN ENGLAND AND WALES

According to Home Office (2011) there are two main sources of information about crime in England and Wales.

- The Home Office collates information from police forces in England and Wales covering all notifiable offences. Notifiable offences include all offences that could possibly be tried by jury and some additional offences such as assault without injury. These recorded crime data are an indicator of police workload and local crime patterns and have been collected since 1898. Police recording practices is governed by Home Office Counting Rule and the National Crime Recording Standards (NCRS). The data exclude crimes that have not been reported to the police or incidents that the police decide not to record. Trends in recorded crime data can be affected by changes to police reporting and recording practices and police activities and priorities. Police forces supply the data monthly to the Home Office.
- The British Crime Survey (BCS) is a survey of households in England and Wales. It measures the amount of crime by collecting information about respondents' experiences of a range of crimes in the 12 months before the survey interview. It also asks about attitudes to other crime related issues such as the police and perceptions of crime and antisocial behaviour. The first survey in 1982 collected information about crime in 1981. The survey was repeated periodically until 2001 and it has run continuously since then. Questions about people's experiences of crime have remained largely unchanged, so the survey provides consistent long term trend data. Since its inception, the BCS has maintained a relatively high response rate (76 percent in 2009/10). As it is a household survey, the BCS does not cover murder or victimless crimes, for example, possession of drugs and it does not cover crimes against businesses. The Home Office contracts out the survey fieldwork and data preparation.

4.8 MEASURING RE-OFFENDING IN ENGLAND AND WALES

In England and Wales, the concept of re-offending is defined by the Ministry of Justice as “any offence committed in a one year follow-up period and receiving a court conviction, caution, reprimand or warning in the one year follow-up or a further six months waiting period (Ministry of Justice, 2012:32). The Ministry of Justice had an admirable record of producing high quality and timely statistics about the criminal justice system in England and Wales (Alvazzi del Frate, 2010:56).

According to Elkins (2013:4) methods of measuring re-offending such as self-report studies which do not identify the offender are thus likely to be unreliable. Re-offending is seen as the key measure of the criminal justice system’s success in England and Wales (Ministry of Justice, 2012:32). Ministry of Justice (2012:28) indicated that in England and Wales, for any crime to be counted as “detected” sufficient evidence must be available, therefore several methods to count crimes as detected can be divide into two categories, namely:

- Sanction detections, which occur when an offender receives some formal sanction such as being charged or summonsed or when they have an offence taken into consideration in the courts.
- Non-sanction detection, which occurs when an offence is ‘cleared up’ but no further action is taken against the offender.

England and Wales have a high crime rate compared to other parts of the United Kingdom (Ministry of Justice, 2012:14). The reasons why England and Wales have a high rate of crime is that the incident of crime is genuinely greater than many countries or maybe because of some measurement and categorization differences (Ministry of Justice, 2012:16). In between 2005 and 2009 crime in England and Wales decreased by 22 percent (Ministry of Justice, 2012:14). Thus England and Wales remains a jurisdiction with a high crime rate as compared to the other parts of the United Kingdom. Since 2007, the Ministry of Justice in England and Wales has measured the level of re-offending in only the first year following an individual’s release from prison or their commencement of a community sentence. Previously it measured the first two years (Ministry of Justice, 2012:32).

Despite recent development in law and policy in both England and Wales, and Canada, which have aimed to decrease the number of offenders being sent to prison, prison population continues to

increase (Berinbaum, 2009:43), despite the fact that the Criminal Justice Act, 1991 indicated that custody was meant to be a last resort for crimes of such serious nature and prison was the only appropriate punishment (Berinbaum, 2009:29). In most serious offences, prison is the only relevant punishment; the female prison population has more than doubled in the last decade (Prison Reform Trust, 2007). According to Berinbaum (2009:45), England and Wales have automatic release dates from prison for the majority of offences, which states that even if an offender is not granted an early release from a prison review board, they are automatically released at some point.

In England and Wales re-offending by young people who have been in custody is alarmingly high; however it is difficult to ascertain a reason for this. Young people in custody in England and Wales often come from complex and challenging backgrounds, however it does not end when they come into custody, as custody itself can be a terrifying experience that can cause damage to young people. Motiuk (2001b:20) stipulates that deciding on how to determine the number of released offenders raises several options and necessarily affects the denominator, for example, calculations may be used for the following; (1) any release, (2) release under supervision, and (3) the aforementioned combined with those already under community supervision to complete the full picture of community supervision caseloads. Furthermore, Motiuk indicated that deciding on how to determine the number of re-admitted offenders also poses some choices and necessarily affects the numerator. For example, calculations may be used for the following: (1) any return; (2) return for technical violations of conditions; and (3) return for a new offence.

It is indicated that on 23 May 2014, the prison population in England and Wales was 84,305 (Ministry of Justice, 2014:2). Therefore, England and Wales had an imprisonment rate of 149 per 100, 000 of the population (Ministry of Justice, 2014:2).

The term re-entry refers to, firstly to those people who are leaving prison conditionally and unconditionally, secondly, it is a technical term that describes the process of re-entering society without any connotations of doing it successfully or not, in other words of being rehabilitated and reintegrated and thirdly, it enables monitoring of profile of people released from prison and re-entering society, thus facilitating more appropriate support services (Muntingh, 2005:8). According to Maltz (2001:54) conceptual definition of recidivism may seem quite straightforward; however an operational definition, one that permits measurements is not so simple. Makai, Ratcliffe, Veraar & Collins (2004:38) define recidivism as commonly measured by using the following, or a combination of the following, data

sources, however, the main disadvantage to this approach is that the following data are more difficult to obtain:

- Arrest data
- Conviction data
- Imprisonment data
- Self-report data

The literature indicates that all societies must respond to individuals who commit serious offence and therefore, one important determinant of these responses such as punishment, detention, supervision are the perceived risk of recidivism (Hanson, 2007:1). According to Kidson (2013:4), the majority of people that are in custody in England and Wales come from poor background, which does not end when they come into custody since custody itself can be a challenging experience that can cause damage to young people. According to Martinson (1972:23), a functional concept of recidivism is defined as an “institutionalization process which interrupts normal occupational and lifestyle processes”. Recidivism rates are the only readily accessible measures of re-offending (Friendship, Street, Cann & Harper, 2004:10).

In England and Wales there is a legal requirement that do prevent offending than just to deal with it afterwards (Kidson, 2013:6). According to Morgan (2002:34) a return of criminal activities following judicial punishment is called ‘recidivism’. England and Wales came from the community that does not have any legislative framework or any other form of support from the government until 1972 when victim-offender mediation programme was introduced, during this year the British Association for the Care and Resettlement of Offenders (BACO) was looking into possibility of making offenders become more of the harm they were doing by introducing them to their victims (Gavrielides, 2007:64).

Pearson (2007:1) indicates that prediction of offender recidivism where subject commit a further offence within a short period of sanctioning for the original offending behaviour, as is at the core of an effective and efficient criminal justice system. Grimwood and Berman (2012:7) identified a number of factors that determines the size of the prison population:

- The number of people committing crimes
- The seriousness of those crimes as viewed by Parliament in framing the relevant laws and sentences within the powers and guidelines available to them
- The proportion of offenders that are caught, prosecuted and convicted

- The frequency within which they are caught and convicted when they persist
- The severity of punishment judged suitable by Parliament and sentences for given levels of seriousness and persistence.

Community justice is defined as the effort to reintegrate the community by forging a partnership between local government entities, the private sector and community which also refers to all variants of crime prevention and justice whilst offering new ways of thinking (National Institute of Justice, 2007).

Recidivism rates for sexual offences were higher for the following groups (Lievore, 2004:37):

- Offenders with stable deviant sexual preferences;
- Offenders with identifiable anti-social personality;
- Offenders who have committed diverse sexual offences;
- Offenders who committed non-contact sexual offences;
- Offenders who have targeted extra-familial child victim;
- Offenders who have targeted male child victims;
- Offenders who have targeted strangers;
- Offenders who began sexual offending at an early age;
- Offender who have never been married; and
- Offenders who have failed to complete a treatment programme.

4.9 NATIONAL RE-OFFENDING TRENDS IN ENGLAND AND WALES

Brown & Ruddy (2008) indicates the following as trends of reoffending:

- The one year reoffending rate for those leaving prison is 47%, this compares to the rate of those on community disposals of 39%.
- Among community based sentence has the lowest rate of reoffending while drug treatment orders have the higher rate.
- The overall reconviction rate for offenders in England and Wales in the first quarter of 2009 was 39% or 49% for offenders leaving prison and 36% for offenders on community sentences.
- Reconviction rates in England and Wales declined from 2002 to 2006 and have leveled off since then.
- A based sentence has the lowest rate of re-offending while drug treatment orders have the highest rate.

4.10 YOUTH CRIME IN CONTEXT IN ENGLAND AND WALES

The minimum age of criminal responsibility is set at 10 years in England and Wales. These countries have particular high rates of youth in custody. After a period of higher levels around the turn of the century, the overall juvenile prison population in 2011 was close to the level of the early 1990s. There had been a shift from detainees on remand to sentenced prisoners (Lebel, et al., 2008:55).

4.10.1 First-Time Offenders

The number of first time juvenile entrants to the criminal justice system has fallen every year since in 2007, where penalty notices for disorder do not count as entry to the system. Since 2000, the proportion of first-time entrants that were female has been consistently between a quarter and a third of those sentenced to custody, the female proportion is far lower: 8 percent in 2009/10 (Ministry of Justice, 2009). Therefore, penalty notices for disorder were served to juveniles in England and Wales on 3,793 occasions in 2004. Therefore, the number is low as compared to the juvenile system as a whole (O'Donnell & Hughes, 2008:41).

4.10.2 Adult offenders in England and Wales

There are approximately 83,000 adults in prison in England and Wales, which is nearly double the number from 1991 to 1992 (Morgan & Liebling, 2007:12). In 2008, the male prisoner population increased by 5 percent to approximately 4,500 female prisoners (Fawcett Society, 2006). In England and Wales in 2002, 67 percent of male prisoners discharged from prison were reconvicted within two years (LeBel, et al., 2008). Similarly, in 2004, about 64 percent of female prisoners released in England and Wales re-offended within two years (Fawcett Society, 2006). Prison populations are out of control for many reasons, not only that more offenders are being sent to prison for less serious offences, more are being sent to prison for breaching their release conditions.

Despite the fact that the Criminal Justice Act of 1991 contents that custody was meant to be a last resort for crimes of such a serious nature and prison was the only appropriate punishment, imprisonment rates continue to increase as sentencers feel this is what the public wants (Burnett & Maruna, 2004). Therefore, the majority of women in custody in England and Wales have been convicted of non-violent offences, drug offences and theft (Prison Reform Trust, 2007). Recidivism is the percentage of released offenders re-admitted to correctional custody (Motiuk, 2001b).

4.11 FIGURE 1: RE-OFFENDING IN ENGLAND

Country	Rate	Notes
Scotland	42%	Two-year reconviction rate of offenders convicted and sentenced to any disposal including fines in 2007/08 (Scottish Government, 2011).
Ireland	40%	Two-year re-imprisonment rate for prisoners released between 2001 and 2004. (O'Donnell et al., 2008) Two year re-imprisonment rate for prisoners released between 2001 and 2004 (O'Donnell et al., 2008).
Northern Ireland	43%	Two-year rate of reconviction for adults leaving prison community disposal in 2005 (Brown & Ruddy, 2008).
England and Wales	53%	Two-year rate of reconviction on any offence by adult offenders to prison or on probation administered disposal in 2008 (Moj, 2011).

Source: Ministry of Justice (2011)

4.12 FIGURE 2: FACTORS WHICH INFLUENCE RE-OFFENDING

Criminogenic need	Link to re-offending
Drug misuse	<p>There are well-established links between drug misuse and re-offending with a particular strong link between the use of opiates and crack and acquisitive offending. Drug misuse is also associated with reoffending; higher reconviction rates have been observed among prisoners who had used drugs in month before custody compared to those who had drugs or used them less recently.</p> <p>The links between drug use and re-offending have been found to be particular pronounced for poly drug use and class A drug use.</p>
Alcohol misuse	<p>Problematic alcohol consumption is associated with crime, particularly heavy drinking and violent crime. However, the link between alcohol, crime and re-offending are complex: other mediating factors, for example, personality disorder, childhood experience of violence and social norms are likely to play a role in the relationship between alcohol misuse and violent crime. There is a link between alcohol misuse and re-offending; for example, prisoners who drink alcohol every day shortly prior to custody were more likely to be reconvicted within a year following releases than those who had not.</p>

Impulsivity or low self-control	A temperament which is highly impulsive and sensation seeking has been identified in a number of theories of anti-social behaviour. High levels of impulsivity have been also identified as a significant factor that predicts general as well as violent re-offending.
Attitudes that support crime	An attitude that supports crime such as anticipating and evaluating crime as worthwhile has been found to be a link to re-offending. Attitudes that support criminal activities can be just as strongly associated with re-offending as factors such as homelessness and employment.
Social networks	Relationships with anti-social peers are regarded as important in supporting or maintaining criminal behaviour among offenders. There are negative peer influences, which are relevant factors in adult re-offending, although the negative influence of peers is understood to reduce with age.
Lack of /poor family and intimate relationship	Strong and supportive family and intimate relationships are widely considered important factors in the desistance from crime. Prisoners receiving family visits have been found to be less likely to re-offend and more likely to have employment or training and accommodation arranged for their release than prisoners who receive no family visits.
Suitable accommodation	Offenders with accommodation problems have been found to be more likely to re-offend. Access to stable accommodation is important in enabling ex-offenders to access employment and training opportunities which may in turn support their rehabilitation. Accommodation needs can also impact on family relationships and the chances of successful reintegration into the community on release from prisons which are important in reducing reoffending. Accommodation problems have been found to be linked to other offender needs.

Source: Ministry of Justice (2013)

4.13 PROBATION SERVICES AND OFFENDER REENTRY PROGRAMME

Probation in England and Wales was formally established under the Probation of Offenders Act, 1907. It was in this Act that the release of offenders into the community under the control of officially appointed probation officers was made a matter of statute (National Probation Service). This Act also clearly defined the duties of these probation officers; primarily to advice, assist and befriend offenders (Prison Reform Trust, 2006). This motto would come to personify what has commonly been referred to

as the treatment phase or era of penal welfarism which existed from 1907 up until the 1970s within the probation service.

In England, the re-offending rate of offender commencing probation supervision in 2007 was seven percentage points lower than those who had served short-term custodial sentences after controlling their individual difference which may be due to the fact that offenders on community sentences have more opportunities to access rehabilitation services as compared to offenders on short term prison sentences that have limited access to rehabilitation programmes in the short period of time if they are in prison (Sampson & Laub, 1993).

The major change in the probation service in recent years has been the increasing priority given to public protection and the management of dangerous offenders (Ministry of Justice, 2013). The fact that there are such high rates of recidivism in Scotland which suggests that there has been no sufficient action to address its causes, therefore, it would be too general to assume that recidivism occurs as a result of factors that influenced any initial crime, or due to a single factor alone, although this may be the case in some instances (Dwyer, 2012).

Between June 1993 and June 2012, the prison population in England and Wales increased by 41, 800 prisoners over 86,000 however, there are two factors that caused the increase in the prison population in these years due to tougher sentencing and enforcement outcomes and more serious mix of offence groups coming before the courts (Ministry of Justice, 2013). Thus, between 2004 and 2007, average sentence lengths decreased which may have been as a result of a switch from longer determinate sentence to Sentences of Imprisonment for Public Protection (IPPs) introduced in 2005 which was abolished in October 2011.

The prison system as a whole has been overcrowded in every year since 1994, at the end of March 2014, 77 of the 119 prisons in England and Wales were overcrowded (Ministry of Justice, 2014). Re-entry or reintegration programmes after any type of release from prison, whether it is through parole services or not can play an important role in helping people effectively integrate back into their communities and stay out of prison (Justice Policy Institute, 2011). Probation refers to a combination of treatment, supervision and intermediate sanctions, and these elements should be recognized as the best intervention (Lowenkamp, 2004).

The effective use of probation is an essential part of the criminal justice system. Probation services are provided by 35 probation trusts across England and Wales. These trusts are responsible for overseeing offenders released from prison on license and those on community sentences. On December 2009, 241, 500 offenders were under supervision (Dwyer, 2012).

A return to criminal activities following judicial punishment is termed recidivism, therefore, recidivism is generally used as an index of the effectiveness of different judicial sanctions where sanction is effective, the recidivism rate should be low or at a least lower than that associated with alternative sanctions. Many people who serve prison sentences re-offend.

Morgan (2002) indicates that three quarters of young offenders and about half of adult offenders commit further offences within two years of release from prison. Reconviction rates seem to be stable over time. Bottomley and Pease (1986) found that the reconviction rate in the UK ran at 60 percent throughout the 1970s and into the 1980s.

In a study conducted by Smith et al. (2002) the length of sentence and the use of prison versus non-custodial sentences, found that the recidivism rate following imprisonment was not lower than for non-custodial sentencing and that longer prison terms did not lower the risk of re-offending. Farrington and Walker (1981), for example, compared the recidivism rates of first offenders given probation or suspended sentences with those fined or imprisoned.

Justice (2011) indicates that complicating factors affecting how offender re-entry works in a given community can include the following:

- The varying types of sentences handed down;
- The different kinds of release mechanisms available to judges;
- The types of programmes provided in prisons by correctional systems;
- The intensity of supervision provided by the parole agency;
- The family and community support available to the offender;
- The kinds of social services available in the offender's community, and
- The status of the local economy and the offender's ability to obtain employment.

According to Hanson and Harries (2001) individuals who are found guilty for committing crime that seems not to be serious enough for imprisonment can be sentenced to serve their sentences under

community supervision (probation). Offenders on probation typically must adhere to certain conditions and check in regularly with their probation officers (Ward, 2000). Violation of these conditions or failure to appear before their probation officers can lead to their further criminal sanctions which include incarceration. Therefore, offenders can be sentenced to a mixed term of prison and probation (Hanson and Thornton, 2000).

4.14 PROFILE OF INMATES IN ENGLAND AND WALES

In England and Wales, a larger percent of black inmates, compared to white inmates was held for drug offences (21% to 6%) and robbery (20% to 13%). White inmates (19%) were more likely than black inmates (6%) to be convicted of or charged with burglary. The England and Wales statistics for black inmates distinguish among origin groups by offence. For example, among black inmates held for drug offenses were 12%, 39% of the Africans and 17% of the other black inmates. For robbery and aggravated burglary, the percentages were 11% of the Africans and 1% of the other blacks, for burglary, 6%, 2% and 14%. Among sentenced prisoners in England and Wales, men were more likely than women to be serving time for a robbery or burglary. By contrast, women (28%) were 3 times as likely as men (9%) to be in prison for drug offence.

4.15 PAROLE SYSTEM IN ENGLAND AND WALES

Since the abolition of the death penalty in the UK a life sentence has been mandatory in the event of a murder conviction, however, a so called “discretionary life sentence” may be imposed for some other serious offences such as rape and manslaughter (Annison, 2013). The concept of minimum term was introduced as a means of tailoring an indeterminate sentence to the seriousness of the offence. The minimum term is imposed by sentencing judge and is a term which must be served before indeterminate prisoners can be considered for parole (Bradford and Cowell, 2012). Only in extreme circumstances can the Secretary of State for Justice, parole a prisoner before expiry of the minimum term which is usually only granted for humanitarian reasons such as prisoner’s terminal illness (McDougall, Cohen, Swaray & Perry, 2003). After expiry of the minimum term all lifers can apply for parole, although it is not automatic (Campbell, 2011). It is the prerogative of the Parole Board to determine a prisoner’s level of risk and it may direct release if it judges the risk to life and linked to be minimal (Parole Board for England, 2012).

Parole applications can be considered on the basis of a consideration of documentary evidence alone or by way of hearing. Each case is considered by a panel of three members of the Parole Board. In lifer cases the panel will normally include a psychologist or psychiatrist and the panel is chaired by a judge or senior lawyer. The documentary evidence before them will include reports from probation officers, prison staff and sometimes psychologists and psychiatrists as well as an account of the offence and the details of the prisoner's previous criminal history, therefore, if the case proceeds to a hearing, the panel will hear submissions from the prisoner in person and oral evidence from those who have presented reports. The prisoner may be legally represented and may call witnesses to support his case including expert witnesses such as psychologists (Parole Board for England, 2012).

The parole panel can direct release in a case which the secretary of the state for justice must comply. Alternatively, if the prisoner is in closed prison the panel can recommend his transfer to an open prison preparatory to release, but this is not binding on the secretary of the state. Minimum terms for life sentences were not introduced immediately after the abolition of the death penalty and some older lifers never received one. Therefore, they were eligible for parole as soon after sentencing as a parole panel could be convened. In practice, this was extraordinarily unlikely. Since 2005 determinate sentence prisoners in the UK have all been conditionally released through their sentence so that the Parole Board no longer considers cases unless their release has been revoked and they are now applying to be released again. Therefore, almost all of the Parole Board's decisions are now in respect of lifers and other indeterminate prisoners (Parole Board for England and Wales, 2012). There is another group of indeterminate sentence imposed for persistently repeated offences, normally sexual or violent offences (Ministry of Justice, 2013b).

Indeterminate sentence prisoners and especially mandatory lifers may end up serving very long terms in prisons (Ministry of Justice, 2013). For prisoners serving indeterminate sentences it is their route out of prison and although the stakes are lower for prisoners serving determinate sentences and parole can still shorten their sentence considerably.

4.16 PRISON AND IMPRISONMENT IN ENGLAND AND WALES

According to Morgan (2002), prisons have three principal functions: custody (containing prisoners on remand awaiting trial), coercion (forcing prisoner to comply with legal judgments, e.g. payment of fines) and punishment. Compared with many other countries England and Wales imprisons a lot of people.

Fairly recent figure indicates that there are about 140 people in prison for every 100,000 population in England and Wales. This rate of imprisonment is about 50% higher than in France, Germany and Italy (Howard League for Penal Reform, 2006). Contrary to media-sponsored perception of judicial system that has gone soft on crime, the prison population has been rising steadily since the mid-1940s as has the proportion of the prison population serving sentences longer than 4 years (Home Office, 2001). Between 1991 and 2008 the prison population in England and Wales nearly doubled from 42,000 to 82,000 (BBC News, 22nd February 2008). Imprisonment is one of the options available to sentencers. The Criminal Justice Act, 2003 lists the purposes of sentencing as follows:

- the punishment of offenders,
- the reduction of crime (including its reduction by deterrence),
- the reform and rehabilitation of offenders,
- the protection of the public, and
- the making of reparation by offenders to persons affected by their offences.

Therefore, the purposes of imprisonment are often given as incapacitation, punishment, retribution, deterrence and rehabilitation. The Northern Ireland Office commissioned an international study of successful interventions which sought to summarize and update the Maryland Report, was published in 2008 and identified sixteen successful interventions which were “worth trying”, based on a review of available research evidence (Grinwood and Berman, 2012:22):

- Infant home visitation with pre-school education;
- Family therapy by clinical staff for families in stress;
- Holistic, multi-faceted offender treatment involving meaningful relationships between client and treatment practitioner;
- Therapeutic communities and other mutual support efforts;
- Aftercare/resettlement social support;
- Drug courts and other addiction treatment interventions;
- Community Restorative Justice;
- Transition to work projects involving training and real opportunities for employment pre- and/or post-release from prison;
- Proactively patrolling high-crime ‘hot spots’;
- Proactive arrests for driving under the influence of drugs and alcohol;
- Problem-Oriented and community policing;

- CCTV in car parks and other contained areas;
- Residential burglary prevention schemes;
- Supporting and empowering schools (including the students themselves) to develop anti- crime strategies;
- Anti-bullying campaigns and rituals in schools; and
- Social competency skills training in schools.

4.17 CONSIDERATIONS IN DEVELOPING SUCCESSFUL REINTEGRATION PROGRAMMES

Interventions designed to address the dynamic risk factors of offenders have a higher chance of success if there is devotion to the 'principles of effective correctional treatment as set out by Andrews and Bonta (1998). They indicate that offender re-entry programmes are becoming clear that successful interventions are those which:

- focus on a specific target group of offenders and their specific challenges;
- rely on sound methods for assessing the needs and risk factors of offenders;
- hold the offenders accountable and responsible for their own choices and their actions;
- begin while the offender is in confinement in the correctional institution and continue throughout the offender's transition to, and stabilization in the community (through care);
- strike a balance between surveillance and control, on the one hand, and support and assistance on the other;
- offer assistance in an integrated and comprehensive manner and address the many inter-related challenges faced by offenders (e.g. wrap-around interventions);
- are offered as a coordinated effort of all the agencies involved and supported by strong agency cooperation (supported by partnerships and interagency cooperation and information protocols, clear definition of respective roles and responsibilities; and a clear articulation of the services to be provided and the relevant time frames);
- are supported by sound case management practices and adequate information management systems;
- reflect the public safety priorities of the community in which they are developed;
- engage the community in both the planning and the delivery of the intervention and fosters strong community ownership; and

- have a robust evaluation component that allows the program to advance self- improve, and remain accountable to the community for crime reduction results.

4.18 CONCLUSION

There is no doubt that the high rate of recidivism jeopardizes both social and economic activities of the societies. There are no agreed international standards on recording and reporting recidivism. Prison overcrowding has a high impact on the increase of recidivism. Rehabilitation programmes needs to be strengthened. Prison treatment has shown to be cost effective to the government. More research is recommended on recidivism in England and Wales. The evaluation of the effectiveness of criminal justice system and penal policy is notoriously problematic, especially when it comes to identifying the cost effectiveness of particular interventions to tackle crime problem.

A review of risk factors and outcomes for persistent young offenders in the UK found limited interagency cooperation and information-sharing, a lack of assessment and planned intervention based on risk and needs; and a failure to record in detail assessments and subsequent interventions (Arnull, *et al.*, 2005).

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CHAPTER FIVE

RECIDIVISM IN THE UNITED STATES OF AMERICA (USA)

5.1 INTRODUCTION

The USA is commonly referred to as the United States (US) or America, is a federal republic consisting of 50 states and a federal district. According to Hudson (2007) the mood and temper of the public with regard to the treatment of crime and criminals is one of the most unfailing tests of the civilization of any country. Of the 2.3 million inmates in the US, just over 2 million are in state and local facilities (Carson and Sabo, 2012). Today, correctional agencies and organizations' are facing several significant challenges such as rising crime rates and greater numbers of criminal prosecutions in establishing new prison and jail records (Champion, 2001:XV). He further indicates that overcrowding is inevitable and it fosters living conditions for inmates that are both intolerable and unconstitutional. The structure of the US criminal justice system is unique and complex, varying from state to state, however, the laws, sentencing and punishments are allowing for some variation, standardized and regulated by the overriding administration of the federal government (O'Connor, 2014:122).

Current state sentencing policies have resulted in historically high rate of racism and the highest incarceration rates in the world (Warren, 2007:1). These sentencing policies originally written in most states 30 years ago at a time when the violent offence rate had tripled in 15 years because people were fed up and convinced that sentences were too lenient and rehabilitation and treatment did not work "*nothing works*" were the watchword of the day. According to Champion (2001:2) corrections in the US are in trouble and haunted by many problems and these problems are getting worse; these problems are surrounding jail and prison overcrowding.

The "first offender" philosophy in sentencing policy generally encourages lower sentences for offenders who have little or no criminal conduct. According to Reno, Marcus, Leary & Gist (2000:1), jail overcrowding may become a community issue as the result of events such as litigation initiated on behalf of jail inmates, a citizen's campaign, which is a state agency citation for violation of capacity standards, or a sheriff's plea for jail expansion due to an increasing inmate population. Maltz (1984:66) revealed that among over 90 recidivism studies, recidivism was defined using nine different decision points such as arrest, reconviction, incarceration, parole violation, parole suspension, parole

revocation, a new offence, absconding, and probation, however, the average percentage of youths found to have recidivated shrinks from 55% when arrest is used as the recidivism measure to 12% if incarceration for a new offence is selected. This shrinkage has to do with desirable and necessary decisions to remove (dismiss or divert) some cases at each decision point and allow others to continue to the next stage of the justice process. Therefore, decision-makers screen out cases for which evidence is insufficient to support the charges or an informal option is seen as more suitable given the offence and accompanying circumstances (Carson and Sabol, 2012).

5.2 RECIDIVISM RATES IN THE UNITED STATES

According to Harrison and Beck (2005b), the total number of people incarcerated in the United States grew 1.9 percent in 2004 to 2,267,789. They further indicated that this number includes 1,421,911 federal and state prisoners plus 713,990 more assigned to local jails, 15,757 in the United States territorial prisons, 9,788 in immigration and custom facilities, 2,177 in military facilities, 1,826 in Indian jails and 102,338 in juvenile facilities. Carney (1977:204) argues that recidivism means the act of relapsing into a former mode of behaviour, in this case criminal behaviour. He further states that when a parolee resumes criminal behaviour after release from prison, he or she is said to have recidivated. This therefore, would appear to be a clear-cut indicator of success or failure. Prisoners vary largely in age, race and offence, of those currently incarcerated; the largest numbers of offenders have committed crimes that are violent in nature (Carson and Sabol, 2012).

The increase in the number of releases has stretched parole system beyond their limits with increased concern about what assistance can be provided at release (Petersilia, 2004:76). Compared with the 1990 returning prisoners will have served longer sentences, be more disconnected from family and friends, have a higher prevalence of untreated substance abuse and mental illness and be less educated and employable (Petersilia, 2004:54). Rehabilitation programmes in the prison system have had no appreciable effect on recidivism since that time; however, an abundance of research has shown positive effects on cognitive behavioural approaches with offenders (Martinson, 1974).

Brown (2002) suggested that prediction of recidivism has important social and economic implications for offender programmes and rehabilitation, parole and public safety decisions and offender's families and communities. She further argued that the work involving women has been largely restricted to testing whether recidivism risk indicators validated the records regarding male offenders as compared to female offenders.

The current sentencing policies in the states have resulted in high rates of offender recidivism and the highest incarceration rates in the world (Warren, 2007:1). According to a report on BBC Radio 4 on Monday, 2 September 2005, the recidivism rates for released prisoners in the US are 60% compared to the UK. The United States Department of Justice tracked the re-arrest, re-conviction and re-incarceration of former inmates for three years after their release from prison in 15 states in 1994, where key findings include:

- Released prisoners with the highest re-arrest rates were robbers with 70 percent, burglar with 74 percent, larcenist with 74 percent, and motor vehicle theft with 78 percent, those in prison for possessing or selling stolen property with 77 percent and those in prison for possessing or selling illegal weapons with 70 percent.
- Within three years, three percent of rapist released was arrested for another rape and one percent of those who had served time for homicide. These are the lowest rates of re-arrest for the same category of offence.
- The 272, 111 offenders discharged in 1994 had accumulated 4.1 million arrest charges before their most recent imprisonment and another 744, 000 charges within three years of release.

Recidivism is the act of re-engaging in criminal offending despite having been punished, and the prison recidivism rate becomes the subject of the proportion of person released from prison that are rearrested, reconvicted or returned to custody within a specified time period (Urahn, 2011:7).

5.3 AFRICAN AMERICANS AND RECIDIVISM

With regard to the US states incarceration rate. African Americans represent only about 13 percent, yet account for approximately half the prison population as well as ex-offenders once released from prison (Carson and Sabol, 2012). As compared to whites, African Americans are incarcerated 6.4 times higher for violent offences, 4.4 times higher for property offences and 9.4 times higher for drug offences. African Americans comprise of majority of the prison re-entry population, yet recidivism is higher amongst those under the age of 18 years who are male and African Americans have significantly higher levels of recidivism as compared to whites (Carson and Sabol, 2012).

The sheer number of ex-inmates existing prison into the community is significant, however, chances of recidivism are low for those who avoid contact with the law for at least three years after release (Carson

and Sabol, 2012). The environment that African American ex-inmates are released into plays a part in their likelihood to re-offend; communities that have high racial inequality increase the risk of African American recidivism as they are denied equal access to “employment, health care services and other institutions that can facilitate a law abiding re-entry into society”. Employment also reduces recidivism, however, for African American ex-inmates, finding employment which can be difficult prior to incarceration become increasingly higher after incarceration (Carson and Sabol, 2012).

5.4 ARRESTS IN THE UNITED STATES

Carney (1979:82) The Federal Bureau of Prisons was established by an act of Congress on May 14, 1930. He further indicates that there were only seven federal prisons in existence, holding 12, 000 prisoners. The police in the arrest phase and judges having considerable discretion over the disposition of a case; they can elect to impose (Vernon and Stinchcomb, 1994:21):

- Fine
- Restitution to the victim
- Some type of community service
- Supervision in the community through probation which may be combined with a fine, restitution, community service or even electronic monitoring at home
- Short term confinement in jail for a year or less
- Imprisonment for a term up to life
- Capital punishment or the death penalty

However, community-based correctional approaches are generally preferable for both the public and the non-dangerous offenders since they offer a number of advantages by:

- Allowing the offender to remain employed thereby enabling family support, payment of fines or victim compensation.
- Avoiding the negative and stigmatizing effects of imprisonment.
- Providing some supervision without breaking ties to the community.
- Reducing costs to the public since community based approaches are far less expensive than incarceration.

Thus sentence imposed by the judge is determined by legal status. This means that judicial discretion is bound by limits imposed by the law; therefore, such boundaries have traditionally been quite flexible. If crime is down, why are there still so many American behind bars? Kalist and Lee (2009) pointed to a number of factors such as; harsher mandatory sentences, the decades-long war on drugs, high violent crime rates, a politicized criminal justice system and lack of social safety network.

According to Vernon and Stinchcomb (1994:44), for an act to be officially considered criminal, a number of conditions must exist:

1. *There must be a prohibiting law.*

No act can be labelled an offence if it is not a specific criminal code either restricting that behaviour. Moreover, the law cannot be used *ex post facto*, sanctions cannot be applied to conduct committed prior the enactment of the law.

2. *Punishment must be specified in the law*

In conjunction with the existence of a criminal code, the law must provide sanctions that can be imposed for the prohibited behaviour. Punishment can range from the imposition of fines or probation to confinement for life, or even death in some states.

3. *There must be criminal intent (mens rea)*

Mens rea means “guilty mind”. To be convicted of an offence, it must be determined that the offender had deliberately intended to commit the act and therefore could be held accountable for it. Small children and mental incompetents are not usually held responsible for criminal behaviour because of the absence of *mens rea*.

4. *There must be an act or omission.*

Mere intent to commit offence is not sufficient. There must be action or failure to act. Planning to commit murder even to the point of arranging all of the preliminary details do not constitute “murder” if the plans were not carried out. On the other hand, if the law requires performance of an act as a legal duty, failure to do so can constitute criminal negligence. For example fleeing the scene of a fatal motor vehicle accident results in legally prohibited behaviour which can be criminally prosecuted.

5. *Criminal intent and action must occur jointly.*

In other words, what was intended must actually have been carried out. Intent without action or vice versa; action without intent does not constitute criminal violation.

Reno, et. al. (2000: 19), indicates that standard case processing information that most agencies are required to keep include the following:

- Law enforcement data on arrest and citation releases.
- Jail administration data on admissions and length of confinement.
- Pretrial release data on referrals, interviews and recommendations and the time frame used.
- Prosecution data on case received for screening, charging decisions and the time lapsing between arrest and the charging decision.
- Defense/public defender data on cases assigned by the court and the time elapsing between arrest and contact with the arrestee.
- Data on the number of cases in initial appearance courts.
- Outcome of release/detention decision.
- Time interval between arrest and the initial appearance hearing.
- Court data on case adjudicated and the arrest-to-adjudication timeframe.
- Probation/parole data on detainers, revocations and the length of time elapsing from detainer filing to decision on revocation.

By gathering and analyzing data on case volume, time intervals between events and decision outcomes, officials can see how their actions affect the jail population level and whether the system is sufficiently using jail space (Reno, et. al., 2000: 20).

5.5 PROGRAMME CHANGES

Programmatic changes tend to be more people oriented than process solutions (Reno, et al., 2000:76). They further indicate that the intent of programmatic changes is to identify a particular population of jail inmates who could benefit from the intervention of particular programmes. The success or failure of such programs is measured by the number of persons within the target population which are diverted or released from jail without disrupting the court system or endangering the public. According to Reno, et al., (2000:76), as with process solutions, certain benefits can be expected from programmatic changes such as the following:

- Because programme solutions are aimed at particular target populations, rather than all defendants, they can have direct impact on categories of persons who, without the program's intervention would have been detained. Target populations might include persons with histories of drug or alcohol abuse, mental illness or those awaiting trial on certain felony charges. In each instance, a programme is implemented or expanded to address the needs of the target population either before admission to the jail or shortly thereafter, thus measurably affecting both confinement time and number of admissions.
- Programmes aimed at specific social problem, such as drug addiction or alcoholism may remedy certain conditions (e.g., chronic drunkenness) while contributing to criminal justice system involvement and reducing recidivism.
- Unlike process changes, programme changes may require little modification of the surrounding case-processing system.
- Programme innovations can be evaluated more easily than process changes to determine their effectiveness in ensuring community safety and their impact on jail populations.

At the same time, programme changes share certain disadvantages with process solutions (Reno, et al., 2000:76):

- Every programme implemented to decrease jail crowding has the potential to increase jail populations. That is, if ineffectively monitored, programmes may include participants who otherwise would not have been detained.
- Programme solution usually requires a "startup" period, when there may be little, if there is any effect on the crowded jail. Depending on the complexity of the programme design, this period might be lengthy.
- Additional costs may be incurred by the jurisdiction in creating, remodeling or expanding a programme.
- Strong system resistance may be encountered because programme staff will be attempting to convince key system actors to divert or release persons who in the past have been incarcerated.
- New programmes, particularly while in developing stage and before substantial public and political support has been established, are highly susceptible to individual client failures. The rearrests of a pretrial release or a new charge against a probationer, particularly when violence can easily cause the elimination of a recently established programme, no matter how much impact the programme might have had on the overall jail population.

According to Lee, White and Brown (1979), states the following as the list of seven goals of criminal sanctions:

- To deter the offender from offending again by punishment or fear of punishment (without necessarily changing him or her in any other way);
- To deter others from behaving as the offender has;
- To incapacitate the offender and thus deprive him or her of the opportunity to offend again for a given period of time;
- To forestall personal vengeance by those hurt by the offender;
- To exact retribution to the offender and so set right the scales of moral justice;
- To educate people morally or socially;
- To rehabilitate or reform the offender.

5.6 RISK FACTORS

Static and dynamic risk factors can be differentiated as intervention targets (Andrews and Bonta, 1994). Static risk factors, rooted in the past and therefore unalterable and inappropriate targets for change, includes the following:

- Early involvement in deviance and acting behaviour. Emotional, psychological and family disruption in childhood and adolescence.
- Involvement with an antisocial peer group as a youth and school problems or failure.
- Alcohol and other drug use in childhood and adolescence.

Dynamic factors are parts of the offender's daily experience and are more amendable to change. They have also been referred to as "criminogenic needs". These factors do more than simply forecast criminal events. They actually influence the chances of criminal acts occurring through deliberate intervention (Andrews and Bonta, 1994). Therefore, some risk factors are more appropriate and promising targets for change than others. Andrews and Bonta (2003:432) list the ways providers that can work with dynamic risk factors:

- Changing antisocial attitudes.
- Changing antisocial feelings.
- Reducing current antisocial peer associations.
- Promoting family affection and communications.
- Promoting family monitoring and supervision.
- Promoting child protection (preventing neglect and abuse)
- Increasing self-control, self-management with anti-criminal role models.
- Promoting identification and association with anti-criminal role models.
- Increasing self-control, self-management and problem solving skills.
- Replacing the skills of lying, stealing and aggression with more pro-social alternatives.
- Reducing chemical dependencies.
- Shifting the balance of personal, interpersonal and other rewards and costs for criminal and non-criminal activities so that the non-criminal alternatives are favored.
- Providing the chronically psychiatrically troubled with low pressure, sheltered living arrangements.
- Ensuring that the client is able to recognize risky situations and has a concrete and well-rehearsed plan for dealing with those situations.
- Confronting the personal and circumstantial barriers to service (such as client motivation, background stressors with which clients may be preoccupied).
- Changing other attributes of clients and their circumstances that, through individualized assessments of risk and need have been linked reasonably with criminal conduct.

According to Andrews and Bonta (2003:432) efforts to work with dynamic risk factors in the following ways may be less successful:

- Increasing self-esteem (without simultaneous reductions in antisocial thinking, feeling and peer associations).
- Focus on vague emotional or personal complaints that have been linked with criminal conduct.
- Increasing the cohesiveness of antisocial peer groups.
- Improving neighborhood wide living conditions without touching the criminogenic needs of high risk individuals and families.
- Showing respect for antisocial thinking on the grounds that the values of one culture are equally as valid as the values of another culture.

- Increasing conventional ambition in the areas of school and work without concrete assistance in realizing these ambitions.
- Attempting to turn the client into a better person when the standards for being a better person do not link with recidivism.

Maltz (1984:8) indicates that the word rehabilitation contains implications about offenders and correctional programmes, which implies that:

- Incarcerated individuals have problems which are direct causes of their appropriate behavior.
- Correctional programme personnel can diagnose these problems accurately and have appropriate treatments available for the individuals;
- These problems will be properly applied and the problems will be corrected as a result of these treatments.
- In addition, the individual's criminal behaviour begins to diminish as a result of mitigating the problems.

5.7 PREDICTING RECIDIVISM

According to risk of re-offending, actuarial approaches attempt to predict the recidivism of specific individuals for purposes of parole supervision are increasingly for service provision (Andrews, Bonta & Wormith, 2006). The effectiveness of these instruments to predict the recidivism of women, using instruments that were designed to measure and predict the behaviour of men (Reisig, Holtfreter & Morash, 2006). According to McShane, Williams & Dolny, (2002) indicates that the existing tools fail to consider the overall context of women's offending, specifically their lower socio-economic class, their higher rates of drug offending and their victimization experiences when compared to male offenders.

Sampson and Laub (1993) states that desistance from crime can be explained aside from delinquency by social bonding that occurs in adulthood transactions that represent turning points in one's life course trajectory. Strong social bonding, including having an attachment to stable employment and entering into secure marriages increases one's chances of desistance from crime (Benda, 2005).

Blumstein, et al., (1988) suggested that incarceration has a limited impact on reducing crime and there is high specialization in drug offending. Consequently, Cohen (1986) argued that if research provides

evidence of offence specialization it may be possible to improve crime control policies by focusing on particular types of offenders.

5.8 CRIMINAL CAREERS AND RECIDIVISM

Stuart and Brice-Baker (2004:29) indicated that the very limited amount of female specific recidivism research suggests the presence of gender specific differences between men and women related to offence patterns. According to De Lisi (2002:27) women offenders were disproportionately involved in forgery, fraud and prostitution whereas men were disproportionately involved in rape, robbery and assault. Uggen and Kruttschnitt (1988) argued that the effect of gender on criminal careers is that gender differences on the predictors of desistance depend on the specific domain of behaviour. According to Steffensmeier and Haynie (2000:405) it was established that while the structural sources of high heels of female offending resembles closely those influencing male offending, these macro-social factors tend to be stronger on male offending rates.

Harm and Philips (2001) indicates that for women, relapse, employment difficulties and instability contributed to recidivism. According to Archwormetry and Katsiyannis (1998) age at first offence and severity of current offence were regarded as the predictors of recidivism of women. However, Dowden and Blanchett (2002) indicate that substance abuse plays an important role in the development of current and future criminal behaviour for women and also a strong predictor for recidivism. According to Benda (2005) the use of illegal drugs and a prior criminal history increase the risk of arrest more than twice as much for women in jail than for men.

5.9 TYPES OF SENTENCING SYSTEMS IN THE UNITED STATES

Approximately 45 percent of these convicted felons were incarcerated in state prisons and about 29 percent were confined in local jails (Champion, 2001:45). For every one of these felony convictions, sentences were imposed by judges according to one of four sentencing schemes (1) indeterminate sentencing, (2) determinate sentencing, (3) presumptive or guidelines-based sentencing, and (4) mandatory sentencing which are discussed in details underneath:

1) Indeterminate sentencing

Indeterminate sentencing is used by a majority of state courts, it occurs when the judge sets upper and lower limits on the time to be served, either on probation or in jail or prison. If offenders are incarcerated under indeterminate sentencing, a parole board determines their early release. Usually offenders must serve at least the minimum sentence as prescribed by the judge before parole can be granted. This is known as minimum-maximum determined sentencing. An example of indeterminate sentencing might be a sentence of “not less than 1 year or more than 10 years for robbery.

2) *Determinate sentencing*

Determinate sentences describe that judge fix the term that must be served in full, earns any good time credits that might be applicable. Good time credits are days earned and deducted from one’s maximum sentence as the result of good institutional behaviour. The basic distinctions between indeterminate and determinate sentencing is that judges must impose a fix sentence under determinate sentencing and early release is governed by the accumulation of good time credit; under indeterminate sentencing, parole boards make early release decisions following a minimum-maximum sentence reductions or minimizes the abuse of judicial and parole board discretion in determining early release for inmates. One of the reasons for the increase in imprisonment in the United States is the growth over the past two decades of determinate sentencing systems adopted by the federal and many state criminal justice system (Klein, 1997:7).

3) *Presumptive or guidelines-based sentencing*

One way of making sentencing more objective is to establish a sentencing commission to study sentencing and its deterrent effects. The use of sentencing commission was first proposed in the United States in the early 1970s with the first sentencing commission being established in 1978. Sentencing guidelines have reduced disparities and gender differences in sentencing in most jurisdictions where they have been established. The US sentencing commission and 18 other state jurisdictions have shifted to presumptive or guidelines-based sentencing schemes.

4) *Mandatory sentencing*

Mandatory sentencing requires the judge to impose an incarcerative sentence, often of a specified length, for certain crimes or for particular categories of offenders. There is no option of probation, suspended sentence or immediate parole eligibility. However, there has been criticism labelled against mandatory sentencing laws, some observers say that mandatory sentencing should be abolished

outright because it does not reduce recidivism. Further extensive prison overcrowding has occurred in those jurisdictions in which mandatory sentencing policies have been enforced. Another charge against mandatory sentencing is that the criminal statutes for mandatory sentences are typically associated with street crimes. Street crimes are committed almost often by those in the lower socio-economic levels and inherent class discrimination occurs whenever such mandatory laws are implemented. Thus mandatory sentencing provisions have applied to and targeted powerless and marginalized groups in American society.

5.10 FOUR MEASURES OF RECIDIVISM

Langan and Levin (2002:1) found that within 3 years from their release:

- 68% of all the prisoners had been re-arrested
- 47% were reconvicted of a new crime
- 25.4% were resented to prison for a new crime.
- 52% were back in prison either for a new prison sentence or a technical violation of their release conditions.

5.11 RE-ENTRY AND PAROLE

The United States has about 5% of the world's population yet it account for about 25% of the world's prisoners, despite a steady decline in the crime rate over the past two decades, the United States incarcerates more of its citizens than any other country which is 716 people per every 100, 000 (Deady, 2014).

Following the rise in prison population, parole population too has continued to rise over the recent decades. In the 1980s the state parole population increased an average of 10% annually between 1980 and 1992, but stabilized thereafter until 1998 and increased on average of 1% annually between 1998 and 2004 (Gaze and Pella, 2005). Bloom, Owen & Covington (2003) indicated that targeting women's pathways to offending are substance abuse, material needs and addressing victimization, trauma histories and mental health as one approach.

O'Brien (2001a) interviewed women on parole who reported that success on parole was as easy as baking a cake and involved addressing material and social concerns. According to Dowden and Blanchette (2002), in a meta-analysis of treatment programme outcomes found that lower recidivism rate among female drug users were associated with an intense programme of structured drug treatment. On the other, Richie (2001) suggested that access to childcare and transportation, safety from abusive partners and probation and programme staff availability beyond business hours contribute to successful re-integration particularly of women offenders.

Pearl (1998) indicates that the delivery of post-prison services with case comprehensive management services most closely associated with positive outcomes for women. One of the most crucial forms of capital required for women's successful re-entry is social capital, yet women offenders as a group experience the highest levels of capital deficits (Reisig, Holtfreter & Morash, 2002). Favin (2004) contends that along with the material needs of re-entry shared by women and men, family support was critical to women's success on parole. According to Rumgay (2004), parole assistance related to material, social and psychological concerns is correlated with successful re-entry. Brown (2003) investigated the role of motherhood in the parole process in her sensitive description of parole. The study identified gender differences in the parole period which include:

- Responsibility for children and other family members.
- Continuing problems with substance abuse, personal violence, housing and employment.
- Fewer programs that target their pathways to offending.

According to Brannon and Troyer (1995), there are many external factors that contribute to recidivism for all offenders. A full examination of recidivism acknowledges the effect of both individual behavioural factors and criminal justice processes themselves, for example, local crack downs on certain offences or certain neighbourhoods; police and court resources; the sanctioning philosophy of the local jurisdiction such as a move towards treatment versus incarceration; plea bargaining and degree of post-release supervision may have a significant impact on post-release outcomes (Zhang, Roberts & Callanan, 2006).

5.12 THE PURPOSE OF SENTENCING

According to (Champion, 2001:43) the purpose of sentencing are (1) retribution, deterrence and prevention, (3) just-deserts and justice, (4) incapacitation and control, and (5) rehabilitation and reintegration:

- *Retribution*

Sentences are designed to exact retribution for crimes committed. Perpetrators must be punished in some way in order to comply with criminal laws. Punishment includes jail or prison terms, fines, or both. Proportionality is sought so that the greater the offence the greater the punishment.

- *Deterrence and prevention*

When the public observe offenders getting punished for their crimes and given harsh sentences, an element of deterrence is introduced whereby potential criminals are deterred from committing crimes because of the penalties they may suffer if caught. To some extent, at least crime is prevented and criminals are deterred because of the sentences others receive.

- *Just-deserts and justice*

Just-deserts is a model that equates punishment with the severity of the crime and is based on Cesare Beccaria's ideas about punishment. Judges attempt to match sentences imposed with the nature and seriousness of convicted offences. The public seems satisfied whenever criminals are punished in ways that equate with the seriousness of the crime.

- *Incapacitation and control*

Incapacitation is a philosophy of corrections that says offenders should suffer loss of freedom; the more serious the offence, the greater the freedom loss. This is the belief that the function of punishment is to separate offenders from other society members and prevent them from committing additional criminal acts.

- *Rehabilitation and reintegration*

In a perfect world, corrections correct the behaviour of offenders and makes former criminals' law abiding and respectful of the right of others. Two thirds or more of all convicted offenders, however, recidivate and commit new offences. The offending rate varies according to the type of offences and other variables. There is sufficient recidivism among criminals to indicate that true rehabilitation does not occur in a majority of cases, nevertheless, a continuing objective of corrections is to provide offenders with the means and opportunity to become law-abiding and get rehabilitated.

There are numerous reintegrative programmes available to criminals of all types, including vocational educational curricula, individual and group counselling and a variety of social services. Offenders are encouraged to participate in these programs when they are offered in jail, prisons and communities.

5.13 COMMUNITY BASED ALTERNATIVES TO CONFINEMENT: STANDARD

Reid (1981:410) states the following six alternatives as a minimum for each state correctional system:

- Diversion mechanisms and programmes prior to trial and sentence.
- Non-residential supervision programmes in addition to probation and parole.
- Residential alternatives to incarceration.
- Community resources open to confined populations and institutional resources available to the entire community.
- Prerelease programmes.
- Community facilities for released offenders in the critical reentry phase with provision for short term return as needed.

5.14 TYPES OF PRISONS AND THEIR FUNCTIONS

All prisons in the US today have classification schemes of one type or another for differentiating among prisoners and assigning them to particular accommodations (Champion, 1994). The use of such schemes has varying utility depending on the purpose for the initial classification, such as identifying those likely to engage in assaultive or aggressive disciplinary infractions by corrections officials in screening inmates, prisoners are eventually channelled into one of several fixed custody levels, these are minimum, medium and maximum security:

1. Minimum security prisons

Minimum security prisons are facilities designed to house low risk, non-violent first offenders (Wilson & Hussong, 1994). These institutions are also established to accommodate those serving short term sentences. Sometimes, minimum security institutions function as intermediate housing for those prisoner leaving more heavily monitored facilities on their way toward parole or eventual freedom. Because of the greater trust administrators place in inmates in minimum security institutions, these sites are believed to be most likely to promote self-confidence and self-esteem among prisoners (Holley & Brewster, 1996).

The rehabilitative potential of minimum security inmates is high, whereas those in more secure detention facilities are considered more hard core criminals and less likely to reform (Kassel, 1998:38). According to Vernon and Stinchcomb (1994:236), a minimum custody facility has extremely little external control or reintegration. Pursely (1987:552) state that minimum security prisons do not utilize fixed observation posts for armed guards on the perimeter, in fact depending on where they are situated and the type of offenders they contain, there may be no perimeter fence.

2. Medium-security prison

A medium security custody institutions usually has a wire fence; along with a strong perimeter that can include guard or booths. Medium security prisons are the most common type of prison facility, house a wide variety of offenders and offer less freedom compared with minimum security facilities. Access to educational, vocational and therapeutic programs is limited. Medium security prisons are really a catch because often both extremely violent and nonviolent offenders are placed in common living areas (Wooldredge, 1998:491).

According to Pursely (1987:552) medium security institutions house inmates who, although not as dangerous to society and their fellow inmates as those confined in maximum security prisons, do pose a threat of escape and often have served prior sentences.

3. Maximum security prison

Approximately 31 prisons of all US prisons are maximum security prisons, classified either as “maximum” or closed/hi” (Camp & Camp, 1999:19). Ordinarily those sentenced to serve time in maximum security facilities are considered among the most dangerous, high risk offenders. Those with prior records of escape and those who are violent crime recidivists often are sentenced to maximum security institutions.

Maximum security prisons are characterized by many stringent rules and restrictions and inmates are isolated from one another for long periods on single-cell accommodations (Farmer, 1994:117). Closed circuit television monitors often permit correctional officers to observe prisoner in their cells or in work areas which are limited (Patrick, 1998:255).

Vernon and Stinchcomb (1994:235) indicates that maximum security facility is characterized by a walled outside perimeter, armed guard towers, searchlights, alarms, electronic detection devices and similar high security measures. Pursely (1987:550) indicates that maximum security has more hardened and dangerous male offenders who are usually enclosed by massive concrete or stone walls from 18 to 25 feet high or by a series of double or triple perimeter fences with barbed or razor wire and spaced 16 to 20 feet apart.

5.15 CONCLUSION

The purpose of this chapter was to discuss recidivism within the context of United States of America. The literature review on recidivism rate in the US was discussed. The chapter also discussed the African American and recidivism as variable factor. In order to ensure that the concept of recidivism is well understood, the chapter discussed the risk factors associated with recidivism. The chapter began by discussing the forms of arrests in the US, programme changes as well as predicting factors for recidivism.

When the chapter proceeds, criminal careers and recidivism were discussed in detail, the types of sentencing systems in the US were illustrated, four measures of recidivism were also part of the discussion. The chapter also encompassed how re-entry and parole are conducted as well as the purpose of sentencing. The last sections of the chapter included community based alternatives to confinement and the types of prisons and their functions in the US.

The literature has established that recidivism in the US is higher than that of the other countries due to high level of crime and overcrowding of prisons. Recidivism has been found to be a challenge in the US. One cannot shy away that crime in the US is higher than those of the most countries due to its population size. Although there are many societal and sociological factors that contribute to crime and recidivism in the US, it is of cardinal importance that the internal practices of prison system and their impact on crime are also evaluated in order to effectively reduce recidivism.

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CHAPTER SIX

RECIDIVISM IN THE REPUBLIC OF SOUTH AFRICA

6.1 INTRODUCTION

It is widely known that South Africa has one of the highest crime and recidivism rates in the world (Thinane, 2010:1). Crime in South Africa is widespread and rife and that life sentence has no effect on criminals (Skelton, 2004:4). South Africa is one of the countries that is experiencing high rate of prison overcrowding. Crime rate in South Africa is at an extreme level (Strydom, 2009:115). It was established that no reliable statistics on the rates of re-offending in South Africa (Department of Correctional Services, 2004:8). According to Coetzee (2003b:4) prison overcrowding is one of the social ills of the world that is found in all continents and in all regions.

South Africa incarcerates offenders at more than double the rate of any European country (Morris, 2004). According to the Department of Correctional Services Annual Report (2001/2002) limited skills and lack of appropriate training of the Department of Correctional Service's staff to support rehabilitation of inmates remain blockages to the delivery and transformation of the department. Between 1996 and June 2001, the overall number of prisoners in South Africa has increased by 34%, as a result the number of sentenced prisoners increased by 27% and the number of those held awaiting trial increased by 54% (Department of Correctional Services, 2000). Rehabilitation initiatives taking place in South African prisons are ineffective (Thinane, 2010:78).

Schoeman (2003) states that recidivism rates on South Africa are estimated to be between 55% and 95%. According to Bartley (2010), repeated crimes results in the individual reappearing in the criminal justice system and thus driving recidivism rates higher. Dissel (2008:27) argues that recidivism in South Africa will remain high because the type of rehabilitation in the country prisons are not effective and are almost non-existent. Rakis (2005:10) indicate that recidivism rates remain a considerable problem which faces societies and governments throughout the world. Freeman (2003) argues that the available data on recidivism is an indication that the ex-offenders that are released by the Department of Correctional Services are not rehabilitated.

6.2 DELIBERATION OF FACTORS TOWARDS RECIDIVISM

The following are the factors associated with recidivism in the South African context:

6.2.1 Recidivism

Recidivism is defined as reoffending, rearrests, reconviction, revocation of parole or probation and incarceration (Champion, 1994:87). However, Reichel (1994:385) view the concept of recidivism as falling back to crime after methods of deterrence, retribution or correction has been applied. Winnicott (1984:123) define recidivism as an offender's tendency to repeat his or her criminal activity despite the efforts towards reformation. According to Zastrow (2000:21) recidivism is defined as re-arrest and conviction of person previously convicted of a crime.

The high rate of recidivism among young offenders leads to question about the effectiveness of the therapeutic and statutory interventions available to them (Ngxubane, 2006). Recidivism is also called backsliding or falling back into previous criminal behavior (Ssebuggwawo, 2010). Recidivism can be defined as an individual's tendency to engage repeatedly in criminal conduct (New Dictionary of Social Work, 1995:56). Recidivism is used interchangeably with repeat offending by ex-offenders which contributes substantially to the high crime rate in the country (Skelton & Batley, 2008).

According to Prinsloo (1995:20), recidivism is defined as a general academic term, indicative of a specific society, community or populations' needs, perception and interpretations. An offender who has committed a recordable offence within the follow-up period and who has had the offence proved within the follow-up period and a confirmation period of three months, either by the offender accepting a caution, warning or reprimand, or by pleading guilty or being found guilty in a court of law (ORGS, 2010).

6.2.2 Recidivist

There is no classification system that exists whereby repeat offender can be formally classified as recidivist. Recidivist is defined as an individual who continues to engage in wrongdoing and misdemeanour's after perpetual warning and corrective action has been taken (Bartley, 2010).

6.2.3 Parole

According to Cromwell and Del Carman (1999:4), parole is defined as the release of an offender before his or her sentence expires. The Department of Correctional Services, (2010b:17) defines parole as a

period of time during which an offender who has served minimum prescribed detention period of their sentence in a correctional centre is conditionally released to serve the remainder of their sentence in the community under the supervision and control of the Department of Correctional Services.

According to Petersilia (2002:129), the concept of parole originate from the French word 'parole' or the term parole 'd'honneur' meaning the 'spoken word' (as in giving one's word of honour), therefore, the term is associated with the promise or word of honour of an offender to behave in a law abiding manner and according to certain restrictions or conditions in exchange for release.

Parole is a continuation of the court's sentence that the offender has to serve in the community whereby the Department of Correctional Services and the parolee agree to certain enforceable conditions (Neser, 1993:353). Van der Westhuizen (1983:40) indicates that parole is the next logical step in the process of rehabilitation, therefore, the offenders has a better chance of being successful in the community if they are provided with supervised assistance.

6.2.4 Community Corrections

The concept of community corrections includes all non-custodial measures and forms of supervision regarding offenders who are under the control of the Department of Correctional Services (Department of Correctional Services, 2010:18).

6.2.5 Offender

Dissel (2008:1) define offender as an inmate who has been convicted and/or sentenced to imprisonment or incarceration. Van Zyl and Smith, (2005:18) questions the use of offender instead of prisoner, as many people currently awaiting trial in prisons might be found not to be offenders. Offenders need to be empowered through rehabilitation programme that will enhance their positive development (Department of Correctional Service, 2005).

6.2.6 Prisoner

Prisoner is defined as any person, whether convicted or not, who is detained in custody in any prison or who is being transferred in custody or is on route from one prison to another (Correctional Service Act, 1998).

6.2.7 Imprisonment

Thinane (2010:43) defines the concept of imprisonment as much more than merely a period of isolation from the community during which a prisoner is deprived freedom. According to Terblanche (1999: 239) imprisonment is defined as the admission into a prison and confinement of an offender in a prison for the duration determined by the court. However (Neser, 1993:27) indicates that imprisonment is defined as the admission, locking up and detained for the duration of sentence.

6.2.8 Correctional Centre

According to Louw (2008:13), Correctional Centre is an institution on which offenders are detained for the purposes of punishment, protecting the community and rehabilitation.

6.2.9 Rehabilitation

Rehabilitation is defined as the provision of professional assistance of job training to offenders to make them less likely to engage in future criminality (Tshiwula, 2001:136). However, Holtzhausen (2002:17) defines the concept of rehabilitation as an assistance process where offenders are provided with psychological and educational opportunities, job training and religious care in order to reduce their propensity to commit crime in order to help them to reintegrate into the community. However, Mubanzi (2001:120) view the concept of rehabilitation as activities designed to change criminals into law-abiding citizens. According to Snyman (2002:17) rehabilitation is part of the relative theory where this approach is that the offender is a victim of his or her circumstances and has to be treated for a sickness. Rehabilitation is to develop prisoners and even bring healing as offenders also need to be prepared for reintegration (Luyt, 2001:31).

The Department of Correctional Services (2005:37) defines rehabilitation as the result of a process that combines the correcting of offender behaviour, human development and the promotion of social responsibility and values that involve both the departmental responsibilities of the government and the social responsibilities of the nation. According to Hoffman (2008), rehabilitation can be seen as a process of learning to be oneself and to be known as a unique person, meaningful to others because of both differences and common ground. Roberts and Hough (2005) indicates that rehabilitation of offenders has consistently led the debates in the public, with some people supporting rehabilitation while some people are against it. According to Louw and Luyt (2009:6) rehabilitation focuses on changing the offending behaviour and attitudes of offenders in such a way that they no longer need to or wish to commit crimes.

Rehabilitation is the results of a process that combines the correction of offending behaviour, human development and the promotion of social responsibility and values (Correctional Service Act, 2005:6). Rehabilitate derives from the word “habilitate”, a word that in itself comes with different connotations, some implications of which could lead to believe that criminal behaviour is congenital in nature (Trestler, 1981:41). However, Muntingh (2001) indicates that it is known that imprisonment on its own does not rehabilitate people and does not facilitate the ultimate goal of reintegration.

6.2.10 Overcrowding

Overcrowding is defined as the consequences of housing too many people in too little space whereby inmates are double bunked in small designed confined areas, where they are forced to sleep on mattresses in unheated prison gym, day rooms, hallways or basements, others sleep in makeshift trailers, tents or converted ferries (Stinchcomb & Fox, 1999:228).

6.2.11 Reintegration

Clear and Dammer (2003:24) define reintegration or re-entry as an event and process that emphasizes the maintenance of the offender’s ties to their community as a method of reform in recognition of the fact that the offender will eventually return to the community.

6.2.12 Prison

In terms of the Correctional Service Act 111 of 1998, prison is a place for the reception, detention, confinement training or treatment of persons liable to detention in custody or to detention in placement under protective custody and all land, outbuildings and premises adjacent to any place and used in connection therewith and all land, branches, outstations, camps, buildings, premises or places to which any such persons have been sent for the purpose of imprisonment, detention, protection, labour, treatment of otherwise.

The concept of prison is defined by Hornby (1974:664) as an institution whereby all wrongdoers awaiting trial and all those found guilty are kept and locked up against their will for a specific period from a month up to life imprisonment as determined by the court of law. According to Coetzee (2003: 2-3) prisons have five major purposes to fulfil, namely:

- Rehabilitation;
- Retribution;
- Deterrence;
- Incapacitation; and

- Restoration

6.2.13 Diversion

According to Sloth-Nielsen and Gallinetti (2004) diversion is a process of referring children who are under the age of 18 years and who have committed offences, in case where there is enough evidence to prosecute, away from formal criminal justice proceedings to informal procedures as recognized by the legislation.

6.3 LEGISLATIVE FRAMEWORK ON PRISONS IN SOUTH AFRICA

6.3.1 *White Paper on Corrections in South Africa*

The White Paper on Corrections in South Africa (2005) arose out of a need for a long-term strategic policy and operational framework that recognizes correctional activities in prisons as all-inclusive societal responsibility. According to the White Paper (2005:74), the purpose of the correctional system in South Africa is not punishment but protection of the public, promotion of social responsibility and the enhancing of human development in order to prevent recidivism or the return to crime. The White Paper (2005:34) provides a vision for viewing correction as a social responsibility. The White Paper acknowledges the need for offenders to also be restored as they might have been victimized before.

The White Paper clearly indicates that the vast majority of South African offenders originate from communities and families that are plagued by poverty, hunger, unemployment, crime, a distorted value system and absent of figures of authority and care. Rehabilitation initiatives are premised on basic human rights as enshrined in the Constitution, Act 108 of 1996, needs driven approaches to rehabilitation and aftercare of offenders where the community plays a significant role is more forward in terms of government approach (White Paper on Corrections, 2005). The draft White Paper on Corrections (2003) states that rehabilitation refers to the following:

- Correcting correctional clients to promote human development and social responsibility;
- Ensuring that offenders internalize the impact that their actions have had on their victims and on society as a whole;
- Separating the offender from the offending behaviour
- Changing criminal attitudes, behaviour and social circumstance that promote criminality;
- Promoting positive social values and responsibility;

- Preventing on a holistic, multi-disciplinary approach pertaining to the rehabilitation of offenders;
- Addressing offenders and the causes of criminal behaviour;
- Empowering offenders through life and other skills;
- Conducting needs and risk assessment of offenders;
- Ensuring social reintegration of offenders back into their communities by focusing on after care services.

The White Paper (2005) indicates that success in rehabilitation also acknowledges that there is no reliable data in South Africa on recidivism; success in the following areas could be a good indicator of the effectiveness of both internal departmental programmes and societal initiatives:

- Reduction of repeat offending;
- Effectiveness of released offenders to society;
- Reduction of new offending as societal institutions begin to play their part and reduction or elimination of criminal offending within correctional centres.

6.3.2 Correctional Services Act 111 of 1998

In terms of the section 36 of the Correctional Services Act, the purpose of imprisonment; after having due regard that the deprivation of liberty serves the purposes of punishment, is to enable the sentenced prisoner to lead a socially responsible and crime-free life in future.

The act sets out three objectives, namely, to enforce the sentences imposed by the courts, to detain all inmates in safe custody whilst ensuring their human dignity and to promote the social responsibility and human development of all inmates and persons subjects to community corrections. One of the DCS's main objectives is to provide prisoners with the opportunity to develop and grow into individuals who can positively contribute to conventional society (Burger, 2004:19). The Correctional Services Act of 1998 as amended indicates the following:

- A sentenced offender must be prepared for placement, release and reintegration into society by participating in a pre-release programme.
- Where a sentenced offender is to be placed under correctional supervision or to be released on parole, there must be compliance with section 55(3) of the act.
- At release, sentenced offenders must be provided with material and financial support as prescribed by the regulation.

The Act indicates that there is no uniform generic development programme for offenders and that there cannot be one programme designed for one offender that would fit all prisoners due to the fact that offenders have committed different types of crimes and they need to be grouped according to the crimes they have committed for the purpose of rehabilitation programmes.

In terms of section 41 of the Act, the department of correctional service is under the obligation to provide access to a full range of programmes and activities as is practicable in order to meet the educational and training needs of sentenced offenders. One of the conditions that may be set is the rendering of community services as specified in section 60 of the Correctional Service Act 111 of 1998 as amended:

- Where a condition of community service is set as part of community corrections, it must stipulate the number of hours which the person is required to serve, which shall not be less than 16 hours per month, unless the court otherwise directed.
- a) The court, Correctional Supervision and Parole Board or other body which has the authority to impose community service may specify where such community service is to be done.
(b) Such an order may not be changed without the matter being referred back to the court, Board or other body which set the condition unless it provides that the order may be changed by a Supervision Committee.
c) If such court, Board or other body does not specify where such community service should be performed, the Supervision Committee must specify the place.

In terms of the Department of Correctional Services Act, the Correctional Supervision and Parole Boards are responsible for making the following decisions:

- the placement of offenders on day parole, parole or correctional supervision;
- the placement of offenders on medical parole;
- the release of offenders upon expiry date of their full sentences;
- the approval of the monitoring phases and conditions of supervision; and
- the amendment of conditions or the revocation of an offender's placement on day parole, parole, medical parole, or correctional supervision, depending on the seriousness of the violation.

Section 64 of the Correctional Services Act 111 of 1998, as amended, stipulates the following:

- The court, Correctional Supervision and Parole Board or the other body which has the authority to impose treatment, development and support programmes in terms of section 52(1)(f) may specify what programmes the person subjected to community corrections must follow.
- Only the court, Board or other body which sets the condition may change it, unless the condition itself provides that it may be changed by a Supervision Committee.
- If such court, Board or other Body does not specify what programmes the person subjected to community corrections should follow, the Supervision Committee must specify such programmes.
- The person concerned must attend such programmes and stay in attendance for the duration of each individual session of the entire programme, unless leave of absence from a session is granted by the National Commissioner.

6.3.3 The Law Commission's Report on Juvenile Justice (2002)

Commission's Report on Juvenile Justice (2002) detailed legal provisions to regulate and promote the use of diversion. During the course of 2003, the Commission's proposals have been elaborated by Parliament in relation to deliberations on the Child Justice Bill 49/2002. The legislation will stipulate that diversion programmes aim to achieve certain objectives. Most recent draft of the tabled Bill includes these objectives:

- Foster accountability in the child for the harm caused by the offence
- Meet the needs of the individual child
- Promote reintegration of the child into his or her family and community
- Promote reconciliation between the child and the person and/or community affected by the harm caused
- Preventing stigmatization of the child
- Prevent adverse consequences that may flow from the child being subjected to the criminal justice system and prevent the child from having a criminal record
- Reduce recidivism

6.3.4 National Crime Prevention Strategy (1996)

The National Crime Prevention Strategy (1996) aims to prevent crime through a strategy whereby a four-pillar approach is used. The National Crime Prevention Strategy (1996) it is acknowledged that the high crime rate poses a threat to the democracy of South Africa. Schoeman (2012:iv) indicates that crime prevention and management strategies utilized in South Africa does not recognize and address the role that recidivism plays as contributing factor towards the high crime rate.

There are four pillars that represent the areas on which crime prevention and rehabilitation should be focused on (Howes, 1996:37). According to South Africa (1996:1), the following are the role players that should participate in the crime prevention and rehabilitation process:

- Department of Correctional Services (DCS)
- Social Welfare
- Law Enforcement agencies
- The Judicial System; and
- Socializing agencies that are responsible for the teaching of values and norms such as families as well as community members.

In terms of the NCPS (1996:61), diversion is a viable way of dealing with young offenders for the following reasons:

- Justice procedures are costly and do not necessarily address the root causes of offending behaviour.
- Many arrested children are first time offenders and do not necessarily pose a threat to society.
- Often youth offences are of a less serious nature which does not warrant formal prosecution and/or institutionalization.
- Contact with the criminal justice system could harm the young person through, for example, awaiting trial in police custody and subsequent stigmatization.
- Encourage the child to take responsibility for his or her action.
- Address the specific needs of the individual child.
- Promote the reintegration of the child into his/her family and community.
- Encourage the victims of offences to participate in the diversion process.
- Allow for reparation or restitution to the victim.
- Promote reconciliation between the offender and the victim.
- Save the child from being labeled as a result of being subjected to the justice system.

- Save the child from getting a criminal record.

According to the Child Justice Alliance (2004c), the following methods may be employed to divert young offenders away from the formal justice system:

- Order related to good behaviour, school attendance, spending time with family, reporting regularly to a specified person or association with peers that can contribute to the youth's positive behaviour.
- An oral or written apology to the victim or victims of the offence.
- Formal cautioning with or without conditions.
- Compulsory attendance at a school or vocational skills training facility.
- Referral to counselling or therapy services.
- Restitution symbolically, financially or by replacing the item or items lost or damaged.
- Community service without remuneration

6.4 THE RIGHTS OF ACCUSED, ARRESTED AND DETAINED

According to Morodi (2001) the Constitution embodies the values of human dignity, justice for all and the promotion and advancement of human rights. Section 35 of the Constitution, Act 108 of 1996, describes the right of accused, arrested and detained persons and section 35(2) extends a number of these rights to all sentenced prisoners. Of particular importance are the rights; to be informed of the reasons for being detained; access to legal representation; to challenge the lawfulness of the detention; conditions of detention consonant with human dignity; and to communicate with and be visited by that person's spouse or partner, next of kin, religious counsellor and a chose medical practitioner.

Dissel and Ellis (2002) state that the rights of accused, arrested and detained persons are listed in section 35 of Act 108 of 1996; offenders rights include rights to dignity, freedom and security of the person, privacy, the right to a fair trial, the right to remain innocent until proven guilty and if found guilty the right to conditions of detention that are consistent with human dignity and not to be subjected to cruel, inhumane and degrading treatment.

A review of recent case law indicates that in respect of prisoners the emphasis has been placed on the right afforded in section 35(2)(e) and (f), relating to conditions of detention and access to medical care, among others. As noted above, the right to dignity is one of the founding value of the South African

Constitution and in a number of cases the courts have invoked this to support decisions in favour of prisoners. Thus far, a concern is with section 12(1)(a) right not to be detained arbitrarily. It now turns to consider a closely related right; the section 35(3)(d) right to a trial within reasonable time. Although, it is not as directly relevant to the situation of remand detainees, it provides useful guidance and support for the section 12(1)(a).

6.5 RESTORATIVE JUSTICE IN THE CONTEXT OF SOUTH AFRICA

Restorative justice is a theory of justice that emphasizes repairing the harm caused or revealed by criminal behaviour (Batley, 2010: 26). According to Roach (2000), restorative justice appears to be a new concept within the criminal justice system in South Africa. However, according to Ward and Langlands (2008), restorative justice is linked to human rights because through restorative justice offenders are treated as moral human beings capable of taking responsibility and making amends for their actions. According to UNODC (2006), the objectives of restorative justice are:

- Supporting victims, giving them a voice, encouraging them to express their needs, enabling them to participate in the resolution process and offering them assistance.
- Repairing the relationships damaged by the crime, in part by arriving at a consensus on how best to respond to it.
- Denouncing criminal behavior as unacceptable and reaffirming community values.
- Encouraging responsibility taking by all concerned parties particularly by offenders.
- Identifying restorative, forward looking outcomes.
- Reducing recidivism by encouraging change in individual offenders and facilitating their integration into the community.
- Identifying factors that lead to crime and informing authority responsible for crime reduction strategy.

Restorative Justice interventions on the family of the victim is more important than punishing the offenders (Consedine, 1999:171). Restorative justice aims to rebuild the relationships that were damaged by crime in order to establish justice for everyone involved (Ryals, 2004). Skelton and Potgieter (2002: 494) explain that the Child Justice Bill (2002) also makes provision for restorative justice sentences in that a child could be ordered to take part in Family Group Conferencing (FGC) or Victim-Offender Mediation (VOM).

Restorative justice is defined as a restorative process and also as any process in which the victim and the offender, and where appropriate, any other individual or community member affected by a crime, participate together actively in the resolution of matters arising from the crime, generally with the help of a facilitator (The United Nations Handbook on Restorative Justice Programme).

The government's responsibility includes ensuring that restorative processes are available to all (Van Ness, 2011). Restorative justice is a process whereby parties with a stake in a specific offence resolve collectively how to deal with the aftermath of the offence and its implications for the future (Anderson, 2004:7). However, Hinesa and Bazemoreb (2003) indicate that restorative justice is considered to be a philosophical framework, rather than a specific programme. Skelton and Batley (2006) indicates that restorative justice initiatives in South Africa are growing in numbers and these programmes needs to be as diverse as the country itself, in order to cater for everyone's need. Restorative justice brings victims and offenders together in an attempt to promote community reintegration of the offenders, rather than the exclusion resulting from punitive prison sentences (Giffard, 2002:34).

Restorative justice emphasizes the importance of elevating the role of victims and community members through more active involvement in the justice process, holding a range of opportunities for dialogue, negotiation and problem solving which can lead to a greater sense of the community safety, social harmony and peace for all involved (Umbrecht, 1996). According to UNICEF (2009), diversion should be excluded where:

- The child indicates that he or she intends to plead guilty to the charge.
- The child had not understood his or her right to remain silence and/or has been unduly influenced in acknowledging responsibility.
- There is insufficient evidence to prosecute.
- The child and his or her parents do not consent to diversion or the diversion option.

Restorative justice, amongst others, heal victims, offenders and communities that had been hurt by crime and it also actively involve these role players as crime often leaves the offender even more alienated, the victim disempowered and everybody more damaged (Luyt, 1999:68).

According to UN Standard Minimum Rules for Non-Custodial Measures (1990), sentencing authorities may dispose of cases in the following ways:

- Verbal sanctions, such as admonition, reprimand and warning
- Conditional discharge
- Status penalties
- Economic sanctions and monetary penalties such as fines and day fines
- Confiscation or an expropriation order
- Restitution to the victim or a compensation order
- Suspended or deferred sentence
- Probation and judicial supervision
- A community service order
- Referral to an attendance centre
- House arrest
- Any other mode of non- institutional treatment.

In terms of South Africa (2003:33) rehabilitation is informed by a commitment to restorative justice system which outlines an approach requiring correctional services to devote attention to:

- Enabling offender to make amends to their victims and the community;
- Increasing offender competencies; and
- Protecting the public through the process in which individual victims, the community and offenders are all active participants.

According to Zehr (2002a:8), the following aspects regarding restorative justice were stated:

- Restorative justice is not primarily about forgiveness or reconciliation.
- Restorative justice is not primarily designed to reduce recidivism or repeating offences.
- Restorative justice is not a particular programme or a blueprint.
- Restorative justice is not primarily intended for comparatively minor offences or first time offenders.
- Restorative justice is not a new development.
- Restorative justice is neither a panacea nor necessarily a replacement for the legal system.
- Restorative justice is not necessarily an alternative to prison.
- Restorative justice is not necessarily the opposite of retribution.

6.6 RECIDIVISM WITHIN THE CONTEXT OF SOUTH AFRICA

According to Schoeman (2012:56), recidivism is synonymous with the phenomenon of chronic insofar as both recidivism and chronic offending can be associated with re-offending behaviour patterns as well as a pro-criminal life style. Dissel (2002) defines recidivism as an act by an inmate to revert to crime upon release from prison resulting in re-incarceration. The escalation in crime emphasizes the need for a better understanding of criminal behaviour, an adequate assessment structure and offence specific programmes to enhance the effective treatment of offenders (Hesselink-Louw & Schoeman, 2003:158). Enhancing community safety is a primary goal in the rehabilitation of offenders (Faugeron, 1996:126). According to Bartley (2010), repeated crimes results in the individual reappearing in the justice system and thus driving recidivism rates higher.

Recidivism may be reduced and discrimination from community towards ex-convicts be decreased (Tewksbury, 2012). According to Muntingh (2002:20), recidivism indicates that there are very few initiatives that can claim success in terms of reintegrating of offenders into society upon their release. Pelser and Rauch (2001) state that recidivism becomes the other momentous challenge, which is usually not tackled thoroughly and it is presently estimated at between 80-90%.

According to Atere and Muoghalu (2007:28), recidivism is measured by (1) criminal acts that resulted in a conviction by a court, when committing by individuals who are under correctional supervision or who have been released from correctional supervision within the previous three years and by (2) technical violations of probation and parole in which a sentencing or paroling authority took action that resulted in an adverse change in the offender's legal status.

Du Preez (2000:38) indicates that the profile of the recidivist demands different development methods in dealing with recidivism. International experiences have shown that the monitoring of rates of recidivism over periods of time represents a critical indicator of the success and effectiveness of need-based rehabilitation and improved service delivery (The White Paper on Corrections, 2005:145).

According to Prinsloo (1995:16) recidivist can be characterized by the following:

- Repetitive and continuous criminal behaviour;
- Being rearrested for a crime;
- Committing breach of parole or supervision;

- Being found guilty of two or more crimes on different occasions;
- Being found guilty on two or more occasions of a similar crime
- Serving an indeterminate sentence;
- Re-offending within a stipulated period of time after release;
- Therapeutic interventions having little or no impact on the individual's offending behavior;
- Resulting in the labeling or stigmatization of the offender.

When measuring recidivism, at least 18 months should have elapsed from when the children were released into the community before an evaluation study is initiated (Barnoski, 1997). Recidivism can be measured in different purposes (Bonta, 1997). Recidivism is reconviction due to a sex offence (Langstrom & Grann, 2000:861). Recidivism among young offenders is a major concern for society in general and a challenge for all helping professionals working within the field of rehabilitation of young offenders (Ngxubane, 2006). It is unclear whether the general significantly low recidivism rate on youth sex offence is due to deterrence, humiliation, lack of opportunity, clinical treatment, increased surveillance or inadequate research methodology (Baptista & Wood, 2002:9).

According to the Report on the OSF-SA recidivism and reoffending conference (2010), there are some ways of defining the recidivism event as follows:

- Date of re-offence, the date at which the first re-offence was committed;
- Date of re-arrest, the date of first arrest after the target offence;
- Date of re-charge, the date of first charge after the target offence;
- Date of reconviction, the date at which the offender is reconvicted in a court;
- Date of sanction, the date at which the offender is reconvicted or admits guilt by accepting a caution, warning or reprimand for an offence.

Four main themes which are generally applied to define and operationalize recidivism (Prinsloo, 1996:41):

- An unconditional repetition of criminal conduct
- An unconditional re-incarceration as a result of continuous criminal behaviour and or bureaucratic considerations which are condition to a previous sentence or release
- Officially established repetitive criminal behaviour

- Habitual and/or professional criminals

Offenders face personal, societal and spiritual obstacles when it comes to integration and that recidivism rate for prisoners shows that far too few individuals establish themselves in productive, crime-free levels following their prison sentence (Van Ness & Strong, 1997:114). Violent recidivism includes offences against persons that involve physical contact with the victim (Langstrom & Grann, 2000:861). Walgrave (2009) indicates that positive impact on recidivism is higher for serious offences. The programme to reduce recidivism involves amongst others strengthening partnerships with civil society and families, therefore specific objectives include among others (South Africa, 2001:33):

- The development of individualized need-based rehabilitation programmes;
- Promoting a restorative justice approach;
- Combating illiteracy; and
- Improving the capacity of training facilities.

According to the UNODC (Manual for the Measurement of Juvenile Justice, 2006) risk factors are regarded as those conditions or characteristics that may contribute to or results in re-offending, such as:

- Social and economic environment
- Individual skills and characteristics
- Relationships with individual and community
- Stigmatization
- Institutionalization and socialization in prison
- Physical environment

6.6.1 Proposed ways to reduce recidivism

The identified principles of effective intervention the Risk-Need Responsivity (RNR) model was developed highlighting the following:

- Recidivism can be reduced or prevented if treatment programmes or services are matched to the offender's risk to re-offend, where high risk offenders should receive intense services, then low risk offenders should receive less intense treatment or services.

- Rehabilitation programmes should focus on changing the criminogenic needs of offenders. Eight central risk factor categories include; 1), a history of antisocial behavior, 2) antisocial personality patterns, 3) antisocial cognition, 4) antisocial peers, 5) family/marital dysfunction, 6) school/work dysfunction, 7) lack of prosocial leisure and 8) substance abuse
- Offender intervention programmes should be behavioral in nature, focusing specifically on cognitive strategies and techniques that work to restructure cognitive skills.

6.7 REHABILITATION INITIATIVES IN SOUTH AFRICAN PRISONS

Rehabilitation of offenders should include addressing the various ways in which offenders respond to cues in their immediate environment, motivation for crime, personal development and the reduction of criminal and anti-social behaviour and lifestyle (Du Preez, 2003:234). Rehabilitation is defined as a change for the better (Robinson & Crow, 2009:3). However, Dammer (2003:387) indicates that rehabilitation has been criticized as a being ineffective. According to Harcourt (1975:163) rehabilitation of offender is widely acknowledged as one of the ultimate goals of punishment. Rehabilitation is a term often used interchangeably with other terms such as treatment, intervention, reform, change and development (Alexander, 2000:4).

Rehabilitation intervention targets some specific aspects pertaining to inmate with the aim of reducing the likelihood of him or her re-offending (Muntingh, 2005). According to Mannheim (1939:151) rehabilitation is defined as an act of rehabilitation in its original context as a deletion of all entries regarding the conviction in the records. Ntuli (2000:162) indicates that ineffective rehabilitation programmes are largely responsible for recidivism. The following are the key areas which were identified in order to establish effective rehabilitation services (South Africa, 2003:18):

- The development of individualized need-based programmes, sexual offender programmes and drug abuse programmes;
- The marketing of rehabilitation services to other government departments and non-governmental organizations;
- Establishing formal partnerships with the community to strengthen rehabilitation programmes and to create a common understanding;
- Promoting the restorative justice approach which encourage offender responsibility for repairing the harm done and become acceptable to the community as a better person;

- Combating illiteracy in prisons; and
- To increase training facilities for the development of skills.

According to Tewksbury (2012) rehabilitation is a lifelong process in which prisoners acknowledge their antisocial behaviour and display a considerable level of commitment to reconstructing, asserting and redeveloping themselves to becoming reintegrated to their society after undergoing a psycho-educational programme. Rehabilitation refers to both the method of making release decisions by a parole board and to a form of community supervision by another office (Travis & Petersilia, 2001:296). The United Nations Standard Minimum Rules for the Treatment of Prisoners (1977), which is an international instrument that guides prisoner rehabilitation, has some of the fundamental principles, which includes:

- Prisoner shall be in well-ordered communities, where there is no danger to life, health or personal integrity.
- No discrimination in the treatment of prisoners.
- Prison conditions shall not impose or constitute a punishment additional to the deprivation of liberty imposed by the imprisonment, nor should they aggravate the suffering caused by the imprisonment.
- Prison should work towards assisting prisoners to resettle in the community by providing opportunities for them to develop skills.

6.7.1 Factors that hinders effective rehabilitation in prisons

- *Lack of a needs-based approach*

According to Notshulwana (2012), if the correctional environment is not conducive to mental growth and social development of offender, recidivism is likely and the safety of the community may be at risk because there is no identification of needs of offenders.

- *Lack of psychological services*

Comer (2013) psychologically, to keep sex offenders in prison without rehabilitation does not serve any purpose as they are likely to engage in further predatory acts of sexual violence as a result of mental abnormality or personal disorder.

- *Overcrowding and poor medical care*

The consequences of overcrowding may lead to poor sanitation and hygiene and aggravate the health of prisoners especially those who are infected by opportunistic diseases such as TB, pneumonia, and HIV/AIDS.

- *Lack of professionalism among prison staff members*

The lack of rehabilitative process could also be daunted by prison warders who lack professionalism and other essential skills attached to rehabilitation (Shalihu, Pretorius, van Dyk, Vander Stoep & Hagopian, 2014).

- *Lack of cooperation between social workers and management in the Department of Correctional Services*

According to Mnguni (2011), lack of sharing of duties and understanding of the roles of the social workers may create conflicts between the management of the Department of Correctional Services and social workers working in a harsh environment of offenders who are vulnerable and helpless.

- *Lack of security*

Naidoo and Mkhize (2012) indicate that lack of security and unethical correctional officers contribute to a large number of prisoners who access drugs, alcohol and other illegal or unauthorized articles.

According to Sentle (2002:14), rehabilitation in South African correctional services can be perceived as:

- The creation of an enabling environment where a human rights culture is upheld, reconciliation, forgiveness and healing are facilitated and prisoners are encouraged and assisted to discard negative values and to develop positive ones;
- The creation of opportunities, the acquisition of knowledge and new skills, the development of an attitude of serving with excellence and achievement of principled relations with others to prepare the prisoners to return to society with an improved chance of staying out of prison as productive and law abiding citizens;
- A process that starts with the prisoner gaining insight into his need to change the negative behavior.

6.8 COMMUNITY CORRECTIONS IN SOUTH AFRICAN CONTEXT

Community corrections are defined as correctional sanctions in the community whereby offenders have to serve all or a portion of their sentence (Cromwell, Del Carmen & Alarid, 2002:7). Community Corrections is the component of offender control that manages offenders in the community (Department of Correctional Services Act 111 of 1998).

6.8.1 The objectives of the community corrections

The objectives and aim of community corrections are stipulated in section 50(1) of the Correctional Service Act 111 of 1998 as amended, as follows:

- To afford sentenced offenders an opportunity to serve their sentences in a non-custodial manner;
- To enable persons subject to community corrections to lead a socially responsible and crime-free life during the period of their sentence and in future;
- To enable persons subject to community corrections to be rehabilitated in a manner that best keeps them as an integral part of society; and
- To enable persons subjected to community corrections to be fully integrated into society when they have completed their sentences.

It is in the context of dysfunctional families that the role of the state, through its various government departments and communities, with all its social institutions takes on a significant importance in the development of a correcting environment for children and the youth (Department of Correctional Services, 2005:35).

Peersen, Sigurdsson, Gudjonsson and Gretarsson (2004:128) indicate that the basic assumptions underlying prediction of offending behavior is that persistent offenders have similar characteristics such as antisocial personality features, which have different behavioral manifestations at different age levels and that the most serious delinquents become the most serious adult offenders.

6.9 DIVERSION PROGRAMMES

According to Nielsen and Gallinette (2004) South African commenced diversion programmes in the early 1990s by the National Institute for Crime Prevention and Reintegration of Offenders (NICRO). Diversion of offenders is one practice that takes away the young offender from the formal criminal justice system, such as victim-offender mediation, family group conferencing, referral to a NGO or other community or social programme including substance abuse programmes, family reunification, community services, police warnings, behaviour contracts, conditional and unconditional release (UNICEF, 2009).

Correctional education programmes are cost effective and provide a substantial return on investment for society (Chappell, 2002). However, Smiling and Killacky (2008) concur that despite possible positive impact of education in most countries, the criminal justice system has not been given adequate recognition and support to educate prison inmates. The Law Commission's Report on Juvenile Justice (2002) states the legal provisions to regulate and promote the use of diversion. According to Coffey (1975:106) each year millions of offenders or suspected offenders come in contact with the criminal justice system. The purpose of diversion programmes:

In terms of section 48 of the Child Justice Bill states that the purpose of diversion is to:

- Encourage the child to be accountable for the harm caused;
- Meet the particular needs of the individual child;
- Promote the reintegration of the child into the family and community;
- Provide an opportunity to those affected by the harm to express their views on its impact on them;
- Encourage the rendering to the victim of some symbolic benefit or the delivery of some object as compensation for the harm;
- Promote reconciliation between the child and the person or persons or community affected by the harm caused;
- Prevent stigmatizing the child and prevent adverse consequences flowing from being subject to the criminal justice system; and
- Prevent the child from having a criminal record.

6.10 SOUTH AFRICAN PAROLE SYSTEM

Parole is a continuation of the court's sentence that the offender had to serve in the community whereby the Department of Correctional Services and the parolee agree on certain enforceable conditions (Neser, 1993:353). However, Cromwell and Del Carmen (1994:4) define parole as the release of an offender before their sentence expires. Clear and Dammer (2003:16) define parole as consisting of two concepts, namely; placement and supervision. A major function of the Parole Board is to protect the community by acting as gatekeepers in managing an offender's transition from correctional centre to the community effectively (Burke, 2004:10). According to Nxumalo (1997:69) when counterbalancing these positive and negative factors, there are other factors that also play a role during the parole decision making process which include the following:

- *Pre-sentence factors*; such as poor personal, social and employment history, criminal history; family and marriage history; low education levels; sentence remarks made by the courts; the nature and seriousness, circumstances of the crime, the length of the sentence; the age of the offender and victims; crime patterns and the rate of committing crime.
- *Post-sentence factors*: such as criminal offence committed while incarcerated; whether any disciplinary offence was committed during the first quarter of the sentence; an offender's conduct and adaptation during the period of incarceration and their acceptance of authority; the attendance of treatment or rehabilitation programmes which are aimed at correcting offending behaviour; reports by vocational personnel such as social workers, psychologists, educationists, religious workers and health care workers; comments and reports from non-governmental organizations; information from victims, positive support systems; the offender's effort in finding solutions to personal problems such as drug addiction and low education levels; the adequacy of the Correctional Sentence Plan; manifestation of remorse and insight into the causes of their past and current criminal conduct and restorative justice.

6.11 RE-INTEGRATION AS AN ESSENTIAL PROGRAMME

The offender after having paid his or her so called dues through exclusion from the rest of the community is expected to assume his or her responsibilities as a productive member of society (Thinane, 2010:26). According to Muntingh (2002:21) a successful offender re-integration as a crime reduction strategy should be the overall purpose of the criminal justice system. Stevens (2006:291) describes reintegration as the process of finding employment for an offender, restoring family relationships, confirming support systems, and guiding an offender towards an independent, crime-free lifestyle.

There seems to be a lack of communication between communities and the DCS when ex-convict is re-integrated to the communities (Zondi, 2012). According to Kurki (1999), restorative justice process starts at the time crime was committed against a person and not just against the state. Muntingh (2005:7) indicates that re-integration introduces a societal dimension as opposed to the emphasis on law abidance and avoidance of risk behaviour often associated with rehabilitation. Doolin (2007) indicates that the offender needs to take responsibility for their actions, apologize and show remorse while attempting to repair the harm that they have caused, both materially and also symbolically.

6.12 CONCLUSION

The purpose of this chapter was to discuss the literature relevant to recidivism in South Africa. The literature focused on the deliberation of factors that are relevant to recidivism, the rights of the accused arrested and detained were also part of the discussion. The chapter also discussed the legislative framework governing the prison services in South Africa, in the form of restorative justice, rehabilitative programme, community corrections, diversion programmes, parole systems as well as discussion on recidivism in South Africa.

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CHAPTER SEVEN

FINDINGS AND RECOMMENDATIONS

7.1 INTRODUCTION

The previous chapter discussed the recidivism in the South African context. The purpose of research is not only to discover something but also to communicate that discovery to a larger audience referring to other social scientists, government officials, and the general public as well as the academic community (Patton, 1977:23).

Therefore, the following chapter discusses the findings and recommendation based on the conclusion of the investigation.

7.2 FINDINGS

7.2.1 Finding 1: Parole

The literature indicated that most parolees violate the conditions of parole that leads them back to prison which contributes to the increase of recidivism. Parole occurs as a result of lack of prisoner's participation in the programme as they do not have commitment on the goals of the programme. Parole is a programme designed for offenders for early release that allows prisoners to spend the remainder of their sentence outside the prison camp yet under the supervision and with conditions (Florida Parole Commission, 2004). The South African Parole system does not cater for recidivist to be dealt with separately in terms of rendering community corrections services. The same methods of parole are applied irrespective of the type of the number of offences committed before release on parole.

Parole is defined as the conditional release of inmates from prison back to the community before the expiration of the offender's sentences (Smykla, 1984:16). Pursley (1987:593) indicates that parole is the conditional release of an individual from a correctional institution back to the community; therefore the offender must abide by rules of conduct that are specified by the paroling authority and enforced by a parole officer. However, Cromwell and Del Carmen (1994:4) define parole as the release of offenders before their sentence expires.

The Department of Correctional Services, (2010b:17) define parole as a period of time during which an offender who has served minimum prescribed detention period of their sentence in Correctional Centre is conditionally released to serve the remainder of their sentence in the community under the supervision and control of the Department of Correctional Services. Recidivism questions the effectiveness of parole in reducing recidivism, according to the literature most offenders that returns to prisons are either those that are on parole or on probation, parole undermines the effectiveness of the probation programme.

Prison sub-culture has an influence in prison which contributes to recidivism. This implies that most offenders enjoy their illegal activities that they perform in prison and as a result they re-commit crime to be sent back to prison in order to practice unlawful behaviour such as gangsterism and so forth.

7.2.2 Finding 2: Probation

Probation as one of the correctional services programmes, its ineffectiveness contributes to recidivism. The majority of offenders have a chance to commit the same or other crimes and be sent back to prison. The impact of probation on correctional services is that probationers violate probation conditions and thus cause overcrowding. The more prisoners violates conditions indicates that probation programmes are not effective enough to prevent offenders from reoffending. Probation has been the main alternative used to help relieve overcrowding which began in 1841 with John Augustus who created a service in which he provided bail for men for temporary suspension of their sentence (Joseph, 2001:13).

Probation is disposition that is administered to individuals instead of sending them to prison; it is justified by inherent drawbacks in the criminal justice system which hinders the adjustment of criminals in the community (Callison, 1983:101). Carter, Glaser and Wilkens (1984:9), the tasks of a probation agency which contribute to the achievement of probation services in an efficient and effective manner are:

- Design and implement an organizational structure for the probation system consistent with providing maximum benefit at minimum cost with due consideration for local community needs and desires.
- Provide appropriate administrative and management controls which assure efficient and effective operation of the probation system.
- Enlist community support and auxiliary community services to augment services provided by the probation system.

- Provide a staff with each individual appropriately trained and educated for assigned duties and encourage the continual development of staff members.
- Evaluate and modify the system as necessary to maintain its efficient and effective operation.

7.2.3 Finding 3: Re-entry

It has been observed that before offenders are released from custody to the community, there is poor preparation of offenders to re-enter the community and therefore, they find it difficult to be accepted by members of the community. Lack of communication between communities and the DCS when ex-convict is re-integrated to the communities contributes to the problem of re-entry. The DCS is characterised by lack of effective programmes of the correctional service to prepare offenders to re-enter their own communities.

The term re-entry refers to, firstly to those people who are leaving prison conditionally and unconditionally, secondly, it is a technical term that describes the process of re-entering society without any connotations of doing it successfully or not, in other words of being rehabilitated and reintegrated and thirdly, it enables monitoring of profile of people released from prison and re-entering society, thus facilitating more appropriate support services (Muntingh, 2005:8).

Chin and Dandurand (2012:149) indicate that re-entry is referred to as a process through which a prisoner is moved from custody to living in the community. According to James (2011:1), offender re-entry includes all the activities and programming conducted to prepare ex-convicts to return safely to the community and to live as law-abiding citizens. Therefore, Doolin (2007:76) indicates that the offender needs to take responsibility for their actions, apologize and show remorse while attempting to repair the harm that they have caused, both materially and also symbolically.

7.2.4 Finding 4: Reintegration

The offender after having paid his or her so called dues through exclusion from the rest of the community is expected to assume his or her responsibilities as a productive member of society (Thinane, 2010:26). The Department of Social Development and other stakeholders are not monitoring the reintegration programme to deal with the stigma attached to offenders when they go out of prison. However, Champion (2001:19) defines reintegration as a punishment philosophy that promotes

programmes that lead offenders back into their community. It includes programmes such as furloughs, work release and halfway house.

7.2.5 Finding 5: Recidivism

Recidivism as a major contributing factor to overcrowding, it is not embraced collectively by all law enforcement agencies, partnerships of law enforcement agencies and other relevant stakeholders are not effective. Recidivism is a problem that exists in all the prisons in the world. Recidivists of different types of crime are treated the same (combination of minor and major offences). There is no international standard on recidivism. According to Rakis (2005:7) recidivism is a considerable problem which faces societies and governments institutions throughout the world. For as long as offenders are not well rehabilitated and approved for parole with such incorrect behaviour, recidivism will continue to happen.

Dissel (2008) argues that recidivism in South Africa will remain high because the types of rehabilitation programmes in the country's prisons are not effective and are almost non-existent. Recidivist is an offender who reverts back to criminal behaviour after being convicted of a prior offence (Champion, 2001:37). However, there is no consensus definition on the concept of recidivism across the world. It was established that there are no reliable statistics on the rates of re-offending in South Africa (Department of Correctional Services, 2004:8). There are vast numbers of programmes that are aimed at reducing recidivism in prison centres that are not effective nor changing offender's behaviour. The literature has established that recidivism in the US is higher than that of the other countries due to high level of crime and overcrowding of prisons.

The literature indicated that factors such as gender, age, race, level of education and socioeconomic situation of the offender do encourage people to recidivate; until these factors are addressed recidivism will keep on occurring. Recidivism is a result of ineffectiveness of the correctional programmes that are aimed at impeding recidivism. Some countries such as USA, England and Wales have a system to record recidivism rates, unlike South Africa. The high rate of recidivism among young offenders questions the effectiveness of the therapeutic and statutory interventions available to them (Ngxubane, 2006).

South Africa's lack of adequate programme encourages recidivism and thus results in overcrowding. Maltz (1984:4) states that using recidivism as a measure of correctional effectiveness implies that

offenders in the society need to be corrected. The biggest task that we know is how to correct offenders and that correcting offenders will lead to reduced criminality.

The challenge remains that those that committed crime should be sentenced for a long time but more importantly while incarcerated be properly managed. The problem is that crime in South African is considered normal and unavoidable. Crime in South Africa is widespread and rife and that life sentence has no effect on criminals (Skelton, 2004:4).

The literature further indicates that some offenders may re-offend after they have been convicted, treated and punished for a specific crime.

7.2.6 Finding 6: Rehabilitation

There are no well-structured programmes to rehabilitate offenders as well as Probation Officers not equipped to implement rehabilitation programmes as they apply “one size fits all”, for example, they apply the same programme to different offenders who committed different crimes. No rehabilitation programme specific for reoffending behaviour. Rehabilitation seems to be centred and been regarded as a course for concern in that it creates more problems which ends in recidivistic behaviour. Improper rehabilitation affects parole, in the sense that parolees violate parole conditions and return back to prison as a results of behaviours that were not corrected and eventually they recidivate. Recidivists are not detained in their separate facilities, not to distort their deviant behaviour to the first time offenders.

The Department of Correctional Services (2005:37) define rehabilitation as the result of a process that combines the correcting of offender behaviour, human development and the promotion of social responsibility and values that involve both the departmental responsibilities of the government and the social responsibilities of the nation. According to Louw and Luyt (2009:6) rehabilitation focuses on changing the offending behaviour and attitudes of offender in such a way that they no longer need to or wish to commit crimes. Freeman (2003) argues that the available data on recidivism is an indication that the ex-offenders that are released by the Department of Correctional Services are not rehabilitated. If offenders are well rehabilitated they will never return to prison at the rate that has been observed during the investigation of this phenomenon.

7.3 RECOMMENDATIONS

7.3.1 Recommendation 1: Parole

It is recommended that Parole system policies need to be revisited as a way of aligning them with international standards since South Africa does not have a database to record recidivism. It is therefore, a prerogative of the Parole Board to determine a prisoner's level of risk and it may direct release if it deems the risk to life and linked, to be minimal (Parole Board for England, 2012). It is recommended that in order to evaluate the success of parole, analysis of the following interrelated factors should be done:

- The indeterminate sentence by determining whether this has an impact on recidivism.
- The Parole Board and its political philosophy should be scrutinized for the purpose of ensuring that the parole board members are apolitical to avoiding special treatment.
- Decision-making by the several professional levels should be in a way that an effective decision making is done to ensure that the offender does not return to his behaviour.
- The quality of parole supervision should be such that it focuses on ensuring that parolees are under supervision in order to monitor their conduct in the community.
- The nature and definition of recidivism should be such that it is understood how it occurs and it should be defined accordingly.

It is recommended that the objectives of parole should be aimed at:

- Providing the inmates with an incentive for learning new skills, seeking treatment and behaving properly in prison, while at the same time;
- Protecting the public by keeping offenders incarcerated until they are no longer perceived as a danger to society, because the more rehabilitation programmes are effective, the more reduction in recidivism.
- The effectiveness of rehabilitation programmes should be measured so that when parole is granted or considered, the Parole Board can weigh and determine how much rehabilitated an offender is, at that particular time.

7.3.2 Recommendation 2: Probation

It is recommended that involvement of other stakeholders such as social workers, NGOs before probation should be done, because there is a need for integration of other role players to assist in ensuring that programmes of correctional services are implemented effectively in order to produce the best results. A programme that offenders are not willing to participate in it fully, cannot achieve its purpose whether in a prison set-up or outside prison. Without a commitment to the goals of the programme, people will always reoffend. The close partnership and continuous engagements of all stakeholders could improve the current practice on how probationers are handled and not to reoffend. The outreach programmes for the communities into which probationers are placed should be intensified. This will help the communities to accept probationers and help them with rehabilitation. The uniform of probation officers should be different from that of prison officials so that probationers are not associated with the stigma of prison when they are visited by probation officers.

7.3.3 Recommendation 3: Re-entry

It is recommended that re-entry programmes involve members of the community because if members of the community are not involved, there will be challenges when reintegration process has to take place, whereby resistance will prevail. Re-entry has been a serious concern for the offenders who has to re-enter the community, the process is not monitored. It is recommended that offender re-entry includes all the activities and programmes conducted to prepare ex-convicts to return safely to the community and to live as law abiding citizens. It is recommended that prior, re-entry takes place, it is important to identify factors that affect how offender re-entry functions in a given community which includes:

- The varying types of sentences handed down;
- The different kinds of release mechanism available to judges,
- The types of programmes provided in prisons by corrections
- The intensity of supervision provided by the parole board
- The family and community support available to the offender
- The kinds of social services available in the offender's community; and
- The status of the local economy and the offender's ability to obtain employment.

7.3.4 Recommendation 4: Reintegration

It is recommended that before reintegration process takes place, all the programmes that are designed to prepare an offender for reintegration be effective. In order to ensure that successful offender reintegration as a crime prevention strategy should be the overall purpose of the criminal justice system (Muntingh, 2002:2). Reintegration programmes are typically divided into three phases: programmes that prepare offenders to re-enter society while they are in prison, programmes that connect ex-offenders with services available immediately after they are released from prison and programmes that provide long term support and supervision for ex-offenders as they settle into communities permanently (James, 2011:1). The effectiveness of these programmes will determine the increase or decrease of recidivism rates in prison.

The family visits, and visits by community organisations and churches to offenders that are about to be released should be made more unrestricted so that offenders could build a bond with outside support systems while still incarcerated. This will also help offenders with acceptance by their families, friends and community-based organisations, thus enhancing reintegration.

7.3.5 Recommendation 5: Recidivism

It is recommended that the criminal justice has to analyse the measurements of recidivism more often in order to understand which offenders may reoffend. Recidivist of different crimes should receive therapy, rehabilitation training and social services that are related to the type of offences committed. Prison treatment has shown to be cost effective to the government. The international best practices on how to deal with recidivism need to be applied. More research is recommended in order to understand the cause and how recidivism could be prevented. Warren (2007:xv) states that local and state policy initiatives that judges needs to pursue through local or state criminal justice policy in order to gain policy support for local recidivism-reduction strategies are as follows:

- develop local or state community based corrections programmes that effectively address the criminogenic needs of felony offenders.
- develop community based intermediate sanctions appropriate to the nature of committed offences and offender risks.
- ensure judges and advocates have access to accurate and relevant sentencing information.
- incorporate a curriculum on Evidence-Based Practice (EBP) into professional education and training programs for judges, probation officers, prosecutors and the defense bar.

- obtain the explicit inclusion of risk reduction as a key objective of the state sentencing policy.
- ensure that state sentencing policy allows sufficient flexibility with regard to discretion applied by sentencing judges to permit implementation of risk reduction strategies.
- modify state corrections policies to provide for the development of evidence based corrections and intermediate sanctions programs.
- create offender based data and sentencing support systems that facilitate data driven sentencing decision.

It is recommended that in order to understand why some offenders' recidivate and others do not, variables such as age, gender, race, employment history, level of education, convicted offence and prior arrests need to be taken into considerations. Langan and Levon (2002) state the following as the actions that can reasonably be applied for measuring recidivism:

- Arrest: an arrest for any offence that would be a crime for an adult where sources of information are police department files.
- Filing charges: filing of charges with juvenile and or adult criminal court based on accusations of an offence that would be a crime for an adult where sources of information are juvenile court files.
- Adjudication or conviction: adjudication by a juvenile court or conviction by an adult criminal court of guilt based on charges filed by the prosecutor. Source of information is juvenile or criminal court files if tried as adult.
- Commitment to a juvenile facility: commitment to a juvenile residential facility by a juvenile court following an adjudication of delinquency where sources of information are juvenile court files.
- Commitment to an adult facility: commitment to a juvenile residential facility following a trial in which the defendant was found guilty of crime where the source of information is criminal court files.
- The follow-up period for tracking an individual's recidivism should be at least 24 months.

The study also recommend that treatment programmes should be matched to the offender's risk to re-offend, where high risk offenders should receive intense services, then low risk offenders should receive less intense treatment or services. Offender intervention programmes should be behavioural in nature, focusing specifically on cognitive strategies and techniques that work to restructure cognitive skills.

7.3.6 Recommendation 6: Rehabilitation

It is recommended that rehabilitation intervention targets some specific aspects pertaining to inmate with the aim of reducing the likelihood of him or her re-offending (Muntingh, 2005), since there is little support for the view that imprisonment have rehabilitative effect to the person confined. Rehabilitation of offenders should include addressing the various ways in which offenders respond to cues in their immediate environment, motivation for crime, personal development and the reduction of criminal and anti-social behaviour and lifestyle (Du Preez, 2003:234).

Rehabilitation programmes should focus on changing the criminogenic needs of offenders. Eight central risk factor categories include; 1), a history of anti-social behaviour, 2) anti-social personality patterns, 3) anti-social cognition, 4) anti-social peers, 5) family/marital dysfunction, 6) school/work dysfunction, 7) lack of prosocial leisure and 8) substance abuse. Prisons should have vocational and educational programmes, psychological counsellors and an array of services available to inmates in order to improve their skills, education and self-concept.

More resources of Correctional Services, including human resources should be directed at rehabilitation than security. The personal development for officials delivering and managing rehabilitation programmes should be prioritised. The prison facilities should be built with more emphasis on things that enhance rehabilitation such as schools, training workshops and sports facilities. There is a need to be proper schools built, unlike the current architecture where the building structures are more oriented towards security than rehabilitation. Furthermore, prison officials should be equipped with training that is relevant to deal with how recidivists should be handled in terms of rolling out rehabilitation programmes in prisons. This should form part and parcel of their training curriculum when they get employed in the department of correctional services or in their learnership or basic training programme before permanent employment could be offered.

7.4 CONCLUSION

In conclusion, inadequate programmes are rolled to inmates in prison that encourages recidivism, that is discovered through activities that are not allowed in prison and management efforts seems to be inappropriate. There are several unlawful behavioural patterns adopted by means of sub-cultures in prisons that are affecting our community when offenders are released and obviously have a negative

impact on the rate of recidivism in the country. Another problem emanating from the scourge associated with reoffending is that the department of correctional services spends more money and other resources to look after the offenders; as a result the economy of the republic becomes affected due to aspects relating to overcrowding and recidivism.

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